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A CRITICAL REFLECTION ON LAW AND ORGANIZING

Scott L. Cummings* and Ingrid V. Eagly**

Over the last decade, poverty law scholars and practitioners have engaged in a lively debate about the relationship between law and social change. What has emerged from this dialogue is a new community-based approach to progressive lawyering that combines legal advocacy and grassroots action in a form of practice that this Article terms “law and organizing.” The law and organizing model privileges movement politics over law reform efforts and suggests that lawyers should facilitate community mobilization rather than practice in the conventional mode. In the academy, this model has attracted heightened attention from legal scholars dissatisfied with the potential of litigation efforts to produce meaningful social change. On the ground, lawyers have deployed organizing tactics to achieve significant gains for marginalized communities. Yet, although it holds out rich possibilities, the law and organizing paradigm is still largely untested as a practical strategy and has not been subjected to close academic scrutiny. This Article initiates a critical reflection on law and organizing by providing a historical account of its evolution, examining how poverty lawyers are incorporating organizing into their day-to-day practice, and analyzing some of the structural, practical, and ethical issues posed by this new approach.

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INTRODUCTION

What role should lawyers play in broader movements for social change? Can progressive lawyers use the law to restructure deeply ingrained political and economic relationships and reorient power in favor of subordinated groups? Can the law empower marginalized communities by offering alternative normative visions, raising awareness of injustice, or providing opportunities for grassroots mobilization?

Over the years, legal practitioners and theorists have offered multiple, often conflicting, answers to these questions, always struggling to define the connection between law and social justice. In the 1950s and 1960s, lawyers used a litigation-centered approach to challenge legalized segregation through class action lawsuits brought against the backdrop of community mobilization and media images of racist brutality.¹ The 1970s saw the advent of complex public law litigation in which lawyers used ongoing judicial intervention

1. See, e.g., RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1975); ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE* (1984); CLEMENT E. VOSE, *CAUCASIANS ONLY: THE SUPREME COURT, THE NAACP, AND THE RESTRICTIVE COVENANT CASES* (1959).

to bring about reform in public institutions such as prisons and mental hospitals.² Both of these strategies privileged the law generally, and litigation specifically, as a mechanism for social change.³

However, the 1970s also witnessed a nascent critique of litigation-focused social change strategies, as scholars and practitioners began to offer alternative models for progressive legal work. In his influential article, Stephen Wexler argued against the idea that rights enforcement by legal aid lawyers would significantly improve the conditions of the poor. Instead, he contended, lawyers should assist poor persons to organize on their own behalf.⁴ Similarly, Gary Bellow posited a model of legal aid practice that emphasized political action and viewed litigation as ancillary to a broader social change strategy.⁵

The 1980s and 1990s were a period of transition for poverty lawyers. While some scholars continued to argue that practitioners should emphasize community mobilization,⁶ a changing political, economic, and intellectual

2. See Abram Chayes, *Public Law Litigation and the Burger Court*, 96 HARV. L. REV. 4 (1982); Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976); Donald L. Horowitz, *Decreeing Organizational Change: Judicial Supervision of Public Institutions*, 1983 DUKE L.J. 1265.

3. The establishment of the federally funded Legal Services Corporation (LSC) in the 1970s reinforced the importance of legal strategies to redress poverty. See generally EARL JOHNSON, JR., JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE OEO LEGAL SERVICES PROGRAM (1974).

4. See Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1053 (1970) (“If all the lawyers in the country worked full time, they could not deal with even the articulated legal problems of the poor. . . . In this setting the object of practicing poverty law must be to organize poor people, rather than to solve their legal problems.”). One of the original purposes of legal services programs instituted under the Office of Economic Opportunity (OEO) in 1964 was the promotion of organizing among groups of poor people. See Roger C. Cramton, *Crisis in Legal Services for the Poor*, 26 VILL. L. REV. 521, 524–25 (1980–1981); Roger C. Cramton, *Delivery of Legal Services to Ordinary Americans*, 44 CASE W. RES. L. REV. 531, 587 (1994) [hereinafter, Cramton, *Delivery of Legal Services*]; Louise G. Trubek, *Reinvigorating Poverty Law Practice: Sites, Skills and Collaborations*, 25 FORDHAM URB. L.J. 801, 806 (1998) (noting that “[o]rganizing clients and educating people on rights has been advocated since the 1960s”). For descriptions of the evolution of early OEO legal services programs, see Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433, 436–40 (1998); Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 GEO. L.J. 1529, 1558–82 (1995); and Alan W. Houseman, *Political Lessons: Legal Services for the Poor—A Commentary*, 83 GEO. L.J. 1669, 1669–83 (1995).

5. See Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 34 NLADA BRIEFCASE 106, 121–22 (1977) (arguing that legal aid lawyers should adopt a “political perspective, directed toward specific changes in particular institutions that affect the poor” and use the method of “focused case” pressure in combination with community organizing and legislative advocacy to promote systemic change).

6. See Richard Abel, *Lawyers and the Power to Change*, 7 LAW & POL’Y 5, 8–9 (1985) (claiming that the “law must be subordinated to other modes of activism” and highlighting examples of lawyers working with organizers as “achievements that could inspire and guide future efforts”); Steve Bachmann, *Lawyers, Law, and Social Change*, 13 N.Y.U. REV. L. & SOC. CHANGE

landscape began to fundamentally reshape the debate on social change practice. The Reagan revolution of the 1980s ushered in an era of hostility to government-sponsored antipoverty programs, cutbacks in legal services, and retrenchment on civil rights issues,⁷ forcing advocates to confront new constraints on their ability to press for social reform. The 1990s, in turn, brought welfare reform,⁸ additional attacks on legal services,⁹ and unprecedented wealth accumulation,¹⁰ leading many poverty lawyers to move away from litigation strategies and instead to focus on community-based efforts to redress economic inequality.¹¹ These material changes coincided with a marked reconfiguration of the role of progressive lawyers in the academic literature. Poverty law scholars, concerned about the potential for lawyer domination within the attorney-client relationship, expressed their dissatisfaction with traditional litigation-centered advocacy strategies and argued that lawyers should seek to empower marginalized clients by privileging client narratives and promoting client political agency.¹²

1, 4 (1984–1985) (stating that “[o]rganized masses of people, not lawyers, play the critical roles [in social change], and the significant victories (or losses) occur outside the sphere of law”).

7. See Douglas J. Besharov, *Introduction to LEGAL SERVICES FOR THE POOR: TIME FOR REFORM* xxiii (Douglas J. Besharov ed., 1990) (stating that the LSC budget was cut by almost one-third during the Reagan Administration); Ruth Margaret Buchanan, *Context, Continuity, and Difference in Poverty Law Scholarship*, 48 U. MIAMI L. REV. 999, 1028–31 (1994) (describing the impact of Reagan conservatism on welfare, legal services, and civil rights).

8. See Robert Pear, *Clinton to Sign Welfare Bill that Ends U.S. Aid Guarantee and Gives States Broad Power*, N.Y. TIMES, Aug. 1, 1996, at A1 (describing the new welfare reform plan that effectively eliminated the guarantee of cash assistance to poor children, gave states authority to run their own welfare to work programs, established a lifetime limit of five years for welfare payments to any family, and instituted strict work requirements).

9. In 1995, Congress tried again to abolish the LSC, and succeeded in cutting funding by one-third and increasing the restrictions on the type of work that can be performed by LSC attorneys. See *Legal Services Survives, Barely*, N.Y. TIMES, May 6, 1996, at A14. Another major source of funding for legal services programs, Interest on Lawyers Trust Accounts, has been threatened by a U.S. Supreme Court decision prompted by a suit brought by a conservative Texas-based organization, the Washington Legal Foundation. See Linda Greenhouse, *\$100 Million in Legal Services Funding Is Placed in Doubt by a Supreme Court Ruling*, N.Y. TIMES, June 16, 1998, at A18.

10. See Richard W. Stevenson, *In a Time of Plenty, the Poor Are Still Poor*, N.Y. TIMES, Jan. 23, 2000, § 4 (Week in Review), at 3 (noting that, despite the fact that the United States is currently experiencing the longest economic expansion on record, the income growth of the wealthiest Americans has been much greater than that of the poor, and the poverty rate has not fallen below the 12 percent barrier, as it has in previous periods of economic expansion).

11. See, e.g., Mario Salgado, *Building a Community Economic Development Unit*, 28 CLEARINGHOUSE REV. 981, 982 (1995) (indicating that 20 percent of the more than 300 legal services programs across the country had devoted significant resources to community economic development); Ann Southworth, *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice*, 1996 WIS. L. REV. 1121, 1147 (describing the results of a survey of civil rights and poverty lawyers in Chicago that found a significant shift in lawyers’ roles away from rights enforcement and toward planning activities that facilitated community development).

12. See *infra* Part I.A–B.

It is against this backdrop that scholars and practitioners—recognizing that innovative advocacy is required to address the needs of the poor in this prosperous postwelfare, post–civil rights era—have begun to revisit the question of what role the law and lawyers should play in struggles for social justice. What has emerged is a politically revitalized approach to progressive legal practice: the “law and organizing” movement.¹³

Unique to the law and organizing paradigm is its insistence that lawyers can advance social justice claims and shift power to low-income constituencies through a particular type of legal advocacy—one that is intimately joined with, and ultimately subordinate to, grassroots organizing campaigns. This model both builds upon and departs from previous discussions of law and social movements by presenting sophisticated theoretical analyses and concrete practical examples of how legal advocacy and community organizing can be integrated as a credible social change strategy. In general, this new framework offers a vision of social change directed by community-based organizations in which lawyers are ancillary to the definition and implementation of a transformative agenda. Accounts of law and organizing suggest that progressive lawyers should de-emphasize conventional legal practice and instead focus their efforts on facilitating community mobilization.¹⁴ Specifically, lawyers seeking to improve the conditions of poor clients are encouraged to supplement conventional litigation strategies with community education programs,¹⁵ link the provision of legal services with

13. Law and organizing includes varied practical strategies and incorporates different views about the relative importance of legal work. See generally GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407 (1995); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699.

14. Some have suggested that, in its most radical form, the law and organizing model equates the role of lawyer to that of organizer and largely rejects the provision of legal services. See Sophie Bryan, *Personally Professional: A Law Student in Search of an Advocacy Model*, 35 HARV. C.R.-C.L. L. REV. 277 (2000).

[The law and organizing] model elevates organizing above legal advocacy, largely rejects the provision of legal services, and regards attorneys as limited skill providers. Its underlying attitude toward attorneys is negative and is grounded in the premise that the permitted contribution of attorneys to an organizing effort should be inversely proportional to their traditional social status.

Id. at 279; see Buchanan, *supra* note 7, at 1044 (stating that “[a]t its most extreme, [law and organizing] equates the lawyers’ role to that of an organizer, while minimizing or eliminating the need for a reliance on the lawyer’s specialized legal knowledge” and that “[o]ne must consider the effects of this radical abandonment of the lawyer’s traditional role on the lawyer’s legitimacy and credibility, and consequently her ability to gain access to communities of disempowered clients”).

15. See Eagly, *supra* note 4, at 451–54, 472–79 (arguing that lawyers should supplement traditional legal strategies with community education).

membership in organizing groups,¹⁶ and become directly involved in organizing campaigns.¹⁷

In recent years, the concept of law and organizing has attracted significant attention among academics, clinicians, practitioners, students, and philanthropic foundations. In the legal academy, a diverse range of scholarship has been associated with the emerging law and organizing model.¹⁸ Classes are being taught at major law schools on law and organizing¹⁹ and conferences are being held to discuss the merits of law and organizing strategies.²⁰

16. See Gordon, *supra* note 13, at 443 (describing a program in which participation in organizing activities is required in exchange for legal services).

17. See, e.g., William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1995) (arguing that community organizing must be a critical component of poverty law advocacy).

18. See, e.g., JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE* (1978); LÓPEZ, *supra* note 13; MICHAEL W. MCCANN, *RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION* (1984); Abel, *supra* note 6; Gary L. Blasi, *Litigation on Behalf of the Homeless: Systematic Approaches*, 31 WASH. U. J. URB. & CONTEMP. L. 137 (1987); Raymond H. Brescia et al., *Who's in Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831 (1998); Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619 (1992); Michael J. Fox, *Some Rules for Community Lawyers*, 14 CLEARINGHOUSE REV. 1 (1980); Gordon, *supra* note 13; Muhammad I. Kenyatta, *Community Organizing, Client Involvement, and Poverty Law*, MONTHLY REV., Oct. 1983, at 18; Karl E. Klare, *Toward New Strategies for Low-Wage Workers*, 4 B.U. PUB. INT. L.J. 245 (1995); Richard Klawiter, ¡La Tierra Es Nuestra! *The Campesino Struggle in El Salvador and a Vision of Community-Based Lawyering*, 42 STAN. L. REV. 1625 (1990); Quigley, *supra* note 17; Ann Southworth, *Collective Representation for the Disadvantaged: Variations in Problems of Accountability*, 67 FORDHAM L. REV. 2449 (1999); Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER, RACE & JUST. 405 (1998); Lucie E. White, *Mobilization on the Margins of the Laissez-faire: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987-1988); White, *supra* note 13; see also Videotape: *So Goes a Nation: Lawyers and Communities* (New York Lawyers for the Public Interest & Stein Center for Ethics and Public Interest Law at Fordham University School of Law 2000) (on file with the *Fordham Urban Law Journal*).

19. For example, Professor Lucie White has a student-faculty reading group on law and organizing at Harvard Law School; Professor Gerald López is teaching Community Outreach, Education, and Organizing at New York University Law School; and the UCLA School of Law's Program in Public Interest Law and Policy has a seminar for second-year students with an organizing module.

20. On February 25, 2000, a group of lawyers, activists, academics, and students gathered at the UCLA School of Law for "A Conference on Law and Organizing," sponsored by the Program in Public Interest Law and Policy. Participants in the Conference included: Frances Lee Ansley, Professor of Law, University of Tennessee College of Law; Greg Asbed, Coalition of Immokalee Workers; Luke Cole, General Counsel, The Center on Race, Poverty and the Environment; Jennifer Gordon, Lecturer, Yale Law School; Jaribu Hill, Program Director, Mississippi Center for Workers' Human Rights; Roy Hong, Executive Director, Korean Immigrant Workers Advocates (KIWA); Clara Luz Navarro, Project Director, Mujeres Unidas y Activas; Lucie White, Professor of Law, Harvard Law School; and Steve Williams, Executive Director, People Organized to Win Employment Rights (POWER). Panelists discussed the conceptual bases and practical examples of the law and organizing model. In November 1995, Harvard Law School hosted a conference entitled "Political Lawyering: Conversations on Progressive Social Change" in which panelists

The idea that lawyers should work with grassroots organizing campaigns rather than engage in traditional forms of poverty lawyering is also influencing the direction of poverty law practice.²¹ The law and organizing model has been successfully implemented by a growing number of nonprofit organizations around the country and has garnered the attention of the foundation world, which is more regularly supporting programs that combine legal advocacy with community organizing.²² As further measure of the appeal of law and organizing, increasing numbers of young lawyers are engaging in organizing activities²³ and attending training on organizing techniques.²⁴

discussed a variety of approaches to community lawyering, including the law and organizing model. See Symposium, *Political Lawyering: Conversations on Progressive Social Change*, 31 HARV. C.R.-C.L. L. REV. 285 (1996).

21. See, e.g., Peter Edelman, *Responding to the Wake-Up Call: A New Agenda for Poverty Lawyers*, 24 N.Y.U. REV. L. & SOC. CHANGE 547, 558 (1998) (encouraging attorneys to “make new alliances and build new relationships with organizers”); *Poverty Law and Community Legal Clinics: A View from Parkdale Community Legal Services*, 35 OSGOODE HALL L.J. 595, 599 (1997) (arguing that community organizing is essential to the effective functioning of community-based legal services clinics); Hina Shah, *Symposium on Labor and Immigration*, 6 ASIAN L.J. 217, 217 (1999) (emphasizing the importance of lawyers acting as organizers in order to empower immigrant workers).

22. For example, foundations sponsoring fellowships for young public interest lawyers, including the Skadden Fellowship Foundation, the Open Society Institute, the Echoing Green Foundation, and the National Association of Public Interest Law (NAPIL), have supported numerous projects involving law and organizing work. The Mott Foundation has funded the Welfare Law Center in New York to provide legal backup for the organizing efforts of grassroots groups, including POWER and the Association of Community Organizations for Reform Now (ACORN). See Welfare Law Ctr., *New Workfare Organizing Project Opens: Mott Foundation Grant to Welfare Law Center Supports Five Groups*, at <http://www.welfarelaw.org/mottgrt.html> (last visited Jan. 14, 2001). The MacArthur Foundation has awarded a “genius grant” to attorney Jennifer Gordon for her groundbreaking law and organizing work. See The MacArthur Found., *Complete List of MacArthur Fellows*, available at http://www.macfdn.org/programs/fel/complete_list_2.htm (last visited Jan. 14, 2001). The Liberty Hill Foundation in Los Angeles has funded a number of organizing projects that have involved collaborations with attorneys. See Liberty Hill Found., at <http://www.libertyhill.org> (last visited Jan. 15, 2001).

23. For example, 60 percent of 1998 NAPIL Equal Justice Fellows indicated in a survey that they had either “extensive” or “significant” experience with community education or organizing work. See Ingrid V. Eagly, *Training Materials for 1999 NAPIL Conference* (on file with authors). Less than 10 percent had “limited” or “no experience” in these areas. See *id.* This increase in law and organizing is occurring despite restrictions on grassroots tactics, including lobbying, public demonstrations, advocacy training, and certain organizing activities, imposed upon lawyers employed by LSC-funded agencies. See 45 C.F.R. § 1612.1 (2000). Innovative LSC attorneys have been able to operate in ways that complement organizing efforts through permissible activities such as providing “legal advice or assistance to eligible clients who desire to plan, establish or operate organizations.” *Id.* § 1612.9.

24. For example, at NAPIL’s Annual National Leadership Development Training, public interest Fellows receive training in “areas that are important to the development of a future public interest lawyer, such as fundraising, media relations, community organizing and coalition-building.” NAPIL, *National Leadership Development Training*, available at <http://www.napil.org/HOME.html> (last visited Sept. 24, 2000). In the 1999 training, three sessions were held on law and organizing,

Law and organizing holds out rich possibilities for social change and sets forth a new role for lawyers concerned with challenging the underlying structural causes of poverty and powerlessness. In practice, the increased focus on organizing work has generated concrete benefits for poor communities. Law and organizing advocates have played significant roles in curbing abusive employment practices, securing the passage of strong workers' rights laws, enacting living wage and first-source hiring ordinances, and preventing hazardous waste dumps from being located in poor communities.

Yet, law and organizing is in need of fuller theoretical analysis and practice-based examination. Precisely because of the increased attention it has received, it is incumbent upon scholars and practitioners to think through the implications of law and organizing and map the challenges that lawyers practicing in organizing contexts face. Perhaps most significantly, a critical assessment of the law and organizing paradigm is necessary to initiate a deeper discussion of the parameters of effective social change lawyering.

Part I of this Article presents a historical overview of the law and organizing movement. Next, Part II explores how law and organizing has been effectively applied in the areas of workers' rights, environmental justice, and community development. Part III examines the structural tensions of the law and organizing approach, discusses practical barriers to its implementation, and analyzes the ethical issues faced by law and organizing advocates. The Conclusion calls for further evaluation of the law and organizing model in order to strengthen its practical application and generate a more fluid conception of social change lawyering—one that allows poverty lawyers to draw on a variety of different advocacy techniques, including organizing, to advance social justice.

I. THE EVOLUTION OF THE LAW AND ORGANIZING MOVEMENT

Law and organizing has emerged as an important movement within progressive legal circles. In order to understand how it has gained such prominence and evaluate its potential as a social change strategy, this part provides an overview of its historical evolution. In particular, this part traces the law and organizing movement to three related developments: (1) the progressive critique of the law generally, and litigation specifically, as a social change vehicle; (2) the postmodern critique of lawyers as social change agents; and (3) the heightened interest in models of community-based organizing campaigns.

and trainers included both community organizers and lawyers heavily engaged in organizing work. See 1999 Leadership Development Training Agenda (on file with authors).

A. The Progressive Critique of Law

One of the defining features of post–civil rights progressive legal scholarship has been its skepticism toward law as a vehicle for social change. This disaffection with the law has been fueled, in part, by the critical legal studies (CLS) challenge to mainstream jurisprudence.²⁵ Beginning in the late 1970s, CLS adherents leveled a deconstructionist critique²⁶ of legal liberalism,²⁷ arguing that the dominant legal regime perpetuated inequities in the

25. For a general discussion of the critical legal studies (CLS) movement, see ANDREW ALTMAN, *CRITICAL LEGAL STUDIES: A LIBERAL CRITIQUE* (1990); *CRITICAL LEGAL STUDIES* (James Boyle ed., 1992); *CRITICAL LEGAL STUDIES* (Allan C. Hutchinson ed., 1989); MARK KELMAN, *A GUIDE TO CRITICAL LEGAL STUDIES* (1987); *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* (David Kairys ed., 1982) [hereinafter *THE POLITICS OF LAW*]; ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* (1986); Allan C. Hutchinson & Patrick J. Monahan, *Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought*, 36 *STAN. L. REV.* 199 (1984); Mark V. Tushnet, *Critical Legal Studies: A Political History*, 100 *YALE L.J.* 1515 (1991); and Mark V. Tushnet, *Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles*, 96 *HARV. L. REV.* 781 (1983).

26. Deconstruction is a method of reading texts, initially employed by the French post-structuralist theorist, Jacques Derrida, see generally JACQUES DERRIDA, *OF GRAMMATOLOGY* (Gayatri Chakravorty Spivak trans., Johns Hopkins Univ. Press 1976) (1967), that was frequently used by CLS scholars as a way of identifying a hierarchy of values in established legal doctrine and “inverting the hierarchy” in order to liberate previously submerged and marginalized viewpoints. See GARY MINDA, *POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY’S END* 116–18 (1995); see also Peter C. Schanck, *Understanding Postmodern Thought and Its Implications for Statutory Interpretation*, 65 *S. CAL. L. REV.* 2505, 2524 (1992) (describing Derrida’s deconstructive method as involving “a rigorous analysis of a given work or body of work for the purpose of demonstrating that the arguments supporting its apparent thesis, a particular proposition within the work, or a meaning usually attributed to it can also support contrary or alternative theses, propositions, or meanings”). Professor J.M. Balkin discussed the technique of deconstruction in the following terms:

Described in its simplest form, the deconstructionist project involves the identification of hierarchical oppositions, followed by a temporary reversal of the hierarchy. Thus, to use Derrida’s favorite example, if the history of Western civilization has been marked by a bias in favor of speech over writing we should investigate what it would be like if writing were more important than speech. . . . In so doing, we reverse the privileged position of speech over writing, and temporarily substitute a new priority.

J.M. Balkin, *Deconstructive Practice and Legal Theory*, 96 *YALE L.J.* 743, 746 (1987).

27. See MINDA, *supra* note 26, at 113 (describing “liberal legalism” as “the label CLS attaches to mainstream law and legal scholarship,” which promotes “the values of autonomy and individual self-interest”); Mark Hager, *Against Liberal Ideology: A Guide to Critical Legal Studies*, 37 *AM. U. L. REV.* 1051, 1053 (1988) (reviewing KELMAN, *supra* note 25 (“‘Liberalism,’ as criticized by CLS, is the all-pervasive public philosophy of democracy within capitalism, a philosophy which postulates both descriptively and normatively a world of self-serving individuals competing for gratification in a fair and well-ordered market, a market by means of which the crucial social choices are made.”); Jonathan Turley, Introduction, *The Hitchhiker’s Guide to CLS, Unger, and Deep Thought*, 81 *NW. U. L. REV.* 593, 601–02 (1987) (describing general features of liberalism). Gerald Wetlauffer has stated that

“liberalism” is comprised of four beliefs: (1) the social universe is comprised of individuals who are essentially independent and autonomous of one another and who should be

social order by privileging certain normative categories over others.²⁸ The project of CLS was to demystify the power hierarchies embedded in liberal individual rights discourse by showing the indeterminacy of legal rules²⁹ and the inherently political choices underlying the current legal order.³⁰ CLS evolved as an oppositional critique of traditional legal thought that employed a method of analysis known as “trashing”³¹ to expose the law as “politics by other means.”³²

Although many within the CLS movement viewed their work as a self-conscious effort to strengthen the connection between law and social justice,³³ the force of the CLS critique encouraged later scholars and prac-

understood to pre-exist society and the state; (2) those individuals are by their nature, and ought to be, free and, indeed, their liberty and autonomy may be the first principles from which we ought to work; (3) among the most basic rights, freedoms, and liberties that those individuals may hold is the right of property and, within a particular realm, the right to choose freely; and (4) the proper role of the state is to protect the rights of these individuals and to provide a mechanism for the mediation of their conflicting desires.

Gerald B. Wetlaufer, *Systems of Belief in Modern American Law: A View from Century's End*, 49 AM. U. L. REV. 1, 9 (1999); see also LAURA KALMAN, *THE STRANGE CAREER OF LEGAL LIBERALISM* (1996); Scott Cummings, *Affirmative Action and the Rhetoric of Individual Rights: Reclaiming Liberalism as a “Color-Conscious” Theory*, 13 HARV. BLACKLETTER L.J. 183, 187–90 (1997) (describing the tenets of liberalism).

28. See MINDA, *supra* note 26, at 115 (stating that early 1980s CLS scholarship was devoted to showing “how legal doctrine, as a manifestation of the ideology of liberalism, contributed to an unjust, hierarchical social structure”); Martha Minow, *Law Turning Outward*, TELOS, Fall 1987, at 79, 84–85 (1987) (stating that CLS sought to show how “particular interest groups, social classes, or entrenched economic institutions benefit from legal decisions despite the indeterminacy of the legal doctrines”); see also MORTON J. HOROWITZ, *THE TRANSFORMATION OF AMERICAN LAW 1780–1860* (1977) (describing how legal doctrine developed to support American corporate interests and industrialization).

29. See MINDA, *supra* note 26, at 110 (stating that CLS scholars “argued that there are no foundations for grounding otherwise indeterminate law because law and its doctrines were philosophically committed to contradictory norms and policies”); see also UNGER, *supra* note 25, at 7 (describing the development of constitutional law and constitutional theory as the “discovery of indeterminacy through generalization”); Minow, *supra* note 28, at 84 (stating that the “critical scholar seeks to demonstrate the indeterminacy of legal doctrine: any given set of legal principles can be used to yield competing or contradictory results”). See generally ROBERTO MANGABEIRA UNGER, *KNOWLEDGE AND POLITICS* (1975); Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976); Duncan Kennedy, *The Structure of Blackstone's Commentaries*, 28 BUFF. L. REV. 209 (1979).

30. See Hutchinson & Monahan, *supra* note 25, at 206.

31. “Trashing” has been defined as a process of criticism through which scholars “tak[e] legal argument and doctrine and ‘demystify[]’ the language to uncover its hidden meaning.” Turley, *supra* note 27, at 603; see also Mark G. Kelman, *Trashing*, 36 STAN. L. REV. 293 (1984).

32. David Kairys, *Legal Reasoning*, in *THE POLITICS OF LAW*, *supra* note 25, at 11, 17; see also John Henry Schlegel, *Notes Toward an Intimate, Opinionated, and Affectionate History of the Conference on Critical Legal Studies*, 36 STAN. L. REV. 391, 411 (1984).

33. See, e.g., UNGER, *supra* note 25, at 15–22 (arguing for the use of “deviationist doctrine”—an approach to legal analysis that, in contrast to legal formalism, explicitly takes into account ideological controversies regarding the proper organization of society—as a means to fos-

tioners to turn away from legal advocacy and embrace political action as the most effective mechanism to promote social change. That is, as CLS proponents exposed the politicized nature of legal doctrine in order to create space for the discussion of alternative institutional arrangements,³⁴ they simultaneously laid the foundations for a new orientation toward social change practice that privileged mass mobilization over law reform efforts. The CLS contention that the law merely codified the outcome of struggles over political power supported the view that real institutional change was possible only through direct action. Law reform strategies, in contrast, were incapable of achieving fundamental social change because the law was circumscribed within the existing political order and thus could not address the core issue of unequal power. From this perspective, achieving social transformation required mass movements, not legal advocacy.³⁵ As a result of the CLS critique, the perceived utility of law as a tool of broader reform was undermined.³⁶

The progressive critique of law led to an increased emphasis on the primacy of mass mobilization and popular protest as the basis for political and economic change.³⁷ In this climate of general skepticism toward the

ter a more vibrant and inclusive discussion about the nature of democracy); Peter Gabel & Paul Harris, *Building Power and Breaking Images*, 11 N.Y.U. REV. L. & SOC. CHANGE 369, 376 (1983) (stating that a critical approach to the law can be used to “expand[] political consciousness through using the legal system to increase people’s sense of personal and political power”). Note, however, that Cornel West has criticized the CLS movement’s disengagement from the political sphere, lamenting “the paucity of sustained reflection by critical legal theorists regarding strategies and tactics for effective social change in the larger culture and society.” See CORNEL WEST, KEEPING FAITH 203 (1993).

34. See MINDA, *supra* note 26, at 113–14.

35. See, e.g., Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 671–73 (1987–1988) (drawing upon the work of CLS scholars to debunk the “myth” that the law “can be marshaled into an effective instrument to alleviate poverty”); Bachmann, *supra* note 6, at 4, 10–11, 21 (stating that lawyers have a limited role to play in implementing social change, which depends primarily on class mobilization and social struggle, and finding that “[t]he lawyer’s role is more the oiler of the social change machine than its motor; the motor of the machine remains masses of people”).

36. Of course, CLS scholars did not abandon law as mechanism of social transformation. See, e.g., ROBERTO MANGABEIRA UNGER, WHAT SHOULD LEGAL ANALYSIS BECOME? 2 (1996) (claiming that a “reoriented practice of legal analysis” can be used to “advance, through cumulative institutional change, the democratic project”). In addition, scholars aligned with the Critical Race Theory movement, who have criticized CLS “trashing,” have maintained that legal rights can play an important role in struggles to achieve racial justice. See, e.g., WEST, *supra* note 33, at 201; PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 150–52 (1991); Kimberlé Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301 (1987).

37. See, e.g., Cole, *supra* note 18, at 648.

Poor people and people of color also understand that most problems faced by their communities are not legal problems, but political and economic ones Thus, a

law's transformative potential, scholars outside of CLS began to focus specifically on the inability of litigation to produce meaningful reform.³⁸ Liti-

political tool is required to change that decision: a community-based movement to bring pressure on the person or agency making the decision.

Id.

38. See, e.g., RICHARD DELGADO & JEAN STEFANCIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF LEGAL IMAGINATION* (1994) (analyzing the limits of achieving social reform through law); HANDLER, *supra* note 18, at 232–33 (arguing that law reform efforts are incapable of producing fundamental social change); MICHAEL W. MCCANN, *TAKING REFORM SERIOUSLY: PERSPECTIVES ON PUBLIC INTEREST LIBERALISM* 200 (1986) (“Legal tactics not only absorb scarce resources that could be used for popular mobilization . . . [but also] make it difficult to develop broadly based, multi-issue grass-roots associations of sustained allegiance.”); ARYEH NEIER, *ONLY JUDGMENT: THE LIMITS OF LITIGATION IN SOCIAL CHANGE* 19 (1982) (“[Litigation] is an effort that is probably doomed to fail and that should fail unless judges can be persuaded that compelling principles of corrective justice require them to enter territory ordinarily outside their province.”); GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 341 (1991) (arguing that social reformers often succumb to the “lure of litigation” rather than providing real political reform); STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE* 6–7 (1974) (claiming that activist lawyers embrace a simplistic view of the efficacy of courts to create change that prevents them from taking a more realistic political approach); GIRARDEAU A. SPANN, *RACE AGAINST THE COURT: THE SUPREME COURT AND MINORITIES IN CONTEMPORARY AMERICA* 5 (1993) (arguing that the structural role of the U.S. Supreme Court is one that ensures the “continued subordination of racial minority interests”); STEPHEN L. WASBY, *RACE RELATIONS LITIGATION IN AN AGE OF COMPLEXITY* 110 (1995) (criticizing civil rights organizations for concentrating on “issues like school desegregation that are more nearly subject to remedy by litigation, instead of attacking redistributive problems which may be more important for the people they believe they serve”); see also Derrick Bell, *Foreword, The Civil Rights Chronicles*, 99 *HARV. L. REV.* 4, 24 (1985) (“[R]eal progress can come only through tactics other than litigation.”); Gary Bellow & Jeanne Kettleton, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 *B.U. L. REV.* 337, 384 n.182 (1978).

Unless public interest lawyers find ways of pursuing shorter term legal gains without encouraging dependency and blunting both individual and organized client initiatives to deal with their own problems, they will substantially undermine the possibility of the sorts of political activity essential to any long term resolution of the inequities that burden their clients.

Id.; see also Quigley, *supra* note 17, at 468 (“One of the weaknesses of litigation is the inherent limitation of the judicial system when called upon to produce social reform.”); Klawiter, *supra* note 18, at 1681–83 (stating that “courts have little power (and, increasingly, less willingness) to ameliorate or eliminate systemic abuses” and “are reluctant (if they were ever prone) to endorse and order redistributive measures,” and noting that “conventional litigation approaches limit the tools for fighting injustice” because decisions often are not implemented, the beneficiaries often are unaware of the outcomes, or the decisions “fail to challenge institutional structures and cognitive faculties that sustain subordination”). It should be emphasized that conservative political attacks on public interest lawyers also played a critical role in diminishing reliance on litigation as a social change strategy. In particular, during the 1980s, conservative challenges to liberal law reform efforts forced many poverty law practitioners to search for alternative means to assist low-income clients. See Buchanan, *supra* note 7, at 1029–31 (discussing Reagan-era attacks on legal services, civil rights, and environmental litigation, and attempts to stack the judiciary with politically conservative judges who were not receptive to progressive legal advocacy); Eagly, *supra* note 4, at 438–40 (describing cutbacks in LSC funding and advocacy restrictions imposed during the 1980s); see also MARK KESSLER, *LEGAL SERVICES FOR THE POOR* 9 (1987); Richard L. Abel,

gation was problematic, its critics argued, “because it discourage[d] client initiatives, divert[ed] resources away from more effective strategies, and [left] larger social change undone.”³⁹ Thus, instead of the heroic image of attorneys using the courts to “redistribute power to subordinated groups,”⁴⁰ litigation-based strategies came to be viewed as impediments to social change due to their potential to “co-opt social mobilization.”⁴¹

Some legal scholars, such as Joel Handler, argued that public interest litigation was an incrementalist reform strategy that could not “disturb the basic political and economic organization of modern American society.”⁴² Others, like Richard Abel, Lucie White, and Jennifer Gordon, offered a stronger argument against litigation-centered strategies. They contended that litigation was not only ineffective, but also potentially dangerous. In particular, Abel argued that litigation undermined social change movements by reinforcing poor clients’ feelings of powerlessness and dispersing social conflict into individualized legal claims.⁴³ White contended that

Law Without Politics: Legal Aid Under Advanced Capitalism, 32 UCLA L. REV. 474, 547–48 (1985); Samuel Jan Brakel, *Legal Services for the Poor in the Reagan Years*, 17 CLEARINGHOUSE REV. 190 (1983); Matthew Diller, *Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 673, 673–74 (1998); Alan W. Houseman, *A Short Review of Past Poverty Law Advocacy*, 23 CLEARINGHOUSE REV. 1514, 1520–21 (1990); William P. Quigley, *The Demise of Law Reform and the Triumph of Legal Aid: Congress and the Legal Services Corporation from the 1960’s to the 1990’s*, 17 ST. LOUIS U. PUB. L. REV. 241, 255–59 (1998).

39. Ann Southworth, *Lawyers and the “Myth of Rights” in Civil Rights and Poverty Practice*, 8 B.U. PUB. INT. L.J. 469, 470–71 (1999) Ann Southworth goes on to summarize the leftist critique of public interest litigation as follows:

[Critics] worry about the distribution of power between lawyer and client, disincentives for lawyers to defer to their clients’ preferences, and psychological costs to clients of working with professionals. Critics also question whether formal legal change ever significantly alters social and institutional arrangements where political momentum does not already support such change. They assert that legal strategies legitimate unjust social and political arrangements by narrowly defining the range of remediable grievances and emphasizing individual disputes over systemic injustice.

Id. at 495 (citations omitted).

40. White, *supra* note 13, at 755.

41. *Id.* at 757.

42. HANDLER, *supra* note 18, at 232–33; see also JACK KATZ, *POOR PEOPLE’S LAWYERS IN TRANSITION 195–96* (1982); ROSENBERG, *supra* note 38, at 336–43; HARRY P. STUMPF, *COMMUNITY POLITICS AND LEGAL SERVICES: THE OTHER SIDE OF THE LAW 273–81* (1975); Kevin R. Johnson, *Lawyering for Social Change: What’s a Lawyer to Do?*, 5 MICH. J. RACE & L. 201, 210 (1999).

43. See Abel, *supra* note 6, at 8–9 (stating that “the inherently individualistic quality of bourgeois legal rights tends to undermine collectivities rather than build them” and that “law must be subordinated to other modes of activism and other disciplines; indeed, legal means of resolving problems should be avoided whenever possible, for they tend to reinforce the client’s experience of powerlessness”). In other contexts, Richard Abel has argued that informal justice mechanisms have the effect of treating disputants as atomized individuals, dispersing societal level class and structural conflict and focusing instead on individual claims. See Richard L. Abel, *Introduction to I THE POLITICS OF INFORMAL JUSTICE 1*, 6–7 (Richard L. Abel ed., 1982); Richard L. Abel,

litigation was experienced as a “hostile cultural setting,”⁴⁴ which effectively “silenced” poor people by requiring the repackaging of client grievances in a form the court could understand.⁴⁵ Gordon claimed that litigation undermined organizing efforts by reinforcing reliance on lawyers and co-opting potential community leaders by paying them off with a settlement or judgment award.⁴⁶ These scholars were joined by others who agreed that litigation “contribut[ed] to the very subordination it purport[ed] to remedy.”⁴⁷ As a result of these critiques of conventional law reform models, scholars and activists began to seek alternative methods of social change practice that de-emphasized litigation and promoted community-based political action.

B. The Postmodern Critique of Lawyers

In the late 1980s and early 1990s, the connection between law and social change was further attenuated as scholars initiated a critique of the

Conservative Conflict and the Reproduction of Capitalism: The Role of Informal Justice, 9 INT’L J. SOC. L. 245 (1981). Other scholars have echoed Abel’s critiques. See Alfieri, *supra* note 35, at 684 (stating that the “narrow treatment of cases as distinct unrelated disputes, without reference to larger class continuities, sacrifices a valuable opportunity to unmask domination and promote counter hegemony by organizing around legal controversy”); Bachmann, *supra* note 6, at 31–32 (“Public interest lawyering takes power from people and gives it to attorneys. It increases the sense of helplessness and frustration on the part of the many, and disguises realities of political struggle and creates false consciousness.” (citations omitted)); Wendy Brown, *Rights and Identity in Late Modernity: Revisiting the “Jewish Question,”* in IDENTITIES, POLITICS, AND RIGHTS 85, 118 (Austin Sarat & Thomas Kearns eds., 1995) (criticizing liberal rights discourse for converting “social problems into matters of individualized, dehistoricized injury and entitlement”); Cole, *supra* note 18, at 650–51 (arguing that taking a case into court might disempower the community and its residents and hinder organizing efforts); Sally Engle Merry, *Wife Battering and the Ambiguities of Rights*, in IDENTITIES, POLITICS, AND RIGHTS, *supra*, at 271, 305 (criticizing rights-based spousal abuse antiviolenence programs as “individualizing, reinforcing the idea that the woman alone is responsible”); Louise G. Trubek, *Embedded Practices: Lawyers, Clients, and Social Change*, 31 HARV. C.R.-C.L. L. REV. 415, 416 (1996) (claiming that the “political efficacy critique” of legal services practice states that “narrow, case-by-case lawyering cannot effectively improve the overall situation of poor people”).

44. White, *supra* note 18, at 542; see also Quigley, *supra* note 17, at 470 (stating that “[a]nother difficulty in utilizing litigation in empowerment is the clash of cultures between the legal system and the powerless or group members”).

45. See White, *supra* note 18, at 543–44; see also Klawiter, *supra* note 18, at 1682.

46. See Gordon, *supra* note 13, at 438–39.

47. Klawiter, *supra* note 18, at 1681. Others have noted additional drawbacks to litigation strategies. See Quigley, *supra* note 17, at 467 (stating that litigation does not usually further the goal of empowerment and should therefore be avoided because it is potentially “harmful to the growth and development of [a community] organization”); see also Blasi, *supra* note 18, at 142 (criticizing the development of litigation strategies divorced from the lived experiences of the poor and advocating that lawyers engage in “empirical field research” by spending “time on the streets and in the welfare office waiting rooms” in order to craft an effective litigation strategy to redress the needs of the homeless).

traditional role of poverty lawyers.⁴⁸ Drawing on postmodern social theory,⁴⁹ these scholars began to detail the deficiencies of conventional poverty law practice, paying special attention to how lawyers tended to dominate poor clients within the context of the attorney-client relationship.⁵⁰ At its

48. The scholarship that emerged during this time described varied models of progressive lawyering—rebellious, political, critical, and collaborative—while generating discussions about the relationship between poverty law theory and practice. See, e.g., LÓPEZ, *supra* note 13; Lois H. Johnson, *The New Public Interest Law: From Old Theories to a New Agenda*, 1 B.U. PUB. INT. L.J. 169 (1991); Symposium, *supra* note 20; Symposium, *Theoretics of Practice: The Integration of Progressive Thought and Action*, 43 HASTINGS L.J. 717 (1992); Louise G. Trubek, *Critical Lawyering: Toward a New Public Interest Practice*, 1 B.U. PUB. INT. L.J. 49 (1991); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994).

49. See Gary L. Blasi, *What's a Theory For?: Notes on Reconstructing Poverty Law Scholarship*, 48 U. MIAMI L. REV. 1063, 1088–92 (1994) (critiquing the reliance by poverty law scholars on postmodernism); Buchanan, *supra* note 7, at 1046–59 (analyzing how postmodern concepts of power, subjectivity, and politics have been incorporated into the new poverty law scholarship); Joel F. Handler, *Postmodernism, Protest, and the New Social Movements*, 26 LAW & SOC'Y REV. 697, 704–10 (1992) (describing how postmodernism has transformed the focus of legal scholarship); William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099, 1111–14 (1994) (discussing the influence of postmodernism on poverty law scholarship). For a discussion of postmodern social theory, see generally STEVEN BEST & DOUGLAS KELLNER, *POSTMODERN THEORY: CRITICAL INTERROGATIONS* (1991); STEVEN BEST & DOUGLAS KELLNER, *THE POSTMODERN TURN* (1997) [hereinafter BEST & KELLNER, *THE POSTMODERN TURN*]; DAVID HARVEY, *THE CONDITION OF POSTMODERNITY* (1990); FREDRIC JAMESON, *POSTMODERNISM, OR, THE CULTURAL LOGIC OF LATE CAPITALISM* (1991); and *POSTMODERNISM & SOCIAL THEORY* (Steven Seidman & David G. Wagner eds., 1992). For a discussion of postmodernism and legal theory, see MINDA, *supra* note 26, and Stephen M. Feldman, *The Politics of Postmodern Jurisprudence*, 95 MICH. L. REV. 166 (1996).

50. See LÓPEZ, *supra* note 13, at 22–23 (describing the “regnant” idea of legal services practice by highlighting Jonathan, a poverty lawyer who “tends to treat his clients like 8 year olds” and does not involve them in basic decision making regarding their case); Alfieri, *supra* note 35, at 692 (describing how lawyers control the “production of discourse,” which excludes the client’s voice); Anthony V. Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 769, 811–28 (1992) (criticizing lawyers’ use of a “victimization strategy” in disability hearings to characterize poor clients as dependent, incompetent, and deviant); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2123–2130 (1991) [hereinafter Alfieri, *Reconstructive Poverty Law Practice*] (arguing that poverty lawyers routinely “silence” poor clients by committing “interpretive violence”—that is, by excluding client narratives from the litigation process and, instead, imposing stories of client passivity and powerlessness that reinforce lawyer domination); Anthony V. Alfieri, *Speaking Out of Turn: The Story of Josephine V.*, 4 GEO. J. LEGAL ETHICS 619, 621 (1991) (discussing “the lawyer’s willingness to dominate the rationality and discourse of the attorney-client relation”); Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants’ Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 536 (1992) (describing the systemic silencing of poor tenants); Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 CLINICAL L. REV. 321, 323 (1998) (stating that the failure of the legal interviewer to recognize a client’s attempt to convey important information “contributes to the phenomenon of the legal services lawyer’s silencing of clients and unwitting role in the maintenance of an unjust societal status quo”); Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client*

most strident, the critique of lawyer domination viewed poverty lawyers as active impediments to social change, disempowering clients by controlling litigation strategies and disregarding client stories.⁵¹ Poverty lawyers were characterized as potential “oppressors” who actually contributed to the subordination of their disadvantaged clients by forcing them to rely on the lawyers’ expertise.⁵²

Stories, 43 HASTINGS L.J. 861, 911–14 (1992) (discussing how lawyers typically “squeeze” client stories into “abstract, universalized narratives” in a way that disempowers clients); Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for “Facilitative” Lawyering?*, 1 CLINICAL L. REV. 639, 646 (1995) (describing the “paradox of social change lawyering” in which lawyers seeking to help poor clients risk subordinating them by forcing reliance on the lawyers’ expertise); Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861, 861 (noting that by speaking for their clients, poverty lawyers silence their clients’ voices and reproduce their subordination); White, *supra* note 18, at 545 (arguing that “in practice, welfare litigators often subordinate their clients’ perceptions of need to the lawyers’ own agendas for reform”); see also Robert D. Dinerstein, *A Meditation on the Theoretics of Practice*, 43 HASTINGS L. REV. 971, 983 (1992) (questioning whether poverty law scholars have fairly characterized lawyers as “professional oppressors” of their clients); William L.F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447, 1451 (1992) (“[The] predominant image of the attorney-client relationship is one of professional dominance and lay passivity.”); Louise G. Trubek, *Lawyering for Poor People: Revisionist Scholarship and Practice*, 48 U. MIAMI L. REV. 983, 987 (1994) (noting that one of the insights of the new poverty law scholarship is that lawyers need to pay attention to poor clients’ stories); Steven L. Winter, *Cursing the Darkness*, 48 U. MIAMI L. REV. 1115, 1129 (1994) (stating that “[t]he crux of the postmodern critique of the attorney-client relationship . . . is that quite a lot of oppression happens in the name of abstract humanist values such as democracy, autonomy, and equality”).

51. See Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485, 486 (1994) (noting that poverty law theorists argue that “client voices have been muted by the narratives that lawyers tell on their behalf”); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 439 (2000) (stating that poverty law scholars have highlighted how lawyers perpetuate passive images of clients by controlling the way clients are depicted through the process of representation); see also LÓPEZ, *supra* note 13, at 49; Alfieri, *Reconstructive Poverty Law Practice*, *supra* note 50, at 2123–30; Gilkerson, *supra* note 50, at 911–14. *But see* Cathy Lesser Mansfield, *Deconstructing Reconstructive Poverty Law: Practice-Based Critique of the Storytelling Aspects of the Theoretics of Practice Movement*, 61 BROOK. L. REV. 889, 891–93 (1995) (claiming that the criticism of poverty lawyers for ignoring client stories is misguided).

52. See Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 949 (1992) (describing the focus of recent poverty law scholarship on lawyer domination); see also Blasi, *supra* note 49, at 1088; Cole *supra* note 18, at 649; Quigley, *supra* note 17, at 464–65, 474, 477–78. Many have advocated a client-centered approach to legal advocacy that places greater value on client stories. See, e.g., DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991); Naomi R. Cahn, *Inconsistent Stories*, 81 GEO. L.J. 2475, 2503–05 (1993); Clark D. Cunningham, *A Tale of Two Clients: Thinking About Law as Language*, 87 MICH. L. REV. 2459 (1989); Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers’ Representation of Groups*, 78 VA. L. REV. 1103, 1128–1129 (1992); Alex J. Hurder, *Negotiating the Lawyer-Client Relationship: A Search for Equality and Collaboration*, 44 BUFF. L. REV. 71 (1996); Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997); Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443, 459–460 (1996).

For these scholars, the antidote to client subordination was client empowerment.⁵³ In order to facilitate empowerment, it was necessary to reaffirm the client's capacity as an agent of social change and challenge the "myth" of client passivity and dependency.⁵⁴ Some sought to define a stronger role for clients within the attorney-client relationship by creating space for client stories inside and on the margins of the litigation process.⁵⁵ Others advocated actively enlisting client groups in the struggle for social reform.⁵⁶

The most influential scholars in this regard have been Gerald López and Lucie White. Both have urged lawyers to cede control over community change strategies in order to foster client empowerment. For instance, López challenged the "regnant" conception of poverty law practice by making the radical suggestion that professional legal skills should not be privileged over

53. See LÓPEZ, *supra* note 13, at 74–82 (promoting client self-help and community empowerment as the goals of rebellious poverty law practice); Alfieri, *supra* note 35, at 665 (“[E]mpowering the poor should be the political object of poverty law.”); Johnson, *supra* note 48, at 184–85 (describing the goal of lawyers under White’s model as facilitating client empowerment); Klawiter, *supra* note 18, at 1683–89 (advocating a “community-based” approach to poverty law advocacy designed to facilitate community education and mobilization); Piomelli, *supra* note 51, at 440 (claiming that “the most significant common theme” of the new poverty law scholarship “is its commitment to more active client participation in the framing and resolution of disputes” and noting that poverty law scholars have emphasized the importance of “active collaboration between attorneys and clients”); Simon, *supra* note 49, at 1102 (“The prescribed goal of the new [poverty law] scholarship is ‘empowerment’ or enhancing the autonomy of the client.”); Tremblay, *supra* note 52, at 951–53 (stating that rebellious lawyering is “lawyering that seeks to empower subordinated clients” by promoting “client voice” and encouraging clients to organize politically); White, *supra* note 18, at 538 (arguing for more flexible strategies to facilitate client mobilization and empowerment); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 50 (1990) (describing the case of Mrs. G. as “emancipatory language practice”); White *supra* note 13, at 760–65 (describing the goal of “third dimensional” lawyering as helping subordinated groups learn how to engage in acts of public resistance and challenge); see also Linda S. Durston & Linda G. Mills, *Toward a New Dynamic in Poverty Client Empowerment: The Rhetoric, Politics, and Therapeutics of Opening Statements in Social Security Disability Hearings*, 8 YALE J.L. & FEMINISM 119 (1996); Anita Hodgkiss, *Petitioning and the Empowerment Theory of Practice*, 96 YALE L.J. 569 (1987).

54. See Alfieri, *supra* note 35, at 673.

55. See *id.* at 698–711; Alfieri, *Reconstructive Poverty Law Practice*, *supra* note 50, at 2131–45; White, *supra* note 18, at 545–46.

56. See, e.g., LÓPEZ, *supra* note 13, at 47–56 (discussing how to foster collaboration between lawyers and community members as “co-eminent practitioners” of social change); see also Cole, *supra* note 18, at 661–62 (defining client empowerment as “creating in the client community the dynamics of democratic decision making, accountability, and self-determination—ideals which one would like to create in society” and helping “community members solve their own problems”); Klawiter, *supra* note 18, at 1684–85, 1688–89 (advocating for a collaborative lawyering practice that “moves toward involving subordinated people themselves in the process by more consciously imagining their potential contributions and executing strategies with their concerns in mind” and emphasizing the need for lawyers to “work actively with the affected community to mobilize their support and, more importantly, their participation at all stages”).

client problem-solving skills—or “lay lawyering.” Instead, López argued that lawyers, clients, and other community members should work together in non-hierarchical relationships to challenge existing systems of power.⁵⁷ Similarly, White leveled a sustained critique against the effectiveness of conventional legal practice, which she characterized as “first-dimensional” lawyering.⁵⁸ White suggested that lawyers should address the most insidious aspects of subordination by facilitating a conversational process designed to empower clients to articulate their own life stories and transform themselves into more potent political actors.⁵⁹ By shifting the analysis away from results-oriented legal strategies and toward process-oriented client empowerment, these scholars displaced lawyers as the focal point of social change practice and further undermined the legitimacy of law reform tactics.

However, in the end, one of the most provocative and influential contributions of López and White was not simply their emphasis on empowerment, but the method that they proposed to achieve it. Specifically, their work marked the first time that scholars went beyond the mere recitation of the importance of integrating law and popular movements to offer a practical vision of how lawyers could achieve social change through community organizing.

C. The Emergence of Community Organizing

By the early 1990s, legal scholars had rejected the law as a vehicle for social transformation, challenged the privileged position of lawyers in social change strategies, and actively encouraged lawyers to work with other community members to seek local, nonlegal solutions to poverty. The collective force of these multilayered critiques of conventional practice ignited the search for alternative models of progressive lawyering. Beginning with the work of López and White, the vision of community-based advocacy that emerged held out community organizing as a critical component.

Over the past several decades, community organizing has emerged as a self-conscious social justice movement with the primary goal of “community building.”⁶⁰ The movement has focused on fostering grassroots participation

57. See LÓPEZ, *supra* note 13, at 30–82.

58. White, *supra* note 13, at 755–57.

59. See *id.* at 760–66; see also White, *supra* note 48, at 157 (stating that “third dimensional” lawyering “seeks to enable poor people to see themselves and their social situation in ways that enhance their world-changing powers”).

60. See GARY DELGADO, BEYOND THE POLITICS OF PLACE: NEW DIRECTIONS IN COMMUNITY ORGANIZING 15 (1997). For a general discussion of community organizing, see PETER BACHRACH & MORTON S. BARATZ, POWER AND POVERTY: THEORY AND PRACTICE (1970); NEIL BETTEN & MICHAEL J. AUSTIN, THE ROOTS OF COMMUNITY ORGANIZING 1917–1939

in local decision making, coordinating the strategic deployment of community resources to achieve community-defined goals, and building community-based democratic organizations led by local leaders who advocate for social and economic change.⁶¹ In practice, community organizations have worked at the local level to create more equitable social and economic policies, redistribute resources to low-income communities, and empower marginalized constituencies by giving voice to their concerns.⁶² As a result of the community organizing movement, there are now more than six thousand community organizations in the United States.⁶³ Movement historians have pointed to its many accomplishments, including the development of skilled community-based leaders and national community organizing networks, the refinement of replicable community organizing models, and numerous successful campaigns that have effectively shifted the balance of power toward disadvantaged communities.⁶⁴

The birth of the modern community organizing movement is generally associated with the work of Saul Alinsky.⁶⁵ Beginning in the 1930s, Alinsky's

(1990); DOUGLAS P. BIKLEN, *COMMUNITY ORGANIZING: THEORY AND PRACTICE* (1983); KIM BOBO ET AL., *ORGANIZING FOR SOCIAL CHANGE: A MANUAL FOR ACTIVISTS IN THE 1990S* (2d ed. 1996); GEORGE BRAGER ET AL., *COMMUNITY ORGANIZING* (2d ed. 1987); ROBERT FISHER, *LET THE PEOPLE DECIDE: NEIGHBORHOOD ORGANIZING IN AMERICA* (Irwin T. Sanders ed., 1984); ROSS GITTELL & AVIS VIDAL, *COMMUNITY ORGANIZING: BUILDING SOCIAL CAPITAL AS A SOCIAL DEVELOPMENT STRATEGY* (1998); SI KAHN, *HOW PEOPLE GET POWER: ORGANIZING OPPRESSED COMMUNITIES FOR ACTION* (1970); SI KAHN, *ORGANIZING: A GUIDE FOR GRASSROOTS LEADERS* (1982); CLARENCE KING, *ORGANIZING FOR COMMUNITY ACTION* (1948); JACQUELINE B. MONDROS & SCOTT M. WILSON, *ORGANIZING FOR POWER AND EMPOWERMENT* (1994); THE O.M. COLLECTIVE, *THE ORGANIZER'S MANUAL* (1971); ORGANIZING FOR COMMUNITY WELFARE (Mayer N. Zald ed., 1967); RACHELLE B. WARREN & DONALD I. WARREN, *THE NEIGHBORHOOD ORGANIZER'S HANDBOOK* (1977); and Dave Beckwith & Cristina Lopez, *Community Organizing: People Power from the Grassroots*, available at <http://community.utoledo.edu/papers97/beckwith.htm> (last visited Jan. 21, 2001).

61. See DELGADO, *supra* note 60, at 15 (quoting DAVE BECKWITH, *INTRODUCTION TO ORGANIZING* (1991)).

62. See *id.* at 3–4.

63. See *id.* at 3.

64. See *id.* at 3–4, 47–49 (highlighting the major accomplishments of community organizing).

65. See SAUL ALINSKY, *REVEILLE FOR RADICALS* (1946); SAUL ALINSKY, *RULES FOR RADICALS* (1971); MARION K. SANDERS, *THE PROFESSIONAL RADICAL: CONVERSATIONS WITH SAUL ALINSKY* (1970); see also SANFORD D. HORWITT, *LET THEM CALL ME REBEL: SAUL ALINSKY—HIS LIFE AND LEGACY* (1989); Frank Riessman, *The Myth of Saul Alinsky*, *DISSENT*, July–Aug. 1967, at 469. Although Saul Alinsky has received much of the credit for the modern community organizing movement, historians generally trace the roots of community organizing to earlier efforts. See Harry C. Boyte, *Community Organizing in the 1970s: Seeds of Democratic Revolt*, in *COMMUNITY ORGANIZATION FOR URBAN SOCIAL CHANGE: A HISTORICAL PERSPECTIVE* 217, 223 (Robert Fisher & Peter Romanofsky eds., 1981) [hereinafter *COMMUNITY ORGANIZATION FOR URBAN SOCIAL CHANGE*]; see also JANE ADDAMS, *TWENTY YEARS AT HULL HOUSE* (1910); BETTEN & AUSTIN, *supra* note 60; Robert Fisher, *From Grass-Roots Organizing to Community Service: Community Organization Practice in the Community Center Movement, 1907–1930*, in

“Back-of-the-Yards” organization in Chicago focused on organizing poor people through the development of neighborhood “organizations of organizations” that brought together local unions, churches, and service clubs.⁶⁶ The central tenets of “Alinskyism” included building local power through the strategic mobilization of poor people, developing indigenous leadership to articulate specific community interests, and ensuring that organizing efforts evolved organically out of the needs of local communities.⁶⁷ Alinsky’s organizing efforts were focused on geographically discrete neighborhoods and sought to influence the decisions of local governments regarding the allocation of resources.⁶⁸ The Alinsky model was extended by Fred Ross, the director of Alinsky’s Industrial Areas Foundation,⁶⁹ who developed the Community Service Organization in the 1940s to organize Latinos in the Southwest.⁷⁰ Ross, who later worked alongside César Chávez in the farm worker organizing effort,⁷¹ is credited with instituting an organizing approach based on issues—which was distinct from the Alinsky model of organizing local institutions—and developing innovative organizing structures.⁷²

Despite the work of these early community organizing pioneers, it was not until the advent of the political and cultural ferment of the 1950s and 1960s that community organizing emerged as a “full-scale movement.”⁷³ During this period of intense social change, increased private funding for community organizations and a decline in municipal services created an atmosphere ripe for local organizing efforts.⁷⁴ As a result, the number of organizations serving low-income constituencies grew significantly and community organizing emerged as a potent political force.⁷⁵ Most signifi-

COMMUNITY ORGANIZATION FOR URBAN SOCIAL CHANGE, *supra*, at 33; Robert Fisher, *Neighborhood Organizing: The Importance of Historical Context*, available at <http://comm-org.utoledo.edu/papers96/fishercon.htm> (1995).

66. See DELGADO, *supra* note 60, at 9; see also HARRY C. BOYTE, THE BACKYARD REVOLUTION: UNDERSTANDING THE NEW CITIZEN MOVEMENT 49 (1980); Boyte, *supra* note 65, at 223.

67. See Boyte, *supra* note 65, at 223–25; see also ROBERT BAILEY, JR., RADICALS IN URBAN POLITICS: THE ALINSKY APPROACH (1974); DELGADO, *supra* note 60, at 10–11; GARY DELGADO, ORGANIZING THE MOVEMENT: THE ROOTS AND GROWTH OF ACORN 21 (1986).

68. See DELGADO, *supra* note 60, at 21. Harry Boyte also notes that Alinsky viewed organizing as a means of building community-based organizations and was willing to employ creative tactics and strategies in an all-out effort to win organizing campaigns. See Boyte, *supra* note 65, at 224.

69. See DELGADO, *supra* note 67, at 21–23 (discussing the Industrial Areas Foundation).

70. See BOYTE, *supra* note 66, at 93–94; DELGADO, *supra* note 60, at 11.

71. See BOYTE, *supra* note 66, at 94.

72. See Boyte, *supra* note 65, at 229; see also DELGADO, *supra* note 60, at 12. Gary Delgado notes that among Fred Ross’s innovations were the membership organization, house meetings, and concrete systems for “volunteer recruitment, donor development, and political support.” See *id.* at 11–13.

73. DELGADO, *supra* note 60, at 12.

74. See *id.* at 12–13.

75. See *id.*

cantly, the civil rights movement highlighted the grassroots organizing work of a diverse array of groups working to end Jim Crow segregation and achieve political and economic equality⁷⁶—the Congress of Racial Equality,⁷⁷ the Student Nonviolent Coordinating Committee,⁷⁸ the Southern Christian Leadership Conference,⁷⁹ Students for a Democratic Society,⁸⁰ and the Black Panthers.⁸¹ Due to the national prominence achieved by these organizations and the success of grassroots campaigns such as the Montgomery Bus Boycott,⁸² community organizing came to be recognized as an important social change strategy.

The contours of community organizing shifted in the 1970s. Community organizers, faced with corporate opposition to reform, shrinking institutional resources, and flagging memberships, sought to broaden their constituencies by building coalitions beyond neighborhood boundaries. In particular, some organizers worked to develop national organizing campaigns to align the majority of Americans against the narrow interests of powerful corporations and their government sponsors.⁸³ This “majority-strategy” was adopted by the National Welfare Rights Organization (NWRO)⁸⁴ and was central to the development of groups such as the

76. See DELGADO, *supra* note 67, at 14–18; MORRIS, *supra* note 1; FRANCES FOX PIVEN & RICHARD A. CLOWARD, POOR PEOPLE’S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL 181–258 (1979); see also WINI BREINES, COMMUNITY ORGANIZATION IN THE NEW LEFT: 1962–1968 (1982); Kenneth Clark, *The Civil Rights Movement: Momentum and Organization*, DAEDALUS, Winter 1965, at 95. For a discussion of the civil rights movement, see generally TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954–63 (1988); JOHN DITTMER, LOCAL PEOPLE: THE STRUGGLE FOR CIVIL RIGHTS IN MISSISSIPPI (1994); MANNING MARABLE, RACE, REFORM AND REBELLION: THE SECOND RECONSTRUCTION IN BLACK AMERICA, 1945–1982 (1984); CHARLES M. PAYNE, I’VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE (1995); and ROBERT WEISBROT, FREEDOM BOUND: A HISTORY OF AMERICA’S CIVIL RIGHTS MOVEMENT (1990).

77. See AUGUST MEIER & ELLIOT RUDWICK, CORE: A STUDY IN THE CIVIL RIGHTS MOVEMENT, 1942–1968 (1975).

78. See CLAYBORNE CARSON, IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960S (1981); HOWARD ZINN, SNCC: THE NEW ABOLITIONISTS (1985).

79. See MORRIS, *supra* note 1, at 77–138.

80. See DELGADO, *supra* note 67, at 18–21.

81. See EARL ANTHONY, PICKING UP THE GUN: A REPORT ON THE BLACK PANTHERS (1970); THE BLACK PANTHER PARTY (RECONSIDERED) (Charles E. Jones ed., 1998); THE BLACK PANTHERS SPEAK (Philip S. Foner ed., 1970).

82. See MORRIS, *supra* note 1, at 51–63.

83. See BOYTE, *supra* note 66, at 52–53; Boyte, *supra* note 65, at 229; see also Harry Boyte, *A Democratic Awakening*, SOC. POL’Y, Sept.–Oct. 1979, at 8.

84. See Boyte, *supra* note 65, at 229; George A. Wiley, *Building a New Majority: The Movement for Economic Justice*, SOC. POL’Y, Sept.–Oct. 1973, at 3. For a history of the welfare rights movement, see generally NICK KOTZ & MARY LYNN KOTZ, A PASSION FOR EQUALITY: GEORGE A. WILEY AND THE MOVEMENT (1977), and PIVEN & CLOWARD, *supra* note 76, at 264.

Association of Community Organizations for Reform Now (ACORN).⁸⁵ Although the turbulence of the 1970s led to the evolution of different approaches to community organizing,⁸⁶ the trend was toward building large-scale organizations that would advance national agendas.⁸⁷

The 1980s ushered in an era of neoconservative politics that shifted the direction of community organizing away from large-scale mobilization and toward less confrontational local strategies, such as community economic development and the cultivation of alliances with economic and political elites.⁸⁸ In response to declining public services, this period also gave rise to a proliferation of diverse community organizations seeking to shoulder the burden created by dwindling government funds.⁸⁹ In the 1990s, as the number of community organizations continued to grow, increasing diversity in urban areas, combined with a groundswell of reac-

85. See BOYTE, *supra* note 66, at 93 (noting that ACORN emerged as a “mass-based, multi-issue citizen organization”); DELGADO, *supra* note 67, at 47–48 (stating that ACORN sought to organize a “majority constituency” in order to establish control of local institutions by low- and moderate-income people); see also Wade Rathke et al., *ACORN: Taking Advantage of the Fiscal Crisis*, SOC. POL’Y, Sept.–Oct. 1979, at 35.

86. See DELGADO, *supra* note 60, at 1 (stating that the types of organizing structures that evolved included: “individual membership organizations of low to moderate-income people; issue-based organizations of existing organizations; and church-based organizations”).

87. See Boyte, *supra* note 65, at 228–31; see also John Mollenkopf, *Neighborhood Politics for the 1980s*, SOC. POL’Y, Sept.–Oct. 1979, at 24, 26 (arguing that effective political mobilization required neighborhood organizations to build coalitions “across ethnic groups, issues areas, and between neighborhoods and the labor movement” in order to rebuild the national Democratic party).

88. See Robert Fisher, *Community Organizing in the Conservative '80s and Beyond*, SOC. POL’Y, Fall 1994, at 11, 13–18. For a discussion of the economic context of organizing in the 1980s, see STEVE BURGHARDT, *THE OTHER SIDE OF ORGANIZING: RESOLVING THE PERSONAL DILEMMAS AND POLITICAL DEMANDS OF DAILY PRACTICE* 7–21 (1982). As a result of this shift toward community economic development, a substantial literature emerged analyzing its impact and implementation. See generally EDWARD J. BLAKELY, *PLANNING LOCAL ECONOMIC DEVELOPMENT: THEORY AND PRACTICE* (1989); *CHALLENGING UNEVEN DEVELOPMENT: AN URBAN AGENDA FOR THE 1990S* (Philip W. Nyden & Wim Wiewel eds., 1991) [hereinafter *CHALLENGING UNEVEN DEVELOPMENT*]; *COMMUNITY DEVELOPMENT IN PERSPECTIVE* (James A. Christenson & Jerry W. Robinson, Jr. eds., 1989); *COMMUNITY ECONOMIC DEVELOPMENT: PERSPECTIVES ON RESEARCH AND POLICY* (Burt Galaway & Joe Hudson eds., 1994); JOHN P. KRETZMAN & JOHN L. MCKNIGHT, *BUILDING COMMUNITIES FROM THE INSIDE OUT: A PATH TOWARD FINDING AND MOBILIZING COMMUNITY ASSETS* (1993); NEAL R. PEIRCE & CAROL F. STEINBACH, *ENTERPRISING COMMUNITIES: COMMUNITY-BASED DEVELOPMENT IN AMERICA, 1990* (1990); DAVID P. ROSS & PETER J. USHER, *FROM THE ROOTS UP: ECONOMIC DEVELOPMENT AS IF COMMUNITY MATTERED* (1986); HERBERT J. RUBIN & IRENE S. RUBIN, *COMMUNITY ORGANIZING AND DEVELOPMENT* (1992); *THEORIES OF LOCAL ECONOMIC DEVELOPMENT: PERSPECTIVES FROM ACROSS THE DISCIPLINES* (Richard D. Bingham & Robert Mier eds., 1993); *URBAN ECONOMIC DEVELOPMENT* (Richard D. Bingham & John P. Blair eds., 1984); AVIS C. VIDAL, *REBUILDING COMMUNITIES: A NATIONAL STUDY OF URBAN COMMUNITY DEVELOPMENT CORPORATIONS* (1992).

89. See Fisher, *supra* note 88, at 18.

tionary political initiatives targeted at communities of color,⁹⁰ led to the expansion of organizing activities around issues of race and other identity categories.⁹¹ The heightened focus on organizing in communities of color, especially in immigrant communities, resulted in the adoption of innovative organizing techniques that drew upon international models.⁹² Toward the end of the decade, activists began to discuss local community organizing strategies in the context of increasing globalization,⁹³ and a new effort emerged to organize multiracial coalitions to press a unified economic and political agenda against corporate interests.⁹⁴

D. The Fusion of Law and Organizing

In the late 1980s and early 1990s, as the community organizing movement confronted the challenges posed by Reagan-era cutbacks and demographic change, it also began to generate increased attention from progressive legal scholars and practitioners. Although the idea that lawyers should facilitate community organizing was not entirely new, this period was characterized by a different orientation toward organizing practice. Organizing

90. For example, in 1996, California passed Proposition 209, a statewide initiative eliminating affirmative action. See California Civil Rights Initiative, CAL. CONST. art. I, § 31(a) ("The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."). In addition, California eliminated affirmative action in the state university system. See Amy Wallace & Dave Leshner, *UC Regents, in Historic Vote, Wipe Out Affirmative Action*, L.A. TIMES, July 21, 1995, at A1. California also passed Proposition 187, an initiative that denied welfare services, nonemergency medical treatment, and public schooling to immigrants living in the state illegally. See B. Drummond Ayres, Jr., *Californians Pass Measure on Aliens: Courts Bar It*, N.Y. TIMES, Nov. 10, 1994, at B7 (discussing Proposition 187 and related legal challenges). Federal welfare reform laws also targeted immigrant groups. See Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (codified as amended in scattered sections of 8 U.S.C. and 18 U.S.C.).

91. See DELGADO, *supra* note 60, at 29-45; see also FELIX G. RIVERA & JOHN L. ERLICH, *COMMUNITY ORGANIZING IN A DIVERSE SOCIETY* (1992).

92. In particular, many organizers began to use popular education theories in carrying out their organizing efforts. Founded by the Brazilian educator Paulo Freire, popular education teaches that adults learn best when placed in nonhierarchical, interactive settings in which they are able to define the parameters and goals of the learning sessions. See PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (Myra B. Ramos trans., 1970); PAULO FREIRE, *THE POLITICS OF EDUCATION: CULTURE, POWER, AND LIBERATION* (Donald Macedo trans., 1985); see also MARY ANN HINSDALE ET AL., *IT COMES FROM THE PEOPLE: COMMUNITY DEVELOPMENT AND LOCAL THEOLOGY* (1995); John L. Hammond, *Popular Education as Community Organizing in El Salvador*, 26 LATIN AM. PERSP. 69 (1999).

93. See DELGADO, *supra* note 60, at 22.

94. See *id.* at 20; see also Alexander Cockburn, *New and Left Are Not Oxymoronic*, L.A. TIMES, Apr. 20, 2000, at B11 (describing the formation of a new radical movement in America that is internationalist and anticorporate).

became the centerpiece of a new theory of progressive lawyering that sought to empower low-income communities,⁹⁵ and an emerging base of scholarship began to focus on studying international and domestic law and organizing projects.

In her seminal article, White described the successful apartheid-era organizing efforts of black South Africans living in a small farming community called Driefontein to resist a government program that mandated relocation to settlement camps in remote rural areas.⁹⁶ Similarly, López highlighted organizing as a critical component of his “rebellious idea of lawyering against subordination”—promoting the work of progressive lawyers who organized immigrants against deportation efforts, established house-keeping cooperatives, and coordinated community-based family services.⁹⁷ López also provided a detailed description of a “lay lawyer at work,” portraying him as actively involved in a tenant organizing group that engaged in voter registration drives, community education, door-to-door canvassing, and tenant mobilization.⁹⁸ Gordon, who has been an especially influential practitioner in the law and organizing movement, founded the Workplace Project in Hempsted, New York.⁹⁹ By demonstrating how law and organizing could be effectively used to redress the concrete problems of immigrant workers, the Workplace Project became widely recognized as an innovative model of social change practice.

As it has evolved, the law and organizing model represents a set of disparate approaches, rather than a unified theory of progressive legal practice. That is, there have been varied descriptions of what it means to engage in law and organizing. Steve Bachmann articulated an early version of law and organizing practice in describing his work on behalf of ACORN. According to Bachmann, the promise of legal assistance could be used to encourage people to join an organizing group, while litigation was sometimes necessary to defend an organization against a lawsuit or help it exit from an unproductive campaign.¹⁰⁰ David Luban offered another incipient version of law and organizing practice, arguing that lawyers must maintain a “sub-

95. See Ruth Buchanan & Louise G. Trubek, *Resistances and Possibilities: A Critical and Practical Look at Public Interest Lawyering*, 19 N.Y.U. REV. L. & SOC. CHANGE 687, 691 (1992) (describing one of the central tenets of the new poverty law scholarship as “encourag[ing] organization and collective efforts by clients”).

96. See White, *supra* note 13.

97. LÓPEZ, *supra* note 13, at 30–38.

98. See *id.* at 275–329. Underscoring his interest in organizing, López devotes an entire chapter of his book on progressive lawyering to exploring the tensions between “orthodox” and “life-sized” organizing. See *id.* at 331–79.

99. See Gordon, *supra* note 13, at 428–37.

100. See Steve Bachmann, *Bachmann & Weltchek: ACORN Law Practice*, 7 LAW & POL’Y 29, 33 (1985).

ordinate role” when working with organizing groups, emerging to assist only when “a legal strategy fits in with a street strategy.”¹⁰¹ He claimed that a “lawyer *qua* lawyer” could play an important role in “political organizing” by using legal action to accomplish specific group aims, augment the group’s morale by attaining a legal victory, and catalyze collective action.¹⁰²

More recently, scholars have departed from these conceptions, suggesting that lawyers should not only use their legal skills to assist organizing groups, but that they should also engage directly in organizing activities to empower client communities. For example, López and White have promoted community organizing in an attempt to loosen lawyers’ affinity for traditional legal practice and to encourage them to “think outside the box” by embracing a more diverse set of organizing skills.¹⁰³ Thus, in many instances, they depict lawyers employing organizing techniques, instead of legal ones.¹⁰⁴

Gordon has offered a particularly comprehensive vision of law and organizing practice. She argues that there are “three interesting and under-explored possibilities for how to use law” in grassroots organizing work.¹⁰⁵ First, law can be used “as a draw” to bring new members into an organization that has larger organizing and reformist goals.¹⁰⁶ The promise of legal

101. DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 389 (1988).

102. *Id.*

103. See LÓPEZ, *supra* note 13, at 74–78 (advocating that lawyers engage in education and encourage self-help); White, *supra* note 13, at 760–66 (encouraging lawyers to use popular education techniques). Others have advocated similar positions. See Cole, *supra* note 18, at 667–68 (stating that “[e]nvironmental poverty lawyers must be as comfortable holding a house meeting or a press conference as going into court”); Eagly, *supra* note 4, at 472–79 (urging poverty lawyers to engage in community education); see also Carrie Menkel-Meadow, *Ethics and Professionalism in Non-Adversarial Lawyering*, 27 FLA. ST. U. L. REV. 153, 160–61 (1999) (stating that lawyers can play many less traditional roles, including “convening meetings of interested groups,” as well as engaging in “‘consensus building,’ strategic planning, joint problem solving, community education, public conversations and meeting facilitation”).

104. See, e.g., LÓPEZ, *supra* note 13, at 30–38 (describing “rebellious lawyers” whose work included organizing immigrants to lobby against unfair immigration laws); White, *supra* note 18, at 546–63 (highlighting speak-outs and group theater as means for poverty lawyers to foster client empowerment); see also Klawiter, *supra* note 18, at 1687 (arguing that in a “community-based” model of legal practice, lawyers adopt organizing skills, such as facilitating critical reflection and strategic planning by community members).

105. Jennifer Gordon, Lecturer, Yale Law School, Address at the UCLA School of Law Conference on Law and Organizing (Feb. 25, 2000).

106. See *id.*; see also Gordon, *supra* note 13, at 442 (discussing how the lure of legal services served as an “effective means for bringing workers into” the Workplace Project). This method of drawing members into an organization through the provision of services has been an effective means of strengthening a group’s membership base. See, e.g., PIVEN & CLOWARD, *supra* note 76, at 301–05 (discussing the National Welfare Rights Organization’s use of special grant campaigns to attract new members by promising the organization’s assistance in obtaining special welfare benefits).

assistance on a discrete case can motivate a worker to come to a workers' meeting at which she will be exposed to the broader educational and organizing activities of the group. Second, the law can be used as a "measure of injustice."¹⁰⁷ For instance, as part of educational efforts, workers can be asked to analyze how their own experiences may diverge from what the law defines as basic legal protections. In this way, a discussion of legal issues can highlight discrepancies between the law as written and the law as lived by marginalized workers.¹⁰⁸ The gap between the legal ideal and practical reality can then be used to chart a course for political action and community mobilization. Finally, the law can be used as "part of a larger organizing campaign"¹⁰⁹ in which the ultimate goal is not to win a particular lawsuit, but rather to achieve specific organizing objectives and build power among unrepresented groups. According to this conception, the law serves as a strategic mechanism to support or advance organizing campaigns in practical ways—for example, by filing a lawsuit to call attention to a broader structural issue or to put pressure on an employer or industry to undertake systemic reforms.¹¹⁰

Although the contours of law and organizing practice remain fluid, one thing is clear: The law and organizing movement has created a decisive break in poverty law scholarship and firmly established the idea that building connections with community organizing campaigns is a critical component of social change advocacy. Over the last decade, the proponents of law and organizing have successfully incorporated scholarship from diverse sources to develop what is now one of the most influential models of progressive legal practice. The evolution of law and organizing has infused a new energy into debates about poverty law advocacy by urging practitioners to move away from conventional modes of practice and challenging them to measure the results of their efforts by the extent to which they are successful in shifting power to the poor. As the next part of this Article describes, the emergence of the law and organizing paradigm has prompted the formation

107. Gordon, *supra* note 105.

108. For example, Gordon has suggested that a discussion of worker health and safety could start with the government's nonenforcement of the Occupational Safety and Health Administration requirements. This would highlight what steps immigrant workers would have to take to close the gap between the ideal of legal protection and the reality of worker vulnerability. See Gordon, *supra* note 13, at 435–36.

109. Gordon, *supra* note 105.

110. See *id.*; see also HANDLER, *supra* note 18, at 209–20 (discussing the "indirect" benefits of litigation in promoting broader client goals such as community mobilization); Eric Mann, *Radical Social Movements and the Responsibility of Progressive Intellectuals*, 32 LOY. L.A. L. REV. 761, 766 (1999) (noting that the class action lawsuit against the Los Angeles Mass Transit Authority was "an essential tactic" in building a Bus Riders Union, but that the lawsuit was always "subordinate to our overall [organizing] objectives").

of new collaborations, the implementation of innovative advocacy projects, and the direct participation of increasing numbers of clients in successful social change efforts.

II. LAW AND ORGANIZING AS PROGRESSIVE LEGAL PRACTICE

The relationship between poverty law scholarship and practice has been a dynamic one. As law and organizing has evolved as a field of academic inquiry, it has drawn upon the experiences of poverty law practitioners at the same time that it has influenced the direction of their work. Three distinct practice areas identified with the law and organizing movement have emerged: workers' rights, environmental law, and community development.¹¹¹ As this part highlights, poverty lawyers in these contexts have used an organizing-centered approach to foster client empowerment and achieve important client victories.

111. Although law and organizing has been applied most prominently in these three practice areas, lawyers have used a law and organizing approach to address other substantive issues. For example, housing lawyers have combined tenant organizing and legal advocacy to combat displacement and slum housing. See, e.g., Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 299 (1996) (discussing the organization of eviction-free zones to prevent the displacement of low-income housing tenants); Cole, *supra* note 18, at 679–82 (discussing Gary Bellow's work organizing tenants to improve substandard housing conditions); Teresa Cordova, *Community Intervention Efforts to Oppose Gentrification*, in CHALLENGING UNEVEN DEVELOPMENT, *supra* note 88, at 25, 36 (discussing community-based efforts to fight gentrification); Judith E. Koons, *Fair Housing and Community Empowerment: Where the Roof Meets Redemption*, 4 GEO. J. ON FIGHTING POVERTY 75 (1996) (describing the use of legal advocacy and community mobilization to resist the displacement of African American community residents due to redevelopment). Currently in Los Angeles, the Figueroa Corridor Coalition for Economic Justice—comprised of legal services lawyers, community organizers, union representatives, and other community activists—has initiated a housing preservation campaign that has adopted a law and organizing strategy in an effort to maintain quality affordable housing units in the rapidly developing Figueroa Corridor area between downtown Los Angeles and the University of Southern California. In addition, law and organizing has been used in the area of welfare rights, see, e.g., KOTZ & KOTZ, *supra* note 84, at 258–59 (discussing the coordination between welfare rights organizing and litigation efforts); Welfare Law Ctr., *Organizing and Litigation: Joint Strategies to Secure Protections for Workfare Workers*, at <http://www.welfarelaw.org/Org&Lit.htm> (last visited Jan. 13, 2001) (describing how litigation can support organizing around workfare issues), domestic violence advocacy, see, e.g., Stacy Brustin, *Expanding Our Vision of Legal Services Representation—The Hermanas Unidas Project*, 1 AM. U. J. GENDER SOC. POL'Y & L. 39, 49–58 (1993) (describing a program that incorporated organizing in the representation of domestic violence survivors), criminal justice (for example, the Seattle Public Defender's Equality and Criminal Justice Project has organized families of offenders against racial profiling), immigrant rights (for example, CHIRLA has mounted major organizing campaigns against restrictive immigration legislation, such as Proposition 187), and homelessness (for example, the Chicago Coalition for the Homeless has organized homeless populations to oppose vagrancy and panhandling ordinances).

A. Workers' Rights

The law and organizing model has been most prominently applied as a strategy for improving the conditions of low-wage workers.¹¹² Practitioners in the field of workers' rights have combined litigation and workplace organizing techniques to pressure employers to enforce wage and hour requirements, workers' compensation laws, occupational health and safety regulations, child labor protections, and antidiscrimination laws.¹¹³

The current version of law and organizing in the workplace draws upon the tradition of labor organizing.¹¹⁴ Like their union counterparts, law and organizing proponents seek to build collective bargaining power in order to create more equitable working conditions. Yet, despite the strong connections to the union movement, workplace law and organizing advocates have been forced to venture outside the scope of conventional labor law practice for a variety of reasons. Most importantly, the declining power of unions—particularly in the low-wage employment sector—has heightened the need for alternative workplace organizing tactics.¹¹⁵ Much of the current law and organizing activity in the workplace context has therefore

112. For example, at the recent UCLA School of Law Conference on Law and Organizing, see *supra* note 20, all of the panelists who spoke on the use of law and organizing, except for one, were focused on workplace issues.

113. See, e.g., Gordon, *supra* note 13, at 441–45; Klare, *supra* note 18, at 272. For an important example of law and organizing in the workers' rights context, see Su, *supra* note 18.

114. See generally JEREMY BRECHER, *STRIKE!* (1972); ELIZABETH FAUE, *COMMUNITY OF SUFFERING AND STRUGGLE: WOMEN, MEN, AND THE LABOR MOVEMENT IN MINNEAPOLIS, 1915–1945* (1991); ERIC MANN, *TAKING ON GENERAL MOTORS* (1987); *ORGANIZING TO WIN: NEW RESEARCH ON UNION STRATEGIES* (Kate Bronfenbrenner et al. eds., 1998) [hereinafter *ORGANIZING TO WIN*]; ARTHUR B. SHOSTAK, *ROBUST UNIONISM: INNOVATIONS IN THE LABOR MOVEMENT* (1991); see also BOYTE, *supra* note 66, at 104–25. Labor lawyers are important precursors to the current generation of law and organizing practitioners, who focus on enforcing legal rights enacted as a result of the labor movement. See Abel, *supra* note 6, at 7 (noting that “[l]abor law offers an attractive model for progressive practice: the client is organized already and endowed with substantial resources (both economic and political), and the body of law is highly elaborated”); Bachmann, *supra* note 6, at 11–17 (discussing achievements of labor movement in the 1930s); Quigley, *supra* note 17, at 460 (citing a discussion with Wade Rathke, one of the founders of ACORN, who noted that the best organizational lawyers tend to “come out of the union tradition”). As advocates committed to the goal of advancing workplace organizing campaigns, labor lawyers continue to merit recognition as important examples of practitioners working within the law and organizing model. However, it should be noted that labor lawyers typically have a different relationship to organizing campaigns than law and organizing practitioners. Labor lawyers, under the direction of union leaders, provide legal assistance to facilitate union organizing. Law and organizing practitioners, in contrast, often directly participate in organizing work.

115. See ROBERT POLLIN & STEPHANIE LUCE, *THE LIVING WAGE: BUILDING A FAIR ECONOMY* 4–5 (1998) (noting the decline in union membership since its postwar peak in the 1950s); Stephen Franklin, *Union Refrain Starts to Move to an Ethnic Beat*, CHI. TRIB., Oct. 13, 1999, § 3, at 1 (citing statistics that union membership now stands at 13.9 percent of the workforce, down from 20.1 percent in 1983).

sought to bring the protections and advantages of unionization to the nonunionized workforce.¹¹⁶ This effort has been particularly important in industries in which labor has a weak presence, such as the garment industry, or in areas in which unionization would be impractical, such as domestic work or day labor. Not coincidentally, these industries are also comprised of large numbers of undocumented immigrants and workers employed on a part-time or contingency basis, who are particularly vulnerable to exploitation by employers.¹¹⁷

Recently, there has been a coordinated effort by activists and lawyers to generate new strategies to advance the interests of these marginalized workers.¹¹⁸ One of the most significant outcomes of this collaboration has been the emergence of the workers' center as a model for promoting greater workplace equity. These centers have been established by independent community organizers and union leaders seeking to promote a stronger culture of labor insurgency by tapping into existing grassroots workplace organizing initiatives, especially in immigrant communities.¹¹⁹ The goal of the union-sponsored centers is "to provide political and ideological support for unionization among disenfranchised low-wage workers" and to promote "union organizing campaigns in their communities."¹²⁰ Unions such as the Union of Needletrades, Industrial and Textile Employees (UNITE!) and the Service Employees International Union have instituted workers' centers that provide job skills training, English-as-a-second-language classes, workers' rights courses, and organizing opportunities for immigrant workers.¹²¹ These centers have become increasingly important as labor leaders have moved to expand the recruitment of immigrant members.¹²²

The workers' center approach has been adapted to the legal services context by innovative law and organizing practitioners. The most frequently cited example in this regard has been the Workplace Project, which aims to

116. See Gordon, *supra* note 13, at 429; see also Peggie R. Smith, *Organizing the Unorganizable: Private Paid Household Workers and Approaches to Employee Representation*, 7 N.C. L. REV. 45 (2000).

117. See Lora Jo Foo, *The Informal Economy: The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation*, 103 YALE L.J. 2179 (1994); Laura Ho et al., *(Dis)Assembling Rights of Women Workers Along the Global Assembly Line: Human Rights and the Garment Industry*, 31 HARV. C.R.-C.L. L. REV. 383 (1996); Su, *supra* note 18.

118. See Klare, *supra* note 18, at 267, 272; see also Jeremy Brecher, *Organizing the New Workforce*, Z MAG., Jul.-Aug. 1998, at 67.

119. Although some early centers were started without union support, more recent centers have received union backing. See Immanuel Ness, *Organizing Immigrant Communities: UNITE's Workers Center Strategy*, in ORGANIZING TO WIN, *supra* note 114, at 89.

120. *Id.* at 91.

121. See *id.* at 93-95.

122. See Franklin, *supra* note 115, at 1; Steven Greenhouse, *Labor, Revitalized with New Recruiting, Has Regained Power and Prestige*, N.Y. TIMES, Oct. 9, 1999, at A14.

mobilize low-income immigrant workers to challenge abusive workplace practices,¹²³ while supporting a broader effort by workers' centers to "build a new labor movement."¹²⁴ At the Workplace Project, legal representation is linked to organizing by restricting legal services to those workers who agree to become active participants in the organization.¹²⁵ During the course of the representation, the client works with a team comprised of an organizer, a counselor, and a lawyer that focuses not only on redressing that particular client's legal problem, but also on implementing a strategy to fight collectively for better working conditions.¹²⁶ The form of this advocacy is varied and can involve picketing employers who violate wage and hour laws or engaging in strategic actions to consolidate popular support for stronger workers' legislation.¹²⁷ The lawyer's role in the organizing process is restricted, as the provision of legal services is combined with the education and organizing components of workers' center membership.¹²⁸

Other organizations have developed alternative structures and strategies for integrating law and organizing to redress workplace injustice. For example, the Asian Pacific American Legal Center (APALC), a legal organization with no organizers on staff, has creatively utilized the skills of lawyers to form partnerships with clients in order to lay the groundwork for a grassroots leadership base.¹²⁹ APALC's lawyers have worked to educate their clients about the court system, the legislative process, and larger political and economic issues. As a result, clients have become involved in activities such as speaking with the press, providing testimony at public

123. See Gordon, *supra* note 13, at 428.

124. *Id.* at 429. Elsewhere, Gordon has described the goal of the Workplace Project as educating immigrant workers on the "realities of power and politics," and linking these workers' groups to broader union and nonunion organizing campaigns around issues of workers' rights. See Jennifer Gordon, *Immigrants Fight the Power*, NATION, Jan. 3, 2000, at 6, 19. This reformist agenda is carried out through community organizing and outreach efforts designed to raise workers' consciousness about the interconnected nature of their workplace problems and to empower them to solve problems through organizing efforts that redress systemic abuses. See Gordon, *supra* note 13, at 430–37.

125. See Gordon, *supra* note 13, at 443–45.

126. See *id.* at 443–44.

127. See JENNIFER GORDON, THE CAMPAIGN FOR THE UNPAID WAGES PROHIBITION ACT: LATINO IMMIGRANTS CHANGE NEW YORK WAGE LAW 3–9 (Carnegie Endowment for Int'l Peace, Int'l Migration Policy Program, Working Paper No. 4, 1999), available at http://www.ceip.org/files/PDF/imp_wp4gordon.pdf (describing the Workplace Project's campaign to secure passage of the Unpaid Wages Prohibition Act); see also Gordon, *supra* note 13, at 430–33 (describing the Workplace Project's organizing program); Gordon, *supra* note 124, at 17 (discussing the Workplace Project's legislative advocacy).

128. See Gordon, *supra* note 13, at 443–45.

129. See Telephone Interview with Muneer Ahmad, Staff Attorney, Asian Pacific American Legal Center (Oct. 10, 2000). See generally Su, *supra* note 18.

hearings, and participating in policy advocacy.¹³⁰ The Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), a community-based organizing group, has utilized its limited legal staff to form partnerships with established legal organizations to advocate on behalf of low-income workers. For example, when a restrictive ordinance was passed in Los Angeles barring day laborers from soliciting work from passing drivers, CHIRLA's Day Laborer Organizing Project¹³¹ partnered with the Mexican American Legal Defense Fund to successfully challenge the ordinance on constitutional grounds.¹³² These efforts, which have focused heightened public attention on the conditions of low-wage workers, are representative of the influence of the law and organizing movement on workplace advocacy.

B. Environmental Justice

Law and organizing has also played a significant role in the development of the environmental justice movement.¹³³ In order to mobilize low-income clients to challenge the disproportionate placement of environmental hazards in their neighborhoods,¹³⁴ lawyers have engaged in a community-based

130. See Telephone Interview with Muneer Ahmad, *supra* note 129.

131. For background on the Day Laborer Organizing Project, see Ctr. for Cmty. Change, *Day Laborers Organize in Los Angeles*, available at <http://www.communitychange.org/organizing/20chirla.asp> (last visited Jan. 13, 2001).

132. See *CHIRLA v. Burke*, No. CV 98-4863-GHK, 2000 U.S. Dist. LEXIS 16520, at *6-43 (C.D. Cal. Sept. 12, 2000) (finding Los Angeles County's ordinance too broad, unduly vague, and in violation of the First and Fourteenth Amendments); see also David Rosenzweig, *Federal Judge Voids Ban on Soliciting by Day Laborers*, L.A. TIMES, Sept. 15, 2000, at B1. Julia Greenfield's work at the Lawyers' Committee for Civil Rights in San Francisco (LCCRSF) offers another example of law and organizing practice. Part of her work has focused on providing legal research and analysis to support POWER's organizing campaigns. For example, POWER began an organizing action against the Department of Human Services' policy of rotating workfare workers between different workfare jobs every three months. This was seen by POWER as being both union busting—in that it damaged POWER's ability to organize these workers—and harmful to workfare participants whose ability to be hired to permanent positions would be reduced because of the rotation system. Greenfield's role as the attorney was to research legal issues related to union busting and civil service hiring policies. She was thus able to assist POWER's leadership in understanding how the law impacted their organizing strategy. See Telephone Interview with Julia Greenfield, NAPI Equal Justice Fellow, LCCRSF (Sept. 28, 2000).

133. For a discussion of the environmental justice movement, see generally Cole, *supra* note 18; Willie A. Gunn, *From the Landfill to the Other Side of the Tracks: Developing Empowerment Strategies to Alleviate Environmental Injustice*, 22 OHIO N.U. L. REV. 1227 (1996); Richard J. Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 NW. U. L. REV. 787 (1993); and R. Gregory Roberts, Comment, *Environmental Justice and Community Empowerment: Learning from the Civil Rights Movement*, 48 AM. U. L. REV. 229 (1998).

134. See Gunn, *supra* note 133, at 1227-28; see also GEN. ACCOUNTING OFFICE, REPORT NO. RCED-83-168, *SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES* (1983); Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, 103

approach that downplays litigation¹³⁵ and emphasizes grassroots efforts to empower community residents as political actors.¹³⁶ By integrating mainstream environmental and poverty law advocacy with organizing, practitioners have raised awareness about environmental racism and effectively prevented the siting of environmental hazards in low-income communities of color.¹³⁷ In this way, law and organizing tactics have contributed to the formation of a broad-based environmental justice movement that addresses the political and economic causes of environmental problems.

For example, while an attorney at the California Rural Legal Assistance Foundation, Luke Cole engaged in a broad range of strategies, including community organizing, to remedy environmental problems faced by the poor. In Kettleman City, California, Cole worked with community leaders to organize meetings of neighborhood residents seeking to oppose the building of a toxic waste incinerator. The residents initiated a letter-writing campaign¹³⁸ and established a core leadership group that mobilized the community into action.¹³⁹ This strong organizing effort, in conjunction with legal actions taken by Cole, played an important part in defeating the incinerator project.¹⁴⁰

Other examples underscore how law and organizing strategies can be effectively deployed to combat environmental racism. For instance, the Golden Gate Law and Justice Clinic worked with community-based organizations to halt the development of a power plant in the largely African American Bayview-Hunters Point section of San Francisco.¹⁴¹ Against the

YALE L.J. 1383, 1406 (1994); Vicki Been, *What's Fairness Got to Do with It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 CORNELL L. REV. 1001, 1001-09 (1993); Paul Mohai & Bunyan Bryant, *Environmental Injustice: Weighing Race and Class as Factors in the Distribution of Environmental Hazards*, 63 U. COLO. L. REV. 921, 921-23 (1992); Peter L. Reich, *Greening the Ghetto: A Theory of Environmental Race Discrimination*, 41 U. KAN. L. REV. 271, 275-80 (1992).

135. For example, while acknowledging the protections provided by environmental legislation, Luke Cole argues that the enforcement of environmental laws, by itself, will not alter the practice of siting environmental hazards in poor communities. See Cole, *supra* note 18, at 635-54. In particular, he states that environmental laws reflect political decisions that are resistant to legal solutions and that typically operate to reinforce existing political and economic inequities. See *id.* at 648-49; see also Roberts, *supra* note 133, at 245-46.

136. See Cole, *supra* note 18, at 621, 636-39; see also Roberts, *supra* note 133, at 255-67; Naikang Tsao, Note, *Ameliorating Environmental Racism: A Citizens' Guide to Combatting the Discriminatory Siting of Toxic Waste Dumps*, 67 N.Y.U. L. REV. 366, 379-417 (1992). Communities for a Better Environment, a San Francisco-based organization, is another example of a group that integrates environmental litigation and community organizing to improve conditions in low-income communities.

137. See Cole, *supra* note 18, at 673-78.

138. See *id.* at 675.

139. See *id.* at 676-77.

140. See *id.* at 678.

141. See Diane Schwartz, *Environmental Racism: Using Legal and Social Means to Achieve Environmental Justice*, 12 J. ENVTL. L. & LITIG. 409, 422-29 (1997).

backdrop of threatened legal action, community groups organized strident opposition to the proposed plant at numerous administrative hearings, coordinated studies demonstrating its potentially deleterious health and economic consequences, and ultimately forced the city to adopt a resolution, crafted by community groups and their lawyers, that prevented the placement of any power generation facilities in the community.¹⁴² In St. James Parish, Louisiana, local activists established a grassroots organization that held educational forums for community residents, participated in local governmental hearings, and collaborated with attorneys to defeat the siting of an environmentally hazardous plant in a predominantly African American community.¹⁴³

Professor Shelia Foster has discussed how a coalition of lawyers and community-based organizations in Chester, Pennsylvania worked to stop the clustering of commercial waste facilities in a low-income, African American neighborhood.¹⁴⁴ The Chester case study focused on the multifaceted strategy these organizations used to challenge the siting of a waste sterilization plant and soil incineration facility in a community that was already home to various environmental hazards.¹⁴⁵ In particular, the proposed sitings galvanized community residents to form an organization, Chester Residents Concerned About Quality of Life, that convened meetings with government and industry leaders, disrupted the operations of existing waste facilities, worked with public interest attorneys to challenge the issuance of site permits, and lobbied city council to increase the burden on companies seeking to locate hazardous facilities in Chester.¹⁴⁶ As a result of these efforts, community residents and their legal representatives were able to block the location of the soil incinerator.¹⁴⁷

These examples reflect a trend among environmental justice advocates toward de-emphasizing litigation strategies in favor of integrated law and organizing approaches. The increasing application of law and organizing techniques in the environmental context has led to coordinated challenges

142. See *id.* at 425–28.

143. See Roberts, *supra* note 133, at 257–65.

144. See Shelia Foster, *Justice from the Ground Up: Distributive Inequities, Grassroots Resistance, and the Transformative Politics of the Environmental Justice Movement*, 86 CAL. L. REV. 774 (1998).

145. See *id.* at 811.

146. See *id.* at 811–22.

147. To emphasize the inadequacy of litigation without a strong local organizing base, Sheila Foster contrasts the unsuccessful legal challenge to the sterilization plant with the grassroots political campaign that culminated in the city council's passage of a local ordinance that effectively blocked the soil incineration facility. See *id.* at 815–22. In her conclusion, Foster calls for environmental decision-making reforms that incorporate stronger community participation and points to the Chester experience as an example of the ways community groups are using direct political action to “establish a grassroots base to influence environmental decision-making in their community.” *Id.* at 838.

against unfair hazardous waste sitings that have protected the health of low-income communities and promoted the development of the environmental justice movement.

C. Community Development

Although the primary focus of law and organizing practitioners has been to develop ways to integrate litigation strategies with community organizing campaigns, the law and organizing model has also been applied by transactional lawyers in the area of community economic development (CED). In particular, CED lawyers have provided legal representation to community-based organizations engaged in grassroots mobilization efforts around a variety of issues affecting low-income workers.

The relationship of CED to the law and organizing movement is particularly important given the recent attention CED has received as an anti-poverty strategy.¹⁴⁸ During the past decade, poverty lawyers have reoriented their priorities to include the provision of transactional legal assistance to community-based organizations working to revitalize low-income neighborhoods.¹⁴⁹ Traditional CED lawyering encompasses a broad set of practices that includes developing affordable housing and commercial projects,¹⁵⁰ as

148. See generally Brian Glick & Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience*, 23 N.Y.U. REV. L. & SOC. CHANGE 105 (1997); Jeffrey S. Lehman & Rochelle E. Lento, *Law School Support for Community-Based Economic Development in Low-Income Urban Neighborhoods*, 42 WASH. U. J. URB. & CONTEMP. L. 65 (1992); Peter Pitegoff, *Law School Initiatives in Housing and Community Development*, 4 B.U. PUB. INT. L.J. 275 (1995); Ben Quinones, *CED on the Job*, 27 CLEARINGHOUSE REV. 773 (1993); Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 U. MICH. J.L. REFORM 689 (1994); Michael H. Schill, *Assessing the Role of Community Development Corporations in Inner City Economic Development*, 22 N.Y.U. REV. L. & SOC. CHANGE 753 (1996–1997); Janine Sisak, *If the Shoe Doesn't Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation*, 25 FORDHAM URB. L.J. 873 (1998); Lucie E. White, *Feminist Microenterprise: Vindicating the Rights of Women in the New Global Order?*, 50 ME. L. REV. 327 (1998). Because of the collaborative nature of community economic development (CED) work, it has been touted by some legal scholars as an important model for facilitating client and community empowerment. See, e.g., Louise G. Trubek, *The Worst of Times . . . and the Best of Times: Lawyering for Poor Clients Today*, 22 FORDHAM URB. L.J. 1123, 1131, 1135 (1995).

149. See Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 217 (1999) (noting that recently “lawyers in legal service organizations, law firms, and law school clinics have increasingly engaged in community development practice”).

150. See generally ABA FORUM ON AFFORDABLE HOUS. & CMTY. DEV. LAW, *THE CUTTING EDGE OF AFFORDABLE HOUSING SOLUTIONS AND COMMUNITY DEVELOPMENT INITIATIVES* (2000); Angela Mulkerin Christy, *Affordable Housing: Nonprofits Bring Concrete Benefits to Affordable Housing Transactions*, 8 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 29 (1998); Kristin A. DeKuijper & Richard J. Tetrault, *Using Tax Exempt Bond Financing in Conjunction with*

well as structuring community-based nonprofit organizations, child care centers,¹⁵¹ businesses,¹⁵² and financial institutions.¹⁵³

An increasing number of CED lawyers have expanded the scope of their practice to support community-based organizing campaigns for economic justice. Law and organizing in the CED context has focused on the provision of transactional legal assistance to community organizing groups working to create jobs and remove barriers to employment for low-wage workers.¹⁵⁴ For instance, CED lawyers have assisted community organizations

the Low Income Housing Tax Credit, 6 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 288 (1997); Shawn Luther & Jason Yuts, *Housing Pioneers and Affordable Housing Joint Ventures: Forging a New Frontier or Straying from the Well-Traveled Path?*, 5 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 261 (1996); Schill, *supra* note 148; Elizabeth A. Taylor, Note, *The Dudley Street Neighborhood Initiative and the Power of Eminent Domain*, 36 B.C. L. REV. 1061 (1995).

151. See generally Peter Pitegoff, *Child Care Enterprise, Community Development, and Work*, 81 GEO. L.J. 1897 (1993).

152. See generally SUSAN R. JONES, A LEGAL GUIDE TO MICROENTERPRISE DEVELOPMENT: BATTLING POVERTY THROUGH SELF-EMPLOYMENT (1998); Brad Caftel, *Helping Microenterprise Programs Succeed*, CED EXCHANGE, June 1993, at 1; Margaret Beebe Held, *Developing Microbusinesses in Public Housing: Notes from the Field*, 31 HARV. C.R.-C.L. L. REV. 473 (1996); Susan R. Jones, *Self-Employment: Possibilities and Problems*, in HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA 76 (Joel F. Handler & Lucie White eds., 1999) [hereinafter HARD LABOR]; Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195 (1997); Lewis D. Solomon, *Microenterprise: Human Reconstruction in America's Inner Cities*, 15 HARV. J.L. & PUB. POL'Y 191 (1992); Robert E. Suggs, *Bringing Small Business Development to Urban Neighborhoods*, 30 HARV. C.R.-C.L. L. REV. 487 (1995). For a discussion of cooperative development, see Scott L. Cummings, *Developing Cooperatives as a Job Creation Strategy for Low-Income Workers*, 25 N.Y.U. REV. L. & SOC. CHANGE 181 (1999); David Ellerman & Peter Pitegoff, *The Democratic Corporation: The New Worker Cooperative Statute in Massachusetts*, 11 N.Y.U. REV. L. & SOC. CHANGE 441 (1982-1983); and Lewis D. Solomon & Melissa B. Kirgis, *Business Cooperatives: A Primer*, 6 DEPAUL BUS. L.J. 233 (1994). See also BRETT FAIRBAIRN ET AL., CO-OPERATIVES & COMMUNITY DEVELOPMENT: ECONOMICS IN SOCIAL PERSPECTIVE (1991); STIMULATING COOPERATIVE ECONOMIC DEVELOPMENT IN LOW-INCOME COMMUNITIES (Patricia Logan et al. eds., 1981).

153. See generally Rochelle E. Lento, *Community Development Banking Strategy for Revitalizing Our Urban Communities*, 27 U. MICH. J.L. REFORM 773 (1994); Christoher Jordan Heisen, Comment, *Community Development Lite: An Economic Analysis of the Community Development Financial Institutions Act*, 39 HOW. L.J. 337 (1995).

154. An important distinction between law and organizing in the CED context as opposed to workers' rights law and organizing practice is that CED lawyers tend to provide transactional legal assistance—typically in the areas of real estate, corporate law, tax, and contracts—to community-based organizations engaged in organizing work. This type of transactional lawyering has been discussed by scholars writing about law and organizing work. See, e.g., Abel, *supra* note 6, at 8 (“[L]awyers can help organizations to act autonomously by providing technical skills and training organization staff and members.”); Bachmann, *supra* note 100, at 38–39 (discussing how Steve Bachmann’s law firm acted as corporate house counsel for ACORN, providing assistance on issues of corporate and tax law); Bachmann, *supra* note 6, at 23 (stating that the lawyer’s role advising organizations on corporate and tax issues facilitates grassroots mobilization); Cole, *supra* note 18, at 663–67 (discussing the representation of community-based organizations); Lucie White, “Democracy” in *Development Practice: Essays on a Fugitive Theme*, 64 TENN. L. REV. 1073,

across the country to negotiate, draft, and secure the passage of living wage ordinances, which have set wage floors that have lifted scores of working people out of poverty.¹⁵⁵ In one notable example, lawyers at Greater Boston Legal Services collaborated with a coalition of labor, clergy, and community activists, to secure the passage of the Boston Jobs and Living Wage Ordinance.¹⁵⁶ Other legal organizations have played critical roles in researching and drafting local first-source hiring agreements, which typically require city contractors to hire low-income workers from local communities. CED lawyers at the Legal Aid Foundation of Los Angeles worked with a community organizing group, Action for Grassroots Empowerment and Neighborhood Development Alternatives (AGENDA), to draft an agreement with a major entertainment studio requiring it to train and hire low-income workers in exchange for public subsidies earmarked for the studio under a government-sponsored redevelopment project.¹⁵⁷ CED practitioners have also helped coalitions of union representatives, grassroots organizers, and community residents to negotiate worker buy-outs of manufacturing companies and structure employee-owned businesses.¹⁵⁸

These CED law and organizing efforts have had far reaching consequences for low-income communities and have begun to change the contours of CED practice. By collaborating with community organizations to challenge structural inequities through grassroots political action, CED practitioners have contributed to efforts to raise wages, increase job security, and

1076 (1997) (stating that “a community organizer or transactional lawyer [can] practice in ways that erode, rather than enhance, her clients’ power”). In contrast to CED lawyers, workers’ rights advocates usually combine organizing with “litigation” tactics to help low-wage workers. That is, they represent individuals or groups of aggrieved workers in suits against employers for wage and hour violations, health and safety problems, and workplace discrimination or harassment. Another difference is that, while workers’ rights advocates typically seek to protect vulnerable workers from unlawful termination or substandard working conditions, the goal of CED lawyering is to increase the number of stable, living wage jobs in low-income communities and to establish adequate job training and social service programs to allow low-wage workers to access new opportunities. Thus, although CED and workers’ rights lawyers often advocate on behalf of the same constituencies, they use different legal techniques, work with different types of clients, and pursue different, albeit complementary, goals.

155. See Selena Spain & Jean Wiley, *The Living-Wage Ordinance: A First Step in Reducing Poverty*, 32 CLEARINGHOUSE REV. 252 (1998); see also POLLIN & LUCE, *supra* note 115.

156. See Telephone Interview with Monica Halas, Attorney, Greater Boston Legal Services (Feb. 17, 2000).

157. See Nona Liegeois et al., *Helping Low-Income People Get Decent Jobs: One Legal Services Program’s Approach*, 33 CLEARINGHOUSE REV. 279, 286–89 (1999). The Los Angeles Alliance for a New Economy’s Accountable Development Project has also combined legal advocacy and grassroots organizing to ensure that publicly subsidized redevelopment projects benefit low-income communities. See L.A. Alliance for a New Econ., at <http://www.laane.org> (last visited Jan. 20, 2001).

158. See Telephone Interview with Ken Gladston, Director, Inter-Valley Worker Ownership Project (Nov. 18, 1999).

expand ownership opportunities for poor workers. In addition, the development of law and organizing initiatives has led many CED lawyers to move away from traditional market-based business development strategies and, instead, use their transactional legal skills to support movements for economic justice.

Part II has reviewed how the law and organizing model has been employed to improve conditions for low-wage workers and protect the environmental integrity of low-income communities. Advocates in the areas of workers' rights, environmental justice, and community development have embraced a new approach to social change lawyering that emphasizes the relationship between legal advocacy and community-defined organizing goals, and leverages the power of grassroots action to win benefits for poor clients. Nonetheless, further practice-based reflection is necessary to better understand the potential—and the limits—of the law and organizing paradigm.

III. THE LIMITS OF LAW AND ORGANIZING

The development of law and organizing has fundamentally altered the terrain of progressive legal practice. By highlighting the value of organizing, the model has challenged the ingrained habits of legal services practitioners and has led to a more flexible and multifaceted vision of effective lawyering for the poor. Furthermore, by questioning the privileged position of lawyers within social movements, law and organizing proponents have reclaimed the centrality of community members in shaping social change. Most significantly, law and organizing has forced poverty lawyers to evaluate the effect of their efforts using a new calculus—one that defines success by asking whether legal advocacy has empowered client communities.

However, as law and organizing is still in its early stages, there has been little opportunity for a sustained dialogue, informed by practical experience, on the appropriate scope and application of the model. In advocating for the integration of law and organizing, scholars have omitted the type of critical analysis of organizing practice that they have so deftly leveled against litigation-based approaches. This omission has truncated academic discussions of law and organizing and impacted poverty law practitioners working to implement organizing methods on the ground.

As a step toward generating a more nuanced examination of law and organizing, Part III explores the limitations of an organizing-centered approach and suggests new directions for scholarship and advocacy. In particular, it offers a critique of organizing practice, examines tensions between the “legal” and “organizing” components of an integrated model, discusses

the practical challenges of implementing a law and organizing project, and analyzes ethical issues faced by lawyers working in organizing contexts.

A. The Myth of Organizing

In the law and organizing scholarship, organizing itself is promoted as a technique that can effectively advance social justice in a way that conventional lawyering cannot. Law and organizing proponents argue that if lawyers can learn to integrate organizing into their day-to-day legal practice, radical change is more likely to occur. However, while its advantages have been richly detailed, the limitations and complexities of organizing have not been sufficiently addressed. Therefore, as organizing is further incorporated into the tactics of progressive lawyers, it is important to generate a balanced view of its strengths and weaknesses so that advocates can more thoughtfully engage in law and organizing practice.¹⁵⁹ This part begins this task by discussing three critical issues in community organizing: the lack of clear distinctions among community-based practices, the limitations of local social change strategies, and the potential of organizing to marginalize race, gender, and other identity issues.

1. Unpacking Organizing

One of the critical issues that law and organizing practitioners must grapple with is the ambiguous meaning of organizing. What are the elements of organizing practice? Which organizing methods should be employed in different circumstances? Although these questions have challenged community activists for decades, there has been inadequate attention focused on differentiating the array of techniques that organizers draw upon in their day-to-day work. Instead, there is a tendency to use the term “organizing” loosely, causing tactical confusion and organizational inefficiency. The absence of a framework for distinguishing these different practices makes it difficult for lawyers to evaluate their role in diverse grassroots contexts.¹⁶⁰ Therefore, a more systematic effort is needed to generate a typology of community-based techniques that will guide the development of coherent law and organizing strategies.

159. Scholar-activists have already started to examine some of the tensions of grassroots practice. See, e.g., DELGADO, *supra* note 60, at 49–52 (detailing some of the limitations of community organizing); LÓPEZ, *supra* note 13, at 331–79 (critiquing “orthodox” organizing); White, *supra* note 48, at 167–69 (examining recurring tensions found in grassroots initiatives).

160. White has called for the development of “typologies, or models, or theories that map out a range of opportunities for collaboration” between lawyers and community groups. White, *supra* note 48, at 161.

Organizing is often used as shorthand for a range of community-based practices, such as organization building, mobilization, education, consciousness raising, and legislative advocacy.¹⁶¹ To begin to disaggregate these different techniques, it is useful to examine the distinction between community mobilization and organizing articulated by Frances Fox Piven and Richard Cloward.¹⁶² During the welfare rights movement, they argued that institutional change would most likely occur if welfare recipients were mobilized to engage in disruptive tactics, such as descending upon local welfare offices in large numbers to demand benefits.¹⁶³ They contrasted this vision of mobilization with the model employed by George Wiley, head of NWRO, who sought to organize the poor through the development of a stable institutional structure with dues-paying members who could exert their collective power to challenge welfare policies.¹⁶⁴ This distinction between mobilization as short-term community action and organizing as an effort to build long-term institutional power, while perhaps obscuring areas of overlap between the two concepts, nevertheless provides an initial framework for beginning to identify different roles for law and organizing practitioners. For instance, lawyers in the mobilization context might advise activists on the legality of different tactics,¹⁶⁵ while lawyers in the organization-building context might counsel groups on the steps necessary to establish membership associations.

Distinctions have also been made between organizing and popular education.¹⁶⁶ In particular, the defining feature of the Alinsky organizing model

161. Further distinctions could be made. For instance, media advocacy and get-out-the-vote drives are sometimes important aspects of larger community-based campaigns. See also Janice Perlman, *Grassroots Empowerment and Government Response*, SOC. POL'Y, Sept.–Oct. 1979, at 16, 16 (noting three separate approaches employed by neighborhood organizations: (1) “[T]hey can use direct action to *pressure* existing elites and institutions for greater accountability;” (2) “they can seek electoral power in order to *replace* the existing elites and institutions;” or (3) “they can bypass existing arrangements and establish *self-help* or *alternative institutions* such as cooperatives or community development corporations”); Simon, *supra* note 49, at 1108–11.

162. See PIVEN & CLOWARD, *supra* note 76, at 284–85; see also DELGADO, *supra* note 67, at 32–34.

163. See PIVEN & CLOWARD, *supra* note 76, at 275–78. Frances Fox Piven and Richard Cloward viewed this strategy as encompassing techniques such as “welfare rights information campaigns,” the exhortation of “potential welfare recipients to seek the aid that was rightfully theirs,” and “the mobilization of marches and demonstrations to build indignation and militancy among the poor.” *Id.* at 284.

164. See *id.* at 287–96.

165. See Bachmann, *supra* note 6, at 22 (describing how lawyers are necessary to advise community groups on the first amendment right to protest). Attorneys assisting in organizing efforts frequently act as legal observers at pickets and protests. See Telephone Interview with Tori T. Kim, Attorney, KIWA (Sept. 27, 2000).

166. See MYLES HORTON & PAULO FREIRE, *WE MAKE THE ROAD BY WALKING: CONVERSATIONS ON EDUCATION AND SOCIAL CHANGE* (Brenda Bell et al. eds., 1990); see also

popularized in the 1940s is organizing to win, despite the fact that winning might involve the organizers making the key decisions about how to achieve the desired end. Popular education, on the other hand, has evolved as a process of nonhierarchical learning through which people analyze problems on their own so that they may arrive at a more critical understanding of the mechanisms of power and oppression. This understanding may then form the basis for collective action; however, it is the process of arriving at this understanding, rather than the action taken as a result, that constitutes the core of the popular education technique. Although education may be used as a precursor to organizing activities, organizing does not necessarily involve education, and not all education work is geared toward organizing.¹⁶⁷ Therefore, law and organizing practitioners must approach educational work differently than other organizing situations. For example, in order to facilitate an educational session, a lawyer should expect to employ a broad range of planning and coordination skills, such as meeting facilitation and curriculum development.¹⁶⁸

Another practice frequently associated with community organizing is legislative advocacy. Although many efforts to influence legislation have an organizing component, it is important to disaggregate the concepts in order to better understand the different levers for applying political pressure. An example of effective legislative advocacy by the Workplace Project highlights this point. By organizing aggrieved Latino workers and building political coalitions with sympathetic constituencies, Workplace Project organizers were able to help win the passage of stringent employer penalties for nonpayment of wages.¹⁶⁹ In this effort, the Workplace Project relied on a variety of community-based techniques, including education,¹⁷⁰ media pressure,¹⁷¹ and signature gathering.¹⁷² In addition, organizers and community members worked together to draft legislation and conduct lob-

Katherine Sciacchitano, *Union, Organizing, and Democracy: Living in One's Time, Building for the Future*, DISSENT, Spring 2000, at 75, 80–81 (describing the debate between Myles Horton of the Highlander Center and Paulo Freire over the differences between education and organizing).

167. A similar distinction could be made between organizing and the consciousness-raising method discussed in feminist literature, see, e.g., Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589, 602 (1986), which is employed to facilitate a deeper understanding of the constructed nature of gender relations in order to foster personal empowerment among women.

168. See Eagly, *supra* note 4, at 460–72; see also White, *supra* note 13, at 767 (describing third dimensional lawyering that involved facilitating “informal conversations between the organizer and villagers, the development of [a] health clinic and [a] legal clinic, and the strategizing work that the lawyer did jointly with the villagers and the negotiating committee”).

169. See GORDON, *supra* note 127, at 7–9.

170. See *id.* at 23.

171. See *id.* at 16–17.

172. See *id.* at 24–26.

bying visits with key legislators. These varied practices suggest different roles for lawyers engaged in legislative work. In particular, practitioners supporting the efforts of a community-based organization to change the law might explain the technical aspects of the existing legal regime, research how other jurisdictions have dealt with similar issues, assist in drafting legislation, and help the organization understand and negotiate the legislative process.

Not only does organizing practice comprise a range of different techniques, it also takes place within disparate institutional contexts. In his recent work on organizing, Gary Delgado, one of the founders of ACORN, highlights three principal community organizing structures: (1) the direct membership model, (2) the coalition model, and (3) the institutionally based model.¹⁷³ These structures vary in terms of their constituencies and methods, and often organizers working within these structures employ a combination of tactical strategies. Groups using the direct membership model are generally small, geographically based organizations of low- and moderate-income members that aim to increase their political power through direct action, including organized protests, strategic pressure, and media campaigns.¹⁷⁴ Coalitions, in contrast, are issue-based groupings of existing organizations that seek to mobilize their members to change public policy through lobbying, public hearings, and electoral work.¹⁷⁵ Institutionally based organizations, which tend to be affiliated with religious institutions, focus on developing strong indigenous leaders who use public pressure and negotiation strategies to influence local politics.¹⁷⁶

Law and organizing practice can vary depending on the type of institutional arrangements chosen by community groups. In a direct membership organization the lawyer might be asked to provide limited legal assistance to members. Frequently such services are promoted as a benefit of membership and used as a method to draw new members. For instance, a group focused on welfare reform might offer a free consultation with a lawyer on benefits issues in order to attract welfare recipients as members. Coalition

173. See DELGADO, *supra* note 60, at 17. Through her work with clinical students, White has also identified different types of community-based initiatives: (1) state-sponsored initiatives, such as Head Start; (2) initiatives founded by a charismatic neighborhood leader; (3) charitable projects; (4) initiatives that promote an ideology, such as literacy or welfare rights; and (5) grassroots self-help initiatives, such as Alcoholics Anonymous. See White, *supra* note 48, at 164–66. She has described different roles for lawyers working with such groups, including the lawyer as “mediator,” “fund-broker and financial adviser,” “historian, observer, critic,” and “networker.” *Id.* at 166.

174. See DELGADO, *supra* note 60, at 17.

175. See *id.*

176. See *id.*

organizations, in contrast, might find it useful for lawyers to share their knowledge of a particular specialized issue. For example, a coalition focused on immigrant rights would need a lawyer to explain existing immigration laws and interpret new legislative proposals. Finally, lawyers working with an institutionally based organization might be asked to analyze local redevelopment laws or the rules governing municipal decision making in order to strengthen the organization's ability to influence political decisions affecting the allocation of local resources.

Organizing must therefore be understood as encompassing a diverse range of methods and institutional forms. Although the analytic distinctions outlined in this part are schematic and do not fully capture the fluid nature of organizing work, they are nevertheless important for beginning to sharpen discussions of law and organizing practice. To move forward, these distinctions must be elaborated, challenged, and brought to life with practice-based examples. Sophisticated practitioners have already begun this process by providing models of coordinated law and organizing advocacy that deftly integrate different community-based techniques to achieve clearly defined strategic goals. For instance, the Workplace Project and Make the Road by Walking, a community-based organization in Bushwick, Brooklyn, both use organizing, education, media pressure, and legislative advocacy to advance their workers' rights agendas.¹⁷⁷ Similarly, the Metropolitan Alliance in Los Angeles has recently launched a Jobs and Health Care Campaign that thoughtfully combines an array of techniques—demonstrations, an electoral campaign, organization-building, and education—to increase quality jobs and expand job training programs in low-income communities. Yet, despite these examples of model practices, many community activists continue to adopt the rhetoric of organizing without having developed an understanding of the complexity of community-based practices. In order for lawyers to target their legal resources in a way that advances community projects, a more intricate typology of organizing methods is needed. At the moment, the picture of what organizing is—as well as what it is not—is still incomplete.

2. Limitations of Local Organizing as a Social Change Strategy

The law and organizing model privileges local organizing as the centerpiece of social change practice. Relying significantly on postmodern

177. See GORDON, *supra* note 127, at 9–30; Gordon, *supra* note 13, at 430–37; Telephone Interview with Andrew Friedman, Codirector, Make the Road by Walking (Sept. 28, 2000); Make the Road by Walking, at <http://www.maketheroad.org> (last visited Sept. 28, 2000).

conceptions of political action,¹⁷⁸ which have emphasized small-scale resistance against subordination,¹⁷⁹ law and organizing proponents have viewed organizing as capable of fostering the type of local grassroots participation that leads to community empowerment.¹⁸⁰ Yet, while the ideal of local action has appealed to progressive scholars and activists, it has also been the subject of criticism by those who contend that, as a political strategy, it fails

178. See Buchanan, *supra* note 7, at 1061–62 (highlighting poverty law scholarship as reflective of postmodern conceptions of political action, noting particularly that White’s Mrs. G. illustrates “the powerful potential of everyday practices as sites of resistance and transformation”); Handler, *supra* note 49, at 713 (characterizing White’s scholarship as adopting a postmodern orientation toward politics). López and White, for instance, have self-consciously drawn upon postmodern theory to ground their calls for community-based legal practice. See LÓPEZ, *supra* note 13, at 41–43 (adopting postmodern conceptions of power and constructed identity to support his contention that rebellious lawyers should seek to empower poor clients by valuing their stories and problem-solving skills); Lucie E. White, *Seeking “ . . . The Faces of Otherness . . . ”: A Response to Professors Sarat, Felstiner, and Cahn*, 77 CORNELL L. REV. 1499, 1504 (1992) (noting that, despite its drawbacks, Michel Foucault’s notion of power makes possible “a politics of resistance”); see also Blasi, *supra* note 49, at 1087 (critiquing postmodern poverty law scholarship for focusing “too narrowly . . . on the individual lawyer/client microworld”); Simon, *supra* note 49, at 1102 (arguing that the postmodern scholarship equates political action with the achievement of “micro-victories over oppression”).

179. See BEST & KELLNER, THE POSTMODERN TURN, *supra* note 49, at 276 (stating that there has been a movement “from a macropolitics that focused on changing the structure of the economy and state to a micropolitics that aims to overturn power and hierarchy in specific institutions and to liberate emotional, libidinal, and creative energies repressed by the reality principle of bourgeois society”); CARL BOGGS, THE END OF POLITICS: CORPORATE POWER AND THE DECLINE OF THE PUBLIC SPHERE 213 (2000) (arguing that postmodernism is “oriented mainly toward the micro politics of everyday life” and “tends to dismiss *in toto* the realm of macro politics and with it an indispensable locus of any large-scale project of social transformation”); Boaventura da Sousa Santos, *The Post Modern Transition: Law in Politics*, in THE FATE OF LAW 79, 114–18 (Austin Sarat & Thomas Kearns eds., 1991) (arguing that postmodernism has generated a politics “of micro-revolutionary practices” that fight against “monopolies of interpretation”). Steven Best and Douglas Kellner argue that numerous theorists associated with postmodernism have advocated various forms of local political action. For example, they note that postmodern theorists Ernesto Laclau and Chantal Mouffe have called for multiple local struggles against subordination. See BEST & KELLNER, THE POSTMODERN TURN, *supra* note 49, at 272–73. See generally ERNESTO LACLAU & CHANTAL MOUFFE, HEGEMONY AND SOCIALIST STRATEGY: TOWARD A RADICAL DEMOCRATIC POLITICS (1985). They also claim that other theorists, such as Foucault, Jean-Francois Lyotard, and Richard Rorty, have rejected “utopian visions of liberation, global politics, and attempts at large-scale transformation . . . in favor of an emphasis on piecemeal reforms and local strategies.” BEST & KELLNER, THE POSTMODERN TURN, *supra* note 49, at 272. Foucault, who has been a significant figure in the evolution of poverty law scholarship, is particularly notable for his depiction of power as an all-pervasive force that can be resisted by marginalized human subjects in small ways in the course of their day-to-day lives. See *id.* at 275. See generally MICHEL FOUCAULT, POWER (Robert Hurley et al. trans., 2000); MICHEL FOUCAULT, POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 1972–1977 (Colin Gordon et al. trans., 1980). Finally, Best and Kellner also highlight Gilles Deleuze & Félix Guattari as theorists who have adopted postmodern micropolitics. See BEST & KELLNER, THE POSTMODERN TURN, *supra* note 49, at 276. See generally GILLES DELEUZE & FÉLIX GUATTARI, ANTI-OEDIPUS (1983).

180. See *supra* note 53.

to offer a coherent challenge to the larger institutional structures that produce poverty and inequality.

Critics of localism have expressed concern about measuring the success of political action by an empowerment standard and have wondered whether local, neighborhood-based efforts can ultimately generate a viable progressive social movement. Carl Boggs, for example, has questioned the effectiveness of local organizing in light of the increasing consolidation of corporate power and the growing importance of global economic and political decision-making structures.¹⁸¹ He argues that “[o]ne of the great ironies of the past two decades is that large-scale, macro, and global issues are increasingly met with local, often individual or privatized, outlooks and ‘solutions’ which is yet another testament to political futility.”¹⁸² Handler has put forth a similar critique of the “new social movements,” which he describes as “the archetypal form of postmodern politics—grass roots, protest from below, solidarity, collective identity, affective processes—all in the struggle against the established order outside the ‘normal’ channels.”¹⁸³ Handler suggests that these grassroots initiatives lack a comprehensive alternative social vision, which ultimately prevents them from developing institutional structures and challenging the hegemony of liberal capitalism.¹⁸⁴ Community development scholars have leveled similar critiques against localism, arguing that social change strategies focused on geographically discrete communities cannot sufficiently address the problems of racial isolation and poverty concentration that are generated by broader regional dynamics.¹⁸⁵ Community organizers

181. See, e.g., BOGGS, *supra* note 179, at 226–28 (arguing that, in an era of “corporate colonization,” the new social movements, which emphasize local action, cannot serve as transformative social vehicles because the “main locus of new movements has been in civil society, outside of or peripheral to the routine elements of the political system, consistent with the postmodern emphasis on micro, localized, and dispersed zones of resistance”); see also CARL BOGGS, *SOCIAL MOVEMENTS AND POLITICAL POWER: EMERGING FORMS OF RADICALISM IN THE WEST* (1986). For a discussion of the process of globalization, and its impact on economic and political structures, see generally NOAM CHOMSKY, *PROFIT OVER PEOPLE: NEOLIBERALISM AND GLOBAL ORDER* (1999); GEORGE SOROS, *THE CRISIS OF GLOBAL CAPITALISM* (1998); and Fredric Jameson, *Taking on Globalization*, *NEW LEFT REV.*, July–Aug. 2000, at 49.

182. BOGGS, *supra* note 179, at 19.

183. Handler, *supra* note 49, at 719.

184. *Id.* at 719–28. In a related vein, several scholars have critiqued the left’s embrace of identity politics as an abandonment of larger political visions of social transformation. See TODD GITLIN, *THE TWILIGHT OF COMMON DREAMS* 141–65 (1995); RUSSELL JACOBY, *THE END OF UTOPIA* 29–66 (2000); RICHARD RORTY, *ACHIEVING OUR COUNTRY* 75–107 (1998).

185. See John Foster-Bey, *Bridging Communities: Making the Link Between Regional Economies and Local Community Development*, 8 *STAN. L. & POL’Y REV.* 25, 32–34 (1997); see also WILLIAM PETERMAN, *NEIGHBORHOOD PLANNING AND COMMUNITY-BASED DEVELOPMENT: THE POTENTIAL AND LIMITS OF GRASSROOTS ACTION* 167–71 (2000) (arguing that it is a mistake to focus urban planning strategies exclusively on the local neighborhood level).

have also voiced concerns about the limitations of place-based neighborhood action strategies.¹⁸⁶

These criticisms raise legitimate questions about the efficacy of local organizing movements. How can local victories be leveraged into systemic, long-term changes in political and economic structures? How can local efforts be forged into a broader social movement? Although much attention has been focused on the benefits that grassroots organizing has produced for low-income communities, scholars and practitioners must begin to think more expansively about how community-based action can be linked to large-scale reform.

Increasingly, activists are working to connect local efforts to larger social change goals in ways that point to new directions in community organizing practice. For example, Fran Ansley has described the efforts of the Tennessee Industrial Renewal Network to address the impact of economic globalism on vulnerable factory workers by cultivating cross-border alliances and engaging in grassroots advocacy around issues of free trade.¹⁸⁷ In Los Angeles, groups such as the Figueroa Corridor Coalition for Economic Justice and the Metropolitan Alliance have initiated organizing initiatives to address housing and job creation issues on a regional level. Community and student organizing against sweatshops has also produced large-scale change by forcing some multinational clothing companies to take steps toward reforming labor practices.¹⁸⁸ In another example of broad-based advocacy, the Workplace Project has successfully leveraged local organizing to improve state law protections for low-wage workers.¹⁸⁹

The challenge facing law and organizing practitioners is to build upon these efforts in order to define more precisely the ways community-based organizing can change broader political and economic structures to benefit marginalized communities. Future scholarship should be devoted to explicating the links between local organizing and larger institutional reform. In addition, as innovative practitioners continue to develop more effective mechanisms for addressing the complex dynamics of regional and transnational

186. See DELGADO, *supra* note 60, at 19 (noting that by the mid-1980s, many community organizations were in crisis due, in part, to the recognition of “the inherent limits of a local, geographically based organizing model”). *But see* DELGADO, *supra* note 67, at 228–31 (addressing this criticism of community organizing and offering suggestions for building local organizing into a social movement).

187. See Fran Ansley, *Afterword: What's the Globe Got to Do With It?*, in *HARD LABOR*, *supra* note 152, at 207, 219–20.

188. See, e.g., Marc Cooper, *No Sweat: Uniting Workers and Students, A New Movement Is Born*, available at <http://past.thenation.com/issue/990607/0607cooper.shtml> (June 7, 1999).

189. See GORDON, *supra* note 127, at 7–9.

poverty, an effort must be made to disseminate these models to a wide audience of progressive scholars and advocates.

3. Hierarchy and Identity Conflicts in Organizing Practice

A final critique of organizing practice is its potential to marginalize issues of race, gender, sexual orientation, and other identity categories. Of course, traditional poverty law work is often fraught with complicated identity dynamics that perpetuate group hierarchy. However, while there has been a discussion of the ways that conventional legal advocacy reinforces power inequality among different groups,¹⁹⁰ there has been little examination of racism and other forms of subordination in the context of an organizing-centered approach.

Despite its progressive orientation, community organizing has not been immune from the same type of bias and discrimination prevalent in the dominant society.¹⁹¹ Commentators have criticized traditional organizing tactics that marginalize the concerns of people of color, women, gays, lesbians, and disabled persons.¹⁹² The labor organizing movement, which has focused on creating class solidarity among the working poor, also has a history of ignoring identity-based interests.¹⁹³ Similarly, the civil rights movement, another precursor of modern organizing practice, has often been

190. See, e.g., Alfieri, *Reconstructive Poverty Law Practice*, *supra* note 50, at 2123 (stating that poverty lawyers often silence “the empowering voices of client struggle, a silencing tied to the denigration of client difference delineated by class, ethnicity, gender, race, sexual preference, and disability”).

191. See DELGADO, *supra* note 60, at 4 (“Locked in the old paradigm of the neighborhood group, traditional CO [community organizing] runs the risk of replicating the same power relations as the dominant society in terms of race, gender, and sexual orientation.”); Francis Calputura & Kim Fellner, *The Square Pegs Find Their Groove: Reshaping the Organizing Circle*, available at <http://comm-org.utoledo.edu/papers96/square.html> (last visited Oct. 20, 2000).

The labor movement, the New Left and the organizing discipline that Saul Alinsky built, despite their luster, also engendered many flaws of the larger society, notably the dominance of white males in the power structures of their own organizations. The dissonance between stated principle and practice stoked the demand by activist women, people of color, and later gays and lesbians and the disabled, that the movement itself live up to its rhetoric or, in some cases, rethink its verities and structures.

Id. But see Michael Miller, “Beyond the Politics of Place”: A Critical Review, available at <http://comm-org.utoledo.edu/papers96/miller.html> (last visited Jan. 21, 2001) (claiming that Delgado unfairly characterizes traditional community organizing’s treatment of race and other identity issues).

192. See, e.g., BURGHARDT, *supra* note 88, at 109–35; DELGADO, *supra* note 60, at 50.

193. See, e.g., ROBERT H. ZIEGER, *AMERICAN WORKERS, AMERICAN UNIONS, 1920–1985*, at 168–92 (1986); Marion Crain & Ken Matheny, “Labor’s Divided Ranks”: *Privilege and the United Front Ideology*, 84 CORNELL L. REV. 1542, 1542–43 (1999) (arguing that the American labor movement has remained “steadfast” in its belief that class-based consciousness is the most important form of group solidarity, ignoring identity-based interests, such as race, gender, disability, and sexual orientation).

criticized for its patriarchal structure and its marginalization of black women's issues.¹⁹⁴ These power dynamics have been reflected in the institutional composition of community organizations. The Alinsky model of organizing has been historically characterized by the dominance of white male organizers, which critics charge has limited the diversity of issues addressed by submerging the interests of other groups.¹⁹⁵ In addition, Delgado notes that only two decades ago community organizers were debating whether to allow women to become lead organizers.¹⁹⁶

To be sure, the organizing environment has significantly improved, as women and people of color have increasingly assumed leadership positions in organizing groups.¹⁹⁷ For example, organizers of color have developed new strategies for redressing racial injustice, establishing organizational configurations focused on police violence, environmental racism, immigrant rights, and workplace discrimination.¹⁹⁸ Community-based formations have also developed that concentrate on the particular issues confronting women of color.¹⁹⁹ However, such change has been slow and organizational hierarchy persists.²⁰⁰

The practical application of certain types of community-based techniques can also perpetuate hierarchy. For example, the method of popular education frequently employed by community organizers has traditionally focused on economic injustice and de-emphasized issues of race, gender, sexual orientation, or disability. Furthermore, popular education tends to rely on organic group discussions that often include the expression of stereotypes and prejudices by group members. Although some facilitators

194. See, e.g., BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 1–6 (1984) (arguing that both the civil rights movement and the women's rights movement have marginalized issues facing women of color); see also Kimberlè Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

195. See Calpotura & Fellner, *supra* note 191 (stating that characteristics of Alinsky-based organizing practice "have included a pragmatic focus on issues that are 'immediate, specific and winnable,' and the dominance of white male organizers, albeit ones of tremendous intellect and energy").

196. See DELGADO, *supra* note 60, at 50.

197. See Francis Calpotura, *The View from the Ground: Organizers Speak Out on Race*, COLOR LINES, Summer 2000, at 17–18 (highlighting the grassroots work of prominent organizers of color).

198. See DELGADO, *supra* note 60, at 30–45. Progressive labor organizers have also begun to deploy a new organizing model that intersects with "struggles around racism, sexism, and heterosexism." Dorian T. Warren & Cathy J. Cohen, *Organizing at the Intersection of Labor and Civil Rights: A Case Study of New Haven*, 2 U. PA. J. LAB. & EMP. L. 629, 630 (2000).

199. For example, in Los Angeles, Strategic Actions for a Just Economy organizes women of color around economic justice issues.

200. See DELGADO, *supra* note 60, at 50 (arguing that the concerns of women, people of color, and members of the gay and lesbian community "still only receive cursory acknowledgment in many of the organizations and networks").

choose to address these issues directly, proscriptions against popular educators imposing their own views are interpreted by many to disallow such challenges by outsiders. As a result, regressive ideas can be disseminated by group members and incorporated into the fabric of the educational process.²⁰¹ The fact that the theoretical and practical imperatives of education work can reinforce hierarchy in this way underscores the need for an approach that is sensitive to how power circulates in grassroots settings. Moreover, lawyers should not assume that grassroots practice will deliver them from the grips of identity conflict. To the contrary, like their regnant counterparts, law and organizing practitioners must exercise constant vigilance in navigating the shoals of racism, sexism, and homophobia.

B. The Tensions Between “Law” and “Organizing”

As poverty lawyers continue to explore alternative law and organizing approaches, they must also confront some of the inevitable tensions between the lawyering and organizing components of an integrated model. In particular, they must address the tradeoffs between organizing and conventional legal practice, role confusion among lawyer-organizers, and the potential for client coercion in the law and organizing context.

1. Law Versus Organizing: The Perils of Privileging an Organizing-Centered Approach

The law and organizing movement has evolved from a critique of litigation-centered poverty law practice.²⁰² Scholars have argued that, rather than focus on piecemeal litigation for individual clients, lawyers should engage in grassroots political interventions to challenge injustice. To achieve this end, organizing has been privileged as a social change strategy while the relative importance of traditional lawyering has been de-emphasized. Thus, descriptions of model law and organizing programs have presented a narrow and arguably inconsequential role for conventional lawyers, while highlighting the community empowering methods of organizers. Although this critique of the regnant model has succeeded in breaking the spell of lawyer-driven social change, it has done so by diminishing the viability of traditional

201. There are, of course, skillful facilitators who are able to address racist or sexist views that emerge during group discussions. There are also progressive popular education materials that provide techniques for dealing with instances of intragroup conflict. However, as White has noted, allowing “participants to work out their internal power relationships on their own” may cause “external hierarchies” to be replicated within the group. White, *supra* note 48, at 168.

202. See *supra* Part I.A.

practice. The attenuation of the connection between conventional legal services and social change raises two major concerns.

First, exaggerating the ineffectiveness of traditional legal interventions minimizes the significant institutional restructuring that legal advocacy has achieved. Indeed, creative litigation and court-ordered remedies have changed many aspects of the social, political, and economic landscape.²⁰³ An analysis that obscures this fact truncates progressive legal practice by closing off potential avenues for redress.

In addition, the suggestion by proponents of law and organizing that lawyers should act as organizers, facilitators, and educators would require that less time be spent providing conventional representation to low-income clients,²⁰⁴ who are already drastically underserved.²⁰⁵ As it stands,

203. See, e.g., Nan D. Hunter, *Lawyering for Social Justice*, 72 N.Y.U. L. REV. 1009, 1011–17 (1997) (claiming that the use of litigation has had a “culture-shifting” effect by advancing civil rights on behalf of people of color, women, gays, and lesbians); Martha Minow, *Law and Social Change*, 62 UMKC L. REV. 171, 171–73 (1993) (arguing that law reform efforts have contributed to significant social change); see also R. SHEP MELNICK, *BETWEEN THE LINES: INTERPRETING WELFARE RIGHTS* (1994) (emphasizing the importance of law reform efforts in the welfare rights context); Karen L. Loewy, *Lawyering for Social Change*, 27 FORDHAM URB. L.J. 1869, 1871–84 (2000) (describing different ways the law can be employed to achieve social change).

204. Some would argue that this concern is overstated given that organizing work has been a small component of poverty law practice since the inception of legal services programs. See, e.g., Abel, *supra* note 38, at 578–79.

The Legal Services Corporation devoted less than five percent of its time to lobbying in 1979, and Congress subsequently prohibited LSC lawyers from participating in any activity designed to influence legislation. The obstacles to community organizing are even greater. Legal aid lawyers in the United States have done hardly any organizing, preferring litigation because of his higher visibility, quicker results, and greater legitimacy; in addition, their professional skills are more obviously indispensable in the courtroom. *Id.*; see also Southworth, *supra* note 39, at 484 (noting the results of interviews with 69 Chicago public interest lawyers in 1993 and 1994 showing that the lawyers had assisted in community organizing and education activities in 20 of 137 litigation matters they had handled in the two years prior to the study); Tremblay, *supra* note 52, at 970 (stating that although “[w]riters have been imploring poverty lawyers to pursue empowerment and collective mobilization for more than twenty years . . . rebelliousness remains the exception, and not the norm”). However, the poverty law scholars and practitioners who participated in the recent Fordham School of Law “Conference on the Delivery of Legal Services to Low-Income Persons” found that “[i]n these times of limited funds for legal services for low-income people,” it is crucial for lawyers to maximize their effectiveness and “not end up doing social work, or organizing, or other work for which the lawyer is untrained.” *Recommendations of the Conference on the Delivery of Legal Services to Low Income Persons*, 67 FORDHAM L. REV. 1751, 1767 (1999) [hereinafter *Recommendations*].

205. See ABA CONSORTIUM ON LEGAL SERV. & THE PUB., *LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS 11* (1994) (stating that 61 percent of moderate-income respondents with legal problems had no interaction with the legal system); Alan W. Houseman, *Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All*, 17 YALE L. & POL’Y REV. 369, 402 (1998) (finding that existing legal assistance programs meet no more than one-fifth of the legal needs of the poor); see also Cramton, *Delivery of Legal Services*, *supra* note 4, at 543–44 (“[L]ess than 1 percent of U.S. lawyers are engaged full time in representing poor people or otherwise unrepresented interests in civil matters.”); Greg Winter, *Legal Firms Cutting Back on Free Services for*

there are only six thousand full-time legal services staff lawyers to meet the legal needs of the forty-five million persons who are income-eligible for free legal services.²⁰⁶ Each day, poor people flood legal services offices seeking assistance in accessing welfare benefits, contesting discriminatory employment terminations, petitioning for political asylum, resisting unlawful evictions, obtaining restraining orders from abusive spouses, and recovering illegally withheld wages. Given the scarcity of resources in legal aid programs, a shift toward an organizing-centered approach would result in a reduction of basic services to these clients.

In the end, this type of resource reallocation may be beneficial—it may, as law and organizing advocates argue, ultimately allow poverty lawyers to effect greater institutional reform. However, it would be short-sighted to undertake such a shift without a careful evaluation of how law and organizing relates to existing legal services priorities.²⁰⁷ This evaluation should be

Poor, N.Y. TIMES, Aug. 17, 2000, at A1 (describing the decrease in pro bono services in the wake of law firm salary increases). This concern about the reduction of conventional legal services is heightened by broader trends in poverty law practice. In particular, legal services offices are increasingly moving toward a model of “unbundled legal services,” providing pro per assistance, computer kiosks, ghostwriting, and limited representation. See Mary Hellen McNeal, *Having One Oar or Being Without a Boat: Reflections on the Fordham Recommendations on Limited Legal Assistance*, 67 FORDHAM L. REV. 2617, 2617 n.1 (1999) (“[L]imited legal assistance,’ also called unbundling or discrete task assistance, . . . is generally understood to be legal assistance that includes only selected tasks from the full range of lawyering provided in the traditional attorney-client relationship.”). This shift away from full-service representation and toward unbundled legal services has attracted considerable support. See Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 FORDHAM L. REV. 1879, 1891 (1999) (finding that pro se programs have become “a popular response to the lack of legal assistance”); Houseman, *supra*, at 402 (calling for “increasing the flexibility of the civil justice system and expanding the options available to people seeking legal help, including hot lines and assistance to those proceeding pro se” (citation omitted)); *Recommendations*, *supra* note 204, at 1777–78 (calling on the courts and the legal profession to “explore innovative efforts to assist pro se litigants”). In many ways, law and organizing reflects a similar impulse to move away from the full-service model of client advocacy to reach larger numbers of poor clients.

206. See Paul R. Tremblay, *Acting “A Very Moral Type of God”: Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475, 2481–82 (1999) (noting that the “resulting arithmetic shows one lawyer for every 9000 financially eligible poor persons”).

207. Paul Tremblay has begun this process of determining appropriate legal services priorities, applying a “risk/reward” analysis to evaluate the potential advantages and disadvantages of four different forms of practice: individual case representation (ICR), focused case representation (FCR), law reform, and mobilization lawyering. See Tremblay, *supra* note 206, at 2511–14. He finds that mobilization lawyering, which “eschews traditional forms of representation, such as litigation or legislative advocacy, in favor of political community organization,” *id.* at 2503, has the advantage of facilitating community empowerment, but suffers from the disadvantage of being “enormously speculative” in comparison to the other three practice visions, *see id.* at 2511–12. He concludes as follows:

If the mobilization advocates are right, political work is far more useful, immediately and in the long run, than ICR, FCR, or law reform. Their arguments imply that the daily skirmishes that engage most legal services lawyers today will tend to be less frequent once

grounded in an empirical analysis of the relative effectiveness of conventional legal practice and law and organizing activities. Thus, to advance the dialogue on social change lawyering, scholars and practitioners must move beyond discussions of law and organizing that merely magnify the deficiencies of traditional legal tactics and instead begin to articulate a new type of interdisciplinary collaboration.

2. Lawyers as Organizers: The Dilemma of Role Duality

Attempting to define the proper role for lawyers within an organizing context generates complicated, often conflicting, responses. Lawyers should be organizers, it is argued, because their legal skills provide them with unique insights and community cachet, yet, these very same qualities, it is warned, might also impede organizing by disempowering clients. This ambivalence has contributed to role confusion among law students and legal services practitioners who struggle to justify their professional status as lawyers amid lingering doubts about the very relevance of legal advocacy to social change efforts.²⁰⁸

Scholars and practitioners have given varied justifications for lawyer involvement in organizing efforts. White has argued that “fluency in the law—that is, a deep practical understanding of law as a discourse for articulating norms of justice and an array of rituals for resolving social conflict—will greatly improve a person’s flexibility and effectiveness at ‘third dimensional’ work.”²⁰⁹ She has further suggested that “[k]nowledge of the law’s procedural rituals will give the [subordinated] group access to a central arena for public resistance and challenge.”²¹⁰ López has claimed that professional lawyers bring an additional dimension to social change work, distinct from—although not superior to—the “lay lawyering” skills of their clients.²¹¹ Gordon has viewed lawyer participation in organizing work instrumentally,

power is more equitably distributed. The offsetting consideration, though, is that the likelihood of success is far less certain than with any of the other three visions. Where one can predict the individual victories that ICR achieves, one cannot, in today’s political environment, be sanguine about mobilization.

Id. at 2514.

208. See, e.g., Bryan, *supra* note 14, at 279 (writing as a law student about to embark on her legal career and expressing dissatisfaction with the idea of pursuing the law and organizing model because it “fails to envision a meaningful role for lawyers in social change movements”); Feldman, *supra* note 4, at 1539 (“Legal services lawyers experience considerable uncertainty and ambivalence about whether they are or should be litigators, facilitators, social workers, or community educators and organizers”).

209. White, *supra* note 13, at 765.

210. *Id.*

211. See LÓPEZ, *supra* note 13, at 43–44.

acknowledging the usefulness of the law as a “draw” for new organizing group participants,²¹² but minimizing the lawyer’s actual participation in organizing work.²¹³ Other practitioners have provided similar explanations of the role of lawyers in organizing efforts, suggesting that their professional title lends a certain prestige that attracts community members into organizing campaigns,²¹⁴ and that lawyers possess special skills that facilitate organizing.²¹⁵

Yet, these justifications are not completely satisfying. In contrast to the arguments in favor of lawyer-organizers, one could just as easily claim, based on the general distrust of lawyers at the grassroots level, that lawyers are singularly ill-equipped to organize. As many progressive legal scholars have suggested, a lawyer’s penchant for narrow, legalistic thinking and tendency to dominate community settings can undermine his effectiveness as an organizer. For example, White has acknowledged that “[i]t is also possible . . . that professional identification as a lawyer can narrow one’s strategic imagination” and has suggested that “[p]erhaps the best arrangement is for lawyer-outsiders to work side by side with outsiders trained in other fields.”²¹⁶ Furthermore, by the nature of their education and professional status, most lawyers are highly invested in the existing system and not well positioned to advocate for radical structural change.²¹⁷

Taken together, the arguments of law and organizing proponents paint a contradictory picture: They suggest that lawyers possess special skills that facilitate organizing, while simultaneously maintaining that lawyer knowledge is not superior to “lay” knowledge and that lawyers should play only a very minor role in organizing efforts because of their potential for overreaching. Despite their criticisms of conventional lawyering, law and organizing advocates ultimately argue that it is precisely a lawyer’s technical sophistication that makes him valuable in grassroots settings. For instance, at the Workplace Project, although lawyers are trained to work in teams with organizers, they are eventually asked to use their legal skills to file lawsuits when initial organizing efforts are unsuccessful.²¹⁸ White’s justification for lawyer involvement relies explicitly on the value of a lawyer’s “fluency in the law.” López

212. See Gordon, *supra* note 105.

213. See Gordon, *supra* note 13, at 443–44.

214. See Telephone Interview with Sameer Ashar, Clinical Fellow, New York University Law School (Sept. 27, 2000) (noting that legal training can provide the organizer with increased credibility).

215. See Telephone Interview with Andrew Friedman, *supra* note 177 (stating that a legal education allows organizers to have a better understanding of the economic and political system and to identify organizing targets for the group).

216. White, *supra* note 13, at 765.

217. Of course, many organizers who train at elite organizing academies must address similar issues.

218. See Gordon, *supra* note 13, at 444.

has also suggested that a lawyer's knowledge of litigation strategies is an important component of his ability to effect social change.²¹⁹ Thus, on the one hand, progressive lawyers are urged to move away from regnant forms of conventional lawyering and embrace grassroots organizing strategies to promote social change. On the other hand, they are told that one of the principal reasons they are valuable in these grassroots efforts is that they have professional status as lawyers.

While the positional ambivalence of lawyer-organizers may foster a self-critical awareness that enhances their ability to work in grassroots settings,²²⁰ it can just as easily produce a sense of role confusion that is demoralizing and causes them to doubt their own efficacy. This ambivalence can also have negative consequences for clients by encouraging lawyers to engage in organizing activities without a clear sense of purpose. In addition, the lack of role definition can actually inhibit effective collaboration with community organizers, who might think it presumptuous for lawyers to believe that they can, with minimal training, implement sophisticated organizing projects. Moreover, as this Article discusses in more detail, the dual role of lawyer-organizer raises a variety of ethical concerns.²²¹ In order to address the problems of role confusion and generate a stronger vision of integrated advocacy, lawyer-organizers must define the relationship between their intersecting identities in a way that values each of their distinct contributions to social change.

3. Law as a Vehicle for Organizing: The Problem of Client Coercion

One of the arguments in favor of law and organizing has been that it is less susceptible to professional domination than conventional legal representation and, therefore, a better vehicle to achieve client empowerment. Proponents have contended that law and organizing places client interests at the center

219. See LÓPEZ, *supra* note 13, at 32.

220. See Polikoff, *supra* note 52, at 471 (arguing that a lawyer's engagement in activist political efforts may sustain her sense of purpose and enhance her ability to make connections between her legal work and larger social change efforts).

221. Some advocates have called for the complete separation of the roles of lawyer and activist to avoid these problems, although the practical barriers to enforcing such a separation have not been explored. See *id.* at 468–70 (noting that “client-centered counseling and participation in political decision making cannot occur simultaneously” and advocating for a type of practice in which the lawyer is always “aware that the activist or organizer role is different from that of a lawyer”); see also Bruce A. Green & Martha Matthews, *Report of the Working Group on Rendering Legal Assistance to Similarly Situated Individuals*, 67 *FORDHAM L. REV.* 1801, 1809 (1999) (noting that many members of the Working Group of poverty law practitioners and scholars “expressed the view that, because of potential . . . conflicts, a lawyer should not simultaneously serve as an organizer and as a legal representative”).

of social change activities and correctly positions lawyers as ancillary to those efforts. Yet, in practice, law and organizing advocates may also engage in strategies that involve professional overreaching and impinge upon client autonomy. Ensuring that organizing efforts truly advance an agenda that reflects the needs and desires of low-income and minority communities is a difficult task, especially when privileged professionals, such as lawyers, begin to play critical roles. In the same way that lawyers may use their technical sophistication and legal knowledge to disempower clients, they may also use organizing to achieve goals that are not aligned with community interests.

For example, scholars and practitioners have suggested that one of the primary uses for law in organizing contexts is to draw community members into organizing movements. Based on his work with ACORN, Bachmann has noted that litigation can be an effective mechanism of fostering community participation in organizing campaigns.²²² By promising community residents individual benefits through legal advocacy, a community-based organization can lure people into organizing efforts.²²³ Similarly, Gordon has advocated using legal services as a draw for organizing campaigns. At the Workplace Project, in order to receive legal services, clients must agree to participate in organizing activities.²²⁴ Other community-based law and organizing groups, such as Make the Road by Walking, implement similar strategies, requiring individuals to become members of the organization before services, such as legal representation, are provided.²²⁵

The imposition of an organizing model on clients who are seeking legal services raises questions about lawyer domination and paternalism.²²⁶ Are these clients really interested in being organized, or are they agreeing to do so only because they have no other means of obtaining needed legal services?²²⁷ White has cited several examples from practice of participants who

222. See Bachmann, *supra* note 100, at 33.

223. See *id.*

224. See Gordon, *supra* note 13, at 443.

225. See Telephone Interview with Andrew Friedman, *supra* note 177. Andrew Friedman, however, stresses that it is made clear to potential participants that they should not join the organization solely to receive legal services. If someone in need of legal representation is not interested in engaging in the group's mission, referrals are provided so that that individual can secure counsel elsewhere. See *id.*; see also Ctr. for Cmty. Change, *Point of Entry: Organizing Low-Income People*, available at <http://www.communitychange.org/organizing/point12.htm> (last visited Jan. 14, 2001) (describing a law clinic offered to draw new membership to the grassroots group Community Voices Heard).

226. See, e.g., Mansfield, *supra* note 51, at 929 (arguing that low-income clients seek out poverty attorneys "because they have legal problems," not because they need "normative validation or conveyance").

227. Even among those who support the use of "law as a draw," there is concern that individuals will join the membership group solely to seek legal services. From an organizing standpoint, this is problematic because it is very difficult to determine who is an "active member"

agree to receive unwanted services because of lack of resources to seek out alternatives. For instance, students have attended literacy classes using popular education despite the fact that they viewed these classes as “an intrusion—an unwanted attempt to indoctrinate them with out-dated Marxist propaganda.”²²⁸ Similarly, homeless shelter residents required to attend an empowerment support group “resented having to pay for their shelter with what they viewed as an intrusion into their personal lives.”²²⁹

Even when clients have voluntarily agreed to engage in organizing activities, it is not clear that the outcome will be free of lawyer domination.²³⁰ Lawyers practicing in organizing contexts may be reluctant to cede control in group settings and restrain their more adept verbal skills in order to advance client empowerment. Even skillful facilitators may subtly impose their own ideas and political agendas on the marginalized communities they are working to organize.

It is therefore important that organizing is not portrayed as an intrinsically client-empowering form of practice. The postmodern critique of lawyers imposing their own views on their clients is equally applicable in the law and organizing context: Just as poverty lawyers must be careful not to use their technical sophistication and legal knowledge to disempower clients, they must also guard against reifying the concept of organizing and using it to advance a social change agenda that does not reflect the needs and desires of client communities. Indeed, it is necessary for thoughtful practitioners to develop mechanisms to ensure that community members participate in

and thereby deserving of the organization’s limited legal services. Even worse, organizers fear that the mere fact that individual legal services are offered will dilute the organizing potential of the group by offering the hope that the problems will be resolved by the lawyer. See Telephone Interview with Julia Greenfield, *supra* note 132.

228. White, *supra* note 48, at 167.

229. *Id.*

230. See *id.* (asking whether it is “possible for the leaders of a grassroots initiative to encourage collective reflection without subtly imposing their own values on the group”). It is interesting to note how CED law and organizing practitioners differ from their litigation counterparts with respect to the issue of lawyer domination. In the CED version of law and organizing, lawyers typically contribute technical legal advice in a context in which—due to the collaboration between the community groups and their counsel—there is much less potential for lawyer overreaching. See Southworth, *supra* note 11, at 1154–63. For instance, they negotiate, draft, and revise agreements structured by client groups, and provide general assistance on nonprofit corporate matters that concern community-based organizations. Since CED advocates in these settings work to facilitate the goals articulated by the client groups, there is less concern that they will undermine the organizing effort by imposing counterproductive views. Moreover, although they are often intimately involved in organizing campaigns, typically CED lawyers are not responsible for setting the organizing agenda. See Sisak, *supra* note 148, at 891. This arrangement is distinct from descriptions of law and organizing in other contexts, in which the community-based practitioner often takes on a significant organizing role.

organizing campaigns out of a commitment to collective action rather than a feeling of coercion.

C. The Practical Difficulties of Law and Organizing

In the bustle of day-to-day practice, lawyers are confronted with a complicated set of barriers to the effective implementation of the law and organizing model. In particular, practitioners must address the challenges of reaching hard-to-recognize populations and implementing their programs in the face of institutional constraints.

1. Obstacles to Client Organizing

As lawyers increasingly rely on an organizing-centered model, it is important to recognize that certain groups of clients are less able to participate in organizing activities for a variety of reasons unrelated to their desire to organize. There are many types of clients historically assisted by poverty law attorneys who would be difficult to organize under any circumstances, such as persons with severe disabilities, health problems, or substance abuse issues. Similarly, undocumented immigrant clients might be unresponsive to an organizing approach because their involvement in organizing efforts could bring them to the attention of Immigration and Naturalization Service officials and thus subject them to deportation.²³¹

Practitioners must also be mindful of the fact that many client groups do not have sufficient common interests to engage in the collective activities required by law and organizing. For example, lawyers working in the family law context often represent low-income clients with an array of complex, case-specific issues related to divorce, custody, child support, paternity, and domestic violence. Similarly, in some areas of immigration law, such as asylum and refugee cases, clients face unique barriers to entering the United States that require attention on an individual basis.

Low-income clients face a host of other practical impediments to participating in organizing efforts. Persons who are the sole providers for their families, for instance, may be unable to fit additional tasks into already challenging work and family schedules. Those who work evenings or weekends would also be unable to attend meetings that assume a traditional work model. Another problem is the transience of very poor populations, which makes it difficult to reach them with traditional organizing techniques, such

231. See Telephone Interview with Mirna Torres, Immigration Staff Attorney, Catholic Charities, N.M. (June 1, 2000).

as home visits and mailings.²³² Community groups implementing the law and organizing model should seek to accommodate the participation of these hard-to-organize populations by providing support to facilitate their involvement, such as child care, disability accommodations, flexible meeting schedules, and free transportation. Nonetheless, because many organizations lack resources to provide these supportive services on a regular basis, sustained involvement of such individuals remains difficult.²³³

It is useful to examine the practical difficulties in organizing domestic violence survivors as an example of client barriers to organizing. Clients escaping abusive relationships can be so busy participating in various legal and social service activities—such as petitioning for divorce, requesting restraining orders, testifying in criminal proceedings, attending counseling, and applying for public benefits—that they find little time to become meaningfully involved in organizing. Lawyers must also consider whether the safety of these women would be jeopardized by requiring them to engage in organizing efforts, because domestic violence survivors must take great care in leaving the home, making phone calls, and going to community meetings. Once women have escaped their abusive situation, some may be interested in participating in organizing activities, but ongoing issues of safety and a need to hide their identity might impede organizing efforts. Indeed, many domestic violence shelters impose strict limitations on residents' movement in order to protect them from abusers.²³⁴ Thus, as this example suggests, practitioners must be sensitive to how the circumstances of particular client groups impose obstacles to effective organizing. In particular, as lawyers continue to experiment with organizing-centered approaches, they

232. See Ctr. for Cmty. Change, *The Nature of the Challenge*, available at <http://www.communitychange.org/organizing/nature12.htm> (last visited Jan. 13, 2001).

233. Success in organizing certain populations also varies according to geographic region. For example, organizing strategies that work with client populations in urban areas are often not feasible in rural areas where clients are unable to access public transportation or common forms of communication.

234. Innovative law and organizing efforts may alleviate some of these issues and allow for the successful implementation of domestic violence organizing projects. For example, the Ayuda domestic violence legal services program in Washington, D.C. has worked effectively with survivors of domestic violence to form an organizing and leadership group called Hermanas Unidas. See Brustin, *supra* note 111. LUCHA, a domestic violence program created by legal services attorneys in Florida, requires that survivors participate in educational classes in exchange for legal services, with the goal that such educational work will lead to organizing. See Virginia P. Coto, *LUCHA, The Struggle for Life: Legal Services for Battered Immigrant Women*, 53 U. MIAMI L. REV. 749, 755–57 (1999). CHIRLA's Immigrant Domestic Violence Project, which allows clients to join a weekly support group, offers another example of law and organizing in the domestic violence context. Participation in the support group, which is led by a trained counselor working in tandem with an attorney, is seen as an important link between the women's healing and their eventual participation in CHIRLA's larger organizing campaigns.

must do so with a keen awareness of the context-specific nature of their advocacy.

2. Constraints on Law and Organizing Practitioners

Lawyers working in organizing contexts also face unique challenges related to the nontraditional nature of their practice. One of the most frequently cited concerns among lawyer-organizers is that it is extremely difficult to coordinate legal and organizing work. Law practice, whether litigation or transactional, has its own special pressures and deadlines. When legal work needs to get done, a lawyer's ethics will require that it takes priority over any organizing obligations, creating inevitable tensions. Furthermore, as organizers cannot engage in the practice of law,²³⁵ the dual role of "law and organizing" necessarily falls on the lawyers. Therefore, lawyers who desire to be actively involved in both pursuits need to be skilled at managing their time and prioritizing work assignments. This balancing can be especially difficult when organizers are not entirely supportive of a community-based lawyer's legal work and put pressure on her to abandon some aspects of her legal assistance in order to attend organizing meetings and events.

A related challenge arises with respect to the competition between lawyers and organizers for scarce client time. Lawyers working with organizers on the same issues with the same community members often find that conflicts develop regarding how the time and efforts of those community members should be allocated. For example, one lawyer explained that she is involved in a litigation effort on behalf of garment workers who were previously politically active.²³⁶ In particular, the clients were leaders in a community-based effort to establish the first multiethnic workers' center in Los Angeles. However, now that the workers are heavily involved in litigation and their trial is approaching, they attend evening and weekend meetings with their lawyers, which frequently conflict with the scheduled meetings of the workers' center. The demands of their work, combined with the litigation, have made them miss these organizing sessions, much to the disappointment of the organizers coordinating the workers' center effort.²³⁷

235. See *infra* Part III.D.4.

236. See Telephone Interview with Julia Figueira-McDonough, Staff Attorney, Legal Aid Foundation of Los Angeles (LAFLA) (June 2, 2000).

237. The demands of the legal work on the clients' time are heightened as a result of the ideals of client participation and empowerment, which frequently overwhelm the clients, making them unable to participate in other forms of political action. See *id.*

Another difficulty for law and organizing practitioners is the reality of resource constraints.²³⁸ Although lawyers in traditional legal contexts must also work under conditions of scarcity, organizing groups—unlike traditional legal services providers—are apt to spend their limited funds in ways that reinforce their organizing mission, rather than on costs associated with legal casework. As a result, organizing groups may not allocate sufficient resources to defray costs for items of importance to lawyers, such as malpractice insurance, litigation expenses, continuing legal education trainings, and research materials.²³⁹ The absence of adequate funds for professional development is a particular concern for recent law graduates in need of mentoring and supervision.

Many lawyers who personally engage in organizing work are also likely to face difficulties in implementing organizing projects due to insufficient training on organizing techniques.²⁴⁰ In contrast to professional organizers who often enroll in rigorous training academies to refine their organizing skills,²⁴¹ most law graduates have no formal instruction in organizing. Although some aspects of organizing can be readily apprehended by lawyers, the varied conceptual bases, practical strategies, and institutional forms of organizing practice put a lawyer with no organizing training at a disadvantage.

Lawyers must therefore learn to respond creatively to the day-to-day constraints and practical barriers that arise when working in an organizing context. By developing effective mechanisms for addressing these issues, law and organizing practitioners can better serve hard-to-organize constituencies

238. “The average staff size for a local community organization is 4 people, and budgets average in the \$120,000–160,000 range. Even for organizations with a strong membership base, there is very little funding to stabilize and expand. Funding tends to be spotty and inconsistent.” DELGADO, *supra* note 60, at 4–5.

239. A law and organizing practitioner could respond to the problem of resource scarcity in different ways. One option would be to accept a limited number of routine legal cases. For example, she could decide only to represent individuals in small claims court—the routinization of such work would allow her to represent clients without a great deal of support or training. Another solution would be to seek assistance for legal work from outside of the organization, including from both the private and public interest bars. This way, she could receive backup legal support through cocounseling arrangements and gain access to libraries and brief banks. The disadvantage of seeking external legal support is that the outside supervising attorney usually does not have actual responsibility for the case and thus is not invested in ensuring quality representation or in being available in emergency situations. Tori Kim, the only attorney at KIWA, an organizing group in Los Angeles, has found that the reality of seeking supervision from sources outside her organization can be difficult, especially as a recent law graduate. She has tried to meet this challenge by forming a legal advisory board and, for more complex cases, seeking cocounsel from nonprofit legal organizations. See Telephone Interview with Tori T. Kim, *supra* note 165.

240. See Green & Matthews, *supra* note 221, at 1809 (“[L]awyers do not necessarily possess the skills to be effective organizers.”).

241. See DELGADO, *supra* note 60, at 25–28.

while structuring the type of institutional support necessary to implement this nontraditional approach.

D. The Ethics of Law and Organizing

Surprisingly absent from the growing dialogue on law and organizing is any examination of the ethical challenges created by this form of practice.²⁴² Some might consider any discussion of ethical restrictions in the context of progressive legal work to be inherently regnant and stifling of creative advocacy on behalf of marginalized clients. Indeed, commentators have argued that public interest lawyers should not be bound by the ethical rules, which were designed with traditional modes of practice in mind.²⁴³ Nonetheless, as lawyers become more involved in organizing movements, it would be irresponsible to ignore the ethical implications of this

242. There is a growing body of scholarship describing ethical dilemmas in public interest work, but no specific analysis of the ethical concerns of lawyer-organizers. See, e.g., Johnson, *supra* note 42, at 217–23 (discussing some of the limitations placed on public interest lawyers by the ethical rules); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 179–206 (2000) (exploring how ethical rules affect “community lawyering” for poor people); Trubek, *supra* note 4, at 808 (mentioning the variety of ethical and professional issues that confront lawyers trying to engage in collaborative practices). In addition, although the ethical difficulties posed by public interest lawyers working together with social workers has developed significantly as a topic of research, no equivalent discussion has emerged regarding the ethics of lawyers’ collaboration with organizers. See, e.g., Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-Examining the Nature and Potential of the Relationship*, 67 FORDHAM L. REV. 2123, 2134–47 (1999) (examining some of the factors in the professional roles of social workers and lawyers that may inhibit collaboration); Sandra Nye, *From a Lawyer-Social Worker—Some Thoughts on Confidentiality and Other Matters*, PRAC. DIG., Fall 1984, at 33, 34 (1984) (arguing that working both as a social worker and as a lawyer is “clinically” impossible); Randy Retkin et al., *Attorneys and Social Workers Collaborating in HIV Care: Breaking New Ground*, 24 FORDHAM URB. L.J. 533 (1997) (discussing the ethical issues raised in the context of lawyers collaborating with social workers to serve HIV positive clients); Heather A. Wydra, Note, *Keeping Secrets Within the Team: Maintaining Client Confidentiality While Offering Interdisciplinary Services to the Elderly Client*, 62 FORDHAM L. REV. 1517, 1523–30 (1994) (examining confidentiality issues faced by lawyers working with social workers on elder law issues). The development of model protocols for lawyers to meet their ethical duties in the organizing context proves to be much more difficult than in the social work context. Whereas social workers have their own ethical canon that can be used to identify potential conflicts in specific situations, organizers are not bound by professional ethics rules.

243. See, e.g., Marshall, *supra* note 242, at 176 (arguing that the values of community lawyers are “not always consistent with the values guiding the ethical codes” and discussing a variety of critiques of the current structure of the ethical rules); Southworth, *supra* note 39, at 496–97 (finding that, in violation of the ethical rules, many public interest attorneys do not follow their clients’ expressed interests or goals); Christine Zuni Cruz, *On the Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557, 586 (1999) (claiming that the current structure of the ethical rules does not envision the obligations of public interest lawyers representing community groups).

practice.²⁴⁴ Indeed, it has long been held that the same ethical standards apply to lawyers working in legal services programs as to lawyers in law firms.²⁴⁵ This part highlights several of the most prominent ethical challenges that arise in the context of law and organizing: determining when an attorney-client relationship is established, maintaining client confidentiality, addressing conflict of interest and scope of representation problems, and avoiding the unauthorized practice of law.²⁴⁶

1. Establishing an Attorney-Client Relationship

Lawyers working in an organizing context often confront issues related to the difficulty of determining when an attorney-client relationship has been established. This is especially true for lawyers engaged in the type of law and organizing practice in which significant organizing responsibilities are assumed by the lawyer. Unlike traditional legal services lawyers who work within the confines of their legal offices, only meeting potential clients

244. See Bruce A. Green, Foreword, *Rationing Lawyers: Ethical and Professional Issues in the Delivery of Legal Services to Low-Income Clients*, 67 *FORDHAM L. REV.* 1713, 1722 (1999).

Those who are concerned about serving the legal needs of low-income persons ought to give thought to: (1) how applicable laws and ethical rules governing the practice of law restrict their options; (2) how best to practice within the context of ethical and legal restrictions; and (3) whether efforts should be made to improve the applicable legal and ethical restrictions to promote better and more effective work on behalf of low-income clients.

Id.

245. See ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 324 (1970) (finding that lawyers in legal services organizations have a "primary obligation of loyalty" to their clients and are required "to act in accordance with the Code of Professional Responsibility"); ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1309 (1975) (finding that ethical standards apply to lawyers working for government-funded legal assistance programs for indigents); see also *Borden v. Borden*, 277 A.2d 89, 92-93 (D.C. 1971) ("We are reluctant ever to make an exception from the professional norm for attorneys employed by the government or others who provide legal representation without compensation from the client because then we might encourage a misapprehension that the special nature of such representation justifies departure from the profession's standards."), *overruled in part by In re Estate of Tran Van Chuong*, 623 A.2d 1154 (D.C. 1993).

246. In analyzing these ethical rules, this part refers to the *Model Code of Professional Responsibility* and the *Model Rules of Professional Conduct*. See MODEL CODE OF PROF'L RESPONSIBILITY (2000); MODEL RULES OF PROF'L CONDUCT (2000). The *Model Code of Professional Responsibility* contains Ethical Considerations (EC), which are aspirational goals for attorneys, as well as Disciplinary Rules (DR), which are mandatory standards. As of 1999, more than two-thirds of jurisdictions had adopted the *Model Rules of Professional Conduct*. See CTR. FOR PROF'L RESPONSIBILITY, ABA, ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT vii (1999) [hereinafter ANNOTATED MODEL RULES].

during intake interviews,²⁴⁷ attorneys operating in the field as organizers come into contact with potential clients on a daily basis. Precisely because of the fact that lawyer-organizers have increased community contact in a variety of settings—including at meetings, trainings, social events, protests, and pickets—they are more frequently approached by community members with questions of a legal nature. To complicate matters even further, it is often unclear whether community members approaching these attorneys are seeking legal advice.

Lawyer-organizers must be extremely careful in their interactions with community members because their conversations, however brief, might establish an attorney-client relationship.²⁴⁸ In general, when a lawyer gives specific legal advice that is reasonably relied on by a layperson, most courts have found that the provision of such advice is sufficient to establish an attorney-client relationship.²⁴⁹ Even in cases in which the attorney did not intend to establish such an obligation, did not charge any fees, and did not sign a retainer, courts have found that an attorney-client relationship, or, at least, a fiduciary obligation, existed.²⁵⁰ Once such a relationship is estab-

247. See Catherine J. Lanctot, *Attorney-Client Relationships in Cyberspace: The Peril and the Promise*, 49 DUKE L.J. 147, 170 (1999).

In the traditional setting of a lawyer's office, there is little mystery about this aspect of the formation of a professional relationship. The layperson comes to the office of the lawyer and expressly asks the lawyer to perform legal services, most commonly by describing a set of facts and asking either for specific legal advice or for the lawyer's assistance in accomplishing a particular objective.

Id.

248. See MODEL RULES OF PROF'L CONDUCT pmb. para. 15.

[F]or purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so.

Id.; see also RESTATEMENT (THIRD) OF GOVERNING LAWYERS § 26 (1998).

A relationship of client and lawyer arises when: (1) a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either (a) the lawyer manifests to the person consent to do so; or (b) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services.

Id. Some states have adopted statutes that define the attorney-client relationship. See, e.g., CAL. EVID. CODE § 951 (West 1998) (providing that an attorney-client relationship is established when a layperson "consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity").

249. See Lanctot, *supra* note 247, at 161; Marshall, *supra* note 242, at 182; see also Perkins v. W. Coast Lumber Co., 129 Cal. 427, 429 (1900) ("When a party seeking legal advice consults an attorney at law and secures that advice, the relation of attorney and client is established *prima facie*."); *In re Bristow*, 301 Or. 194, 201-02 (1986) (finding that the fact that the attorney provided legal advice gives rise to an attorney-client relationship).

250. See, e.g., *Westinghouse Elec. Corp. v. Kerr-McGee Corp.*, 580 F.2d 1311, 1319 (7th Cir. 1978) ("The fiduciary relationship existing between lawyer and client extends to preliminary

lished, lawyers are required to conform to the range of duties inherent in the attorney-client relationship, including confidentiality, competence, and loyalty.

Consider the complications that can arise when a lawyer, acting as an organizer, is asked a question that requires legal knowledge.²⁵¹ For example, what would happen if, in the context of an organizing drive, a worker approaches a lawyer-organizer and asks her what he should do regarding his workplace injury? If the organizer were not a lawyer, the organizer's responsibilities with respect to the question would be limited. However, because the organizer in this situation is a lawyer—and likely was approached by the worker precisely because of her lawyer status—a different set of considerations apply. Any advice given to the worker by the attorney would likely be viewed as legal advice and, if reasonably relied on by the worker, could be sufficient to establish an attorney-client relationship. Accordingly, the attorney would need to explain the range of legal options available to the individual—filing a worker's compensation claim and, if a certain product or machine caused the injury, perhaps also filing a civil claim against the manufacturer. Any relevant restrictions, such as a statute of limitations or notification requirements, should be mentioned. The lawyer would also need to obtain any specific facts relevant to the case that would influence the type of legal advice required. And, of course, the lawyer's ethical obligations,

consultation by a prospective client with a view to retention of the lawyer, although actual employment does not result."); *Herbes v. Graham*, 536 N.E.2d 164, 165 (Ill. App. Ct. 1989) (finding an attorney-client relationship was formed after a 90-minute initial meeting, despite the fact that legal advice was not given and a fee was not paid). See generally MODEL RULES OF PROF'L CONDUCT pmbl. para. 15.

[T]here are some duties, such as that of confidentiality under Rule 1.6, that may attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Id.

251. Lawyer-organizers interviewed for this Article frequently expressed uncertainty about whether they are always acting as lawyers—and therefore bound by the rules of professional responsibility—or whether they can periodically put aside their lawyering role to assume that of an organizer. Should they introduce themselves at community meetings as organizers? As residents? As coalition members? Or, are they required to identify themselves as lawyers? Furthermore, if they do not self-identify as lawyers, yet community members know of and call on their legal expertise, are they nonetheless functioning as lawyers? See Telephone Interview with Mary Anderson, Staff Attorney, Chicago Coalition for the Homeless, Law Project (Oct. 18, 2000); Telephone Interview with Julia Greenfield, *supra* note 132. Although experienced lawyer-organizers may find it easy to move between the roles of lawyer and organizer in day-to-day practice, how they are judged under the attorney's ethical code is a more complex matter.

such as confidentiality and conflict of interest, would attach to the conversation with the worker.²⁵²

Another area in which ambiguity regarding attorney-client relationships occurs is in the context of lawyers providing training for community members to pursue their legal claims on a pro se basis. Law and organizing practitioners frequently offer educational courses that teach self-help strategies for addressing legal problems. Lawyer-organizers working in these contexts should be careful to explain to participants that they are not providing legal advice in order to avoid crossing the line into individualized, fact-specific consultations with participants.²⁵³ Otherwise, the lawyer runs the risk of establishing an attorney-client relationship and being bound by the numerous obligations that such a relationship entails.

2. Confidentiality

Confidentiality is a central tenet of the legal profession. A lawyer is required to maintain the confidentiality of all attorney-client communications and may not reveal any information related to the representation of a client to third parties.²⁵⁴ The duty of confidentiality applies to all information

252. As other commentators have noted, when information is given out by a lawyer, community members place extra trust that the advice given is correct and that the lawyer will follow her ethical mandates with respect to the information. See Marshall, *supra* note 242, at 184. Shauna Marshall argues that, despite the fact that a lawyer may provide a disclaimer that confidentiality does not attach and legal advice is not being provided,

it is important to recognize that clients do place trust in the attorney—trust that whatever information given out about the housing laws is correct, trust that the lawyer will help guide the group toward effective self-help and lay advocacy strategies, and trust that the lawyer will not disclose information to any of the participants' landlords.

Id.

253. See STATE BAR OF CAL., PRO PER ASSISTANCE MANUAL: A MANUAL FOR LEGAL SERVICES AND PRO BONO PROGRAMS, OFFICE OF LEGAL SERVICES 15 (1994) (providing that, in pro se educational settings, "once the legal information is tailored to address an individual's specific situation, the practice of law is involved" (citations omitted)); see also Marshall, *supra* note 242, at 183 (arguing that if a proper disclaimer is made in a group educational session, the client could not "reasonably" believe that an attorney-client relationship was established); Helen B. Kim, Note, *Legal Education for the Pro Se Litigant: A Step Towards a Meaningful Right to Be Heard*, 96 YALE L.J. 1641, 1658–60 (1987) (warning that lawyers conducting classes for pro se litigants must take steps to disclaim an attorney-client relationship).

254. See generally MODEL CODE OF PROF'L RESPONSIBILITY DR 4-101(B)(2000); MODEL RULES OF PROF'L CONDUCT R. 1.6. Under the rule of confidentiality, an attorney may reveal confidential information if the client consents after full disclosure. See MODEL CODE OF PROF'L RESPONSIBILITY DR 4-101(C)(1), EC 4-2; MODEL RULES OF PROF'L CONDUCT R. 1.6(a). In addition, under the *Model Code of Professional Responsibility*, the lawyer may reveal (1) the intention of the client to commit a crime and the information necessary to prevent the crime or (2) information necessary to establish or collect a fee. See MODEL CODE OF PROF'L RESPONSIBILITY DR 4-101(C)(3), (C)(4). Under the *Model Rules of Professional Conduct*, confidential information may be revealed to the extent necessary (1) to prevent the client from committing a criminal act that

obtained during the course of representation, regardless of the source.²⁵⁵ Confidentiality rules can apply even in situations in which the lawyer receives confidential information, but does not take on representation or perform legal services for the prospective client.²⁵⁶

Perhaps the most perplexing confidentiality issues emerge when lawyers and organizers collaborate on a common project.²⁵⁷ A good illustration of how such ethical tensions could arise is found in the Workplace Project, which uses a multidisciplinary staff to provide legal services. When an individual comes to the Workplace Project for assistance, he first meets with an organizer and describes his workplace problem, which may or may not be amenable to a legal solution.²⁵⁸ The organizer describes the way that the Workplace Project operates, including its organizing mission. Next, the client meets with a nonlawyer counselor who also listens to the client's problem. In deciding how to respond to the client's concerns, the counselor might consult with a lawyer on staff. If the client is found to have a complex problem, the client will meet with a team of advisors, including the attorney, organizer, and counselor.²⁵⁹ Through the course of these strategy sessions, the team decides whether legal action is necessary.²⁶⁰ If the client's case is accepted for legal representation, the team continues to work together on the matter.²⁶¹

would result in imminent death or substantial bodily harm or (2) in certain circumstances regarding a conflict, between the lawyer and client, such as criminal charges or a civil claim. See MODEL RULES OF PROF'L CONDUCT R. 1.6(b).

255. In addition, the ethical rule of confidentiality applies not only to the lawyer working on the case, but also to all of the lawyer's associates in the legal office. See Galowitz, *supra* note 242, at 2135–36.

256. See ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 90-358 (1990) ("Information imparted to a lawyer by a would-be client seeking legal representation is protected from revelation or use under Model Rule 1.6 even though the lawyer does not undertake representation of or perform legal work for the would-be client."); MCCORMICK ON EVIDENCE § 88, at 208 (Edward W. Cleary ed., 3d ed. 1984) ("Communications in the course of preliminary discussion with a view to employing the lawyer are privileged though the employment is in the upshot not accepted.").

257. See, e.g., State Bar of Cal. Standing Comm. on Prof'l Responsibility & Conduct, Formal Op. 1995-141 (1995).

[T]he provision of non-legal services [together with traditional legal services] presents the potential for the erosion of the privilege and the loss of confidentiality resulting either from a blurring of the distinction between the provision of legal and non-legal services or from the rendition of services by nonlawyers.

Id.

258. See Gordon, *supra* note 13, at 443.

259. See *id.* at 443–44.

260. See *id.* at 444.

261. See *id.*

While the interdisciplinary team approach to working with the client is appealing for a variety of reasons,²⁶² this form of advocacy raises serious questions regarding the protection of client confidentiality. In order to include nonlawyer organizers within the scope of confidentiality protections, strict procedures—similar to those in place at a law firm—must be established before collaboration begins.²⁶³ Protocols regarding how confidential information must be handled should be reduced to writing so that all parties involved, including clients, organizers, and lawyers, understand the rules that apply to the collaboration.²⁶⁴ A lawyer who fails to create such procedures exposes herself to possible discipline.²⁶⁵ Furthermore, lawyers working together with organizers on legal matters must provide training for the nonlawyer organizers regarding confidentiality rules and explain that their work on legal matters must comply with the lawyer's ethical responsibilities. At all times, the attorney must carefully supervise and remain responsible for the organizer's work product and conduct.²⁶⁶

262. In recent years, there has been an increased interest in multidisciplinary practice. This trend is apparent throughout the legal profession, not only within the field of social change lawyering. See generally Gary A. Munneke, *Dances With Nonlawyers: A New Perspective on Law Firm Diversification*, 61 *FORDHAM L. REV.* 559 (1992); Deborah L. Rhode, *Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice*, 22 *N.Y.U. REV. L. & SOC. CHANGE* 701 (1996).

263. While a lawyer may supervise nonlawyers on legal matters, such an arrangement should only be done under the strictest of circumstances in which the lawyer ensures that the nonlawyer's conduct conforms with the professional obligations of the lawyer. See MODEL CODE OF PROF'L RESPONSIBILITY DR 4-101(D), 7-107(J) (2000); MODEL RULES OF PROF'L CONDUCT R. 5.3 (2000).

264. See Galowitz, *supra* note 242, at 2148.

For both ethical and role issues, it is useful to identify and discuss possible conflicts at the beginning of the relationship. . . . [T]here should be a written document, translated into the languages of the office's client population, that outlines for both the staff and the clients how and when information will be shared.

Id. (internal citations omitted). See generally State Bar of Cal. Standing Comm. on Prof'l Responsibility & Conduct, Formal Op. 1979-50 (1979) (providing that attorneys who work with nonattorneys must ensure that these employees understand their obligations not to disclose client confidences or secrets and that any failure to guard against such disclosures could result in professional discipline).

265. See D.C. Bar Legal Ethics Comm., Op. 282 (1998).

The failure to put these measures into effect, or allowing the nonlawyer assistant to violate the obligations imposed by the Rules, can result in discipline of a lawyer supervising the employee so long as the lawyer has knowledge of the conduct and fails to take action to avoid or mitigate the violation.

Id.

266. See MODEL RULES OF PROF'L CONDUCT R. 5.3 cmt.

A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Id.

Lawyers collaborating with organizers in this manner might ask the client to sign a waiver of confidentiality. However, consent to disclosure of confidential information is extremely problematic because such consent may only be sought if it is in the best interests of the client,²⁶⁷ there is full disclosure,²⁶⁸ and the client's consent is knowing and voluntary.²⁶⁹ Not only will it be difficult to explain to a client the many possible scenarios that could arise as a result of such a waiver, but it is also questionable whether such a waiver is voluntary when made in a situation in which organizing is a required condition to receiving legal services.²⁷⁰

One solution to the client confidentiality dilemma is to entirely separate the legal work from that of the organizing work and not involve any organizers in the lawyering process.²⁷¹ Under such a model, clients must be informed of the potential consequences of sharing their confidential information with individuals outside the attorney-client relationship, such as organizers. In addition, steps should be taken to ensure that other aspects of the representation, such as the physical setup of client meetings and the location of client's files, are conducive to maintaining the client's privacy.²⁷²

267. See RESTATEMENT (THIRD) OF GOVERNING LAWYERS § 113 (1998) ("A lawyer may use or disclose confidential client information when the lawyer reasonably believes that doing so will advance the interests of the client in the representation.").

268. Confidences may be revealed if the client consents after full disclosure. See MODEL CODE OF PROF'L RESPONSIBILITY DR 4-101(C)(1), EC 4-2; MODEL RULES OF PROF'L CONDUCT R. 1.6(a).

269. See Ass'n of the Bar of the City of N.Y. Comm. on Prof'l and Judicial Ethics, Formal Op. 1997-2 (1997) (providing that consent to a waiver of confidentiality must be voluntary); see also State Bar of Cal., Standing Comm. on Prof'l Responsibility and Conduct, Formal Op. 1989-115 (1989) (providing that even a valid waiver would not "protect the lawyer from a malpractice action by the client if the conflict prevented the lawyer from performing competently" and that if the waiver were drafted to protect the lawyer from malpractice liability, "the mere execution of it would subject the lawyer to discipline").

270. See Ass'n of the Bar of the City of N.Y. Comm. on Prof'l and Judicial Ethics, Formal Op. 1997-2 (noting that the attorney must consider whether the client "perceives, accurately or not, that in the absence of consent, he will not be able to secure legal assistance" and that the lawyer "should be particularly sensitive to any element of submissiveness on the part of their indigent clients" (citation omitted)).

271. As a result of confidentiality and other related ethical concerns, KIWA has established a strict separation between the legal and organizing work. See Telephone Interview with Tori T. Kim, *supra* note 165. According to Kim, this separation of the attorney's work from that of the organizing staff has resulted in practical benefits. For example, at one point an organizer was representing an individual in an administrative hearing, which is proper for nonlawyers in California. Opposing counsel believed that something the organizer did was ethically improper for an attorney and, incorrectly believing that Kim supervised the organizer, he threatened to report Kim to the State Bar. The fact that Kim's practice was separate from KIWA protected her in this instance. See *id.* Other organizations, such as Make the Road by Walking, have also made the decision to separate legal work from that of the organizing work by not allowing organizers to participate in legal cases. See Telephone Interview with Andrew Friedman, *supra* note 177.

272. See STATE BAR OF CAL., *supra* note 253, at 16.

3. Conflict of Interest and Scope of Representation

The ethical rules of conflict of interest and scope of representation provide important guidance for law and organizing practitioners in determining the proper path to follow when working with community members and organizations. It has long been held that the lawyer has a duty of loyalty to her clients.²⁷³ Accordingly, the lawyer may not allow her personal interests, the interests of other clients, or the interests of third parties to interfere with her representation of the client.²⁷⁴ If interests of a third party potentially conflict, the lawyer may accept representation only if the lawyer reasonably believes that the client's interests will not be negatively affected and if the client consents after full disclosure.²⁷⁵ Even if a third party is paying for the client's legal services, the third party may not interfere with the attorney-client relationship.²⁷⁶

273. See CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 4.1, at 146 (1986) (“[T]he client-lawyer relationship in the United States is founded on the lawyer's virtually total loyalty to the client and the client's interests.”); MODEL RULES OF PROF'L CONDUCT R. 1.7 cmt. 1 (“Loyalty is an essential element in the lawyer's relationship to a client.”).

274. See MODEL CODE OF PROF'L RESPONSIBILITY EC 5-1 (2000).

The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

Id. (citation omitted). These rules also require that lawyers avoid allowing their professional judgment from being influenced by broader public interest goals that may be inconsistent with client interests. See, e.g., Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976) (discussing desegregation litigation as an example of public interest work in which the goals of the public interest litigators diverged from those of the plaintiffs).

275. See MODEL CODE OF PROF'L RESPONSIBILITY DR 5-101(A), 5-105(A); MODEL RULES OF PROF'L CONDUCT R. 1.7.

276. If a third party is paying the attorney for his services, the attorney may only continue with the representation if (1) the client consents after consultation, (2) the third party does not interfere with the lawyer's representation of the client, and (3) the client's confidential information is not revealed to the third party. See MODEL CODE OF PROF'L RESPONSIBILITY DR 5-107(A), (B); MODEL RULES OF PROF'L CONDUCT R. 1.8(f); see also MODEL CODE OF PROF'L RESPONSIBILITY EC 5-23.

Some employers may be interested in furthering their own economic, political, or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client. . . . Since a lawyer must always be free to exercise professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his professional freedom.

Id. (footnote omitted). See generally Green, *supra* note 244, at 1732–33 (finding that questions are frequently raised in the public interest context regarding the potential conflict caused by restrictions and requirements imposed by those who support the work financially).

Under the scope of representation rules, the attorney must allow the client to articulate his objectives and to make any key decisions regarding his substantive legal rights.²⁷⁷ In contrast, the attorney has the responsibility of making final decisions regarding questions of legal strategy.²⁷⁸ However, the attorney must consult with the client regarding the means by which client objectives will be pursued.²⁷⁹ In general, “the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.”²⁸⁰

Tension between the interests of the client and the interests of the organizers is one of the principal ways in which ethical dilemmas arise. Consider, for example, a situation in which lawyers and organizers are working together on a matter and a decision must be made regarding whether to file an action on behalf of a client in state or federal court. Each option offers advantages and disadvantages, but after learning that the potential for recovering damages is greater in federal court, the client expresses his desire to pursue the federal remedy. The attorney also feels that, as a matter of strategy, federal court is preferable because the federal law on the matter is more favorable to the client and the judges in federal court have a history of finding in favor of clients in similar situations. However, the organizers do not agree. The federal court is a good distance away from the community in which the events occurred, and the organizers believe that this will prevent mass mobilization around the suit. The organizers are adamant that the suit be filed in the local state court so that it can be used as the centerpiece of an organizing campaign.

The attorney in the hypothetical is in a difficult situation. If she decides to file in state court, despite the fact that both she and the client believe that federal court is the preferable forum, she risks violating her ethical duties as an attorney. Although the state filing might be best from the organizing standpoint, the attorney must properly give the authority to make decisions regarding the goals and objectives of the case to the client, not to the organizers.²⁸¹ Furthermore, she must not allow a third party to influence the

277. See MODEL CODE OF PROF'L RESPONSIBILITY DR 7-101(A), EC 7-7, 7-8; MODEL RULES OF PROF'L CONDUCT R. 1.2(a).

278. See MODEL CODE OF PROF'L RESPONSIBILITY EC 7-7; MODEL RULES OF PROF'L CONDUCT R. 1.2 cmt. para. 1.

279. See MODEL RULES OF PROF'L CONDUCT R. 1.2(a).

280. *Id.* R. 1.2 cmt. para. 1.

281. Some scholars have argued that the lawyer should properly move beyond the interests and goals of the individual client to consider the effect of a decision on the entire community. See Zuni Cruz, *supra* note 243, at 575 (noting that the “lawyer should consider both the impact on the client and on the community”); see also Margaret Chon, *Multidimensional Lawyering and Professional*

course of the litigation and must insist on pursuing the client's goals zealously, within the bounds of the law,²⁸² applying her best tactical judgment as an attorney.

Lawyers working with community-based organizations or organized groups of community residents are also likely to encounter conflicts of interest in their work.²⁸³ Although the rules are clear that lawyers representing entities are obligated by the dictates of the organization's "authorized constituents,"²⁸⁴ commentators have noted that discerning who those constituents are in grassroots organizations can be difficult.²⁸⁵ This difficulty is heightened when lawyers representing organizations face situations in which members who once agreed on the group's direction divide into competing factions with conflicting agendas. These internecine battles can escalate into power struggles over the group's leadership. Lawyers advising groups in this scenario are often approached by group members complaining of the machinations of a competing faction and asking for advice on how to oust their rivals. If the lawyer in this case is not careful—which may happen if she has developed strong relationships with all of the group members over a

Responsibility, 43 SYRACUSE L. REV. 1137, 1138–39 (1992) (arguing that lawyers have responsibilities not only to clients, but also to the courts and society). Other commentators have argued that, in the interest of "empowerment," the lawyer must allow the community to dictate legal strategy. See, e.g., Zenobia Lai et al., *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 UCLA ASIAN PAC. AM. L.J. 1, 26 (2000) (contending that the community's decisions on legal strategy are just as valid of those of the attorney).

282. See MODEL CODE OF PROF'L RESPONSIBILITY EC 7-19 ("The duty of a lawyer to his client and his duty to the legal system are the same: to represent his client zealously within the bounds of the law."); MODEL RULES OF PROF'L CONDUCT pmbl. para. 2 ("As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.").

283. See, e.g., Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103 (1992); Deborah L. Rhode, *Class Conflicts in Class Actions*, 34 STAN. L. REV. 1183 (1982); Southworth, *supra* note 18.

284. MODEL RULES OF PROF'L CONDUCT R. 1.13.

285. See Southworth, *supra* note 18, at 2464–65:

If the client is an organization, whether formal or not, the lawyer is charged with representing that organization rather than any of its constituents, and conflicts within the entity generally are to be resolved by reference to the organization's internal structure. Where the organizational structure is clear, this doctrine offers relatively simple answers about how lawyers should discern the client's interests and preferences; ordinarily, the lawyer looks to the officers for answers. Ethics doctrine, however, offers little guidance about representing groups that are just beginning to take shape and groups whose decision making processes fail to protect those whom the organization is designed to serve. In matters where the client organization lacks reliable internal governance procedures, lawyers are left to the ambiguous application of the "entity" theory to a group whose interests may be difficult to discern, whose constituencies may have conflicting interests, and/or whose members cannot agree, or have not yet agreed, on mechanisms for resolving disagreements.

Id.

long period of time and has a personal stake in the organization's work—she might find that her attempts to broker a truce place her in the middle of an irresolvable conflict.

It has been suggested that conflict of interest problems could be avoided by carefully crafted client retainers. For example, the attorney could draft a “limited retainer” explaining to the client that the attorney will only continue to represent him so long as the client's interests do not diverge from broader public interest or community organizing goals.²⁸⁶ Alternatively, the client could be asked to sign a “prospective waiver” in which the client would waive any conflicts of interest that might evolve in the future between the lawyer-organizer and the client.²⁸⁷ Yet, whether such contracts would be found valid by a court of law remains unclear.²⁸⁸ The simplest strategy for averting conflicts is for the lawyer to avoid simultaneously serving as an organizer and a legal representative.²⁸⁹

4. Unauthorized Practice of Law

The growing collaboration between lawyers and organizers on both legal and nonlegal matters necessitates a discussion of what is known as the “unauthorized practice of law” (UPL).²⁹⁰ UPL proscriptions consist of both

286. The American Civil Liberties Union has used such a retainer. See Marshall J. Breger, *Accountability and the Adjudication of the Public Interest*, 8 HARV. J.L. & PUB. POL'Y 349, 350–51 (1985).

287. See *id.* at 351.

288. See *Acad. of Cal. Optometrists, Inc. v. Superior Court*, 51 Cal. App. 3d 999, 1006 (1975) (finding that contracts that violate the professional ethics of an attorney are void). In recognition of the fact that *Model Rule of Professional Conduct* 1.7 on conflicts of interest is not sufficiently clear regarding whether such waivers are permissible, one of the goals of the ABA's Ethics 2000 Commission is to clarify within the rule “when it is impermissible even to seek a client's consent to a conflict of interest.” In addition, the comment “might be expanded to address such issues as prospective conflict waivers.” See Ctr. for Prof'l Responsibility, *Ethics 2000—Proposed Work Plan—Issues to be Considered*, available at <http://www.abanet.org/cpr/wkpliss.html> (last visited Jan. 1, 2001).

289. See Green & Matthews, *supra* note 221, at 1809 (suggesting that, in order to avoid potential conflicts, “a lawyer should not simultaneously serve as an organizer and as a legal representative”).

290. Unauthorized practice of law (UPL) rules have evolved primarily to “protect the public from the consequences of inexpert legal services.” ANNOTATED MODEL RULES, *supra* note 246, at 453; see also MODEL CODE OF PROF'L RESPONSIBILITY EC 3-1 (2000) (“The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services.”). But see Deborah L. Rhode, *The Delivery of Legal Services by Non-Lawyers*, 4 GEO. J. LEGAL ETHICS 209, 230 (1990) (arguing that the risk to consumers from unauthorized practice of law has been overstated). In addition, such laws are intended to protect “the integrity of the judicial system” and provide “a means for regulation of the [legal] profession.” ANNOTATED MODEL RULES, *supra* note 246, at 453. There is no single understanding of what it means to engage in the “practice of law.” See *id.* at 454; see also HARRY J. HAYNSWORTH,

state laws criminalizing UPL activities on the part of nonlawyers as well as ethical rules that create disciplinary sanctions against attorneys who facilitate UPL.²⁹¹ Almost all states have UPL statutes that limit “the practice of law to those who have been licensed by the government and admitted to the state’s bar association after meeting certain requirements of education, examination, and moral character.”²⁹² “UPL statutes usually proscribe three broad categories of activity: (1) representing another in a judicial or administrative proceeding, (2) preparing legal instruments or documents that affect the legal right of another, and (3) advising another of their legal rights and responsibilities.”²⁹³ Under the ethical rules, the lawyer is prohibited from assisting nonlawyers in the performance of any activity that constitutes UPL.²⁹⁴

Several different aspects of law and organizing practice raise UPL concerns.²⁹⁵ First, UPL issues emerge when lawyers train lay organizers on legal topics. For instance, several law and organizing projects provide educational courses that teach community leaders about the law.²⁹⁶ When con-

MARKETING AND LEGAL ETHICS: THE RULES AND RISKS 98 (1990) (describing how the determination of whether something constitutes UPL is a question of law rather than an ethics issue); Rhode, *supra*, at 211 (discussing the different approaches to defining the unauthorized practice of law adopted by the states). Rather, courts have developed a variety of different explanations of what constitutes work that should be reserved for members of the bar. See ANNOTATED MODEL RULES, *supra* note 246, at 454. In general, courts examine situations on a case-by-case basis. See *id.* Some courts inquire whether the activity engaged in requires legal skill and knowledge greater than that of the average individual. See *id.* Other courts have adopted a standard that focuses on whether the matter in question concerns “binding legal rights or remedies.” *Id.* Yet another test asks whether the activity engaged in is one that is generally understood to be something performed by lawyers. See *id.* For a critical discussion of UPL rules, see Barlow F. Christensen, *The Unauthorized Practice of Law: Do Good Fences Really Make Good Neighbors—Or Even Good Sense?*, 1980 AM. B. FOUND. RES. J. 159 (1980), and Joaquin G. Avila, Comment, *Legal Paraprofessionals and Unauthorized Practice*, 8 HARV. C.R.-C.L. L. REV. 104 (1973).

291. See Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 FORDHAM L. REV. 2581, 2581 (1999).

292. *Id.*

293. *Id.* at 2588.

294. See MODEL CODE OF PROF'L RESPONSIBILITY DR 3-301(A); MODEL RULES OF PROF'L CONDUCT R. 5.5(b) (2000).

295. To date, discussions regarding nonlawyer practice have been limited to issues related to unrepresented persons, document preparers, paralegals, and legal technicians. See Green & Matthews, *supra* note 221, at 1814 (relying on a definition of nonlawyer practice found in an ABA Commission Report).

296. For example, LAFLA and the San Fernando Valley Neighborhood Legal Services both conduct such a course for workers to provide representation before the California Labor Commissioner. In addition, these agencies have prepared a manual for workers, in English and Spanish, on the procedures of the Labor Commission. See Telephone Interview with Julia Figueira-McDonough, *supra* note 236. Other programs have conducted similar trainings. DELGADO, *supra* note 60, at 40 (describing the La Mujer Obrera project in El Paso); Coto, *supra* note 234, at 755–57 (describing the LUCHA program in Miami); Eagly, *supra* note 4, at 451–72 (describing the

ducting these programs for nonlawyers, attorneys must be aware of their obligation to avoid facilitating UPL. Although attorneys can provide the nonlawyer students with valuable background information on legal issues,²⁹⁷ they must be careful not to engage in proscribed activities, such as instructing nonlawyers on how to provide legal representation in court, prepare legal documents, or advise others regarding their legal rights. UPL can also occur when attorneys provide backup support for organizers advising community members through means such as telephone hotlines, radio call-in programs, or community fairs. If the lawyer finds that the organizer is dispensing individualized legal advice in these forums and does nothing to prevent it, this could constitute the facilitation of UPL in violation of the ethical rules. Finally, UPL concerns arise when lawyers and organizers collaborate on a legal matter. Although an organizer can legitimately work with a lawyer as a legal assistant, the lawyer must carefully delegate tasks and remain ultimately responsible for the organizer's work product.²⁹⁸ Moreover, the attorney must ensure that the nonlawyer complies with the lawyer's ethical standards. If the lawyer fails to do this and the nonlawyer engages in unsupervised legal practice, the lawyer exposes herself to possible disciplinary sanctions.

As this discussion demonstrates, attorneys working in interdisciplinary law and organizing contexts face significant ethical challenges. Indeed, as many commentators have noted, the ethical rules are so restrictive that they have largely inhibited lawyer collaboration with persons trained in other areas.²⁹⁹ Under such an ethical regime, law and organizing practitioners

Women's Law Project of the Legal Assistance Foundation of Chicago); Gordon, *supra* note 13, at 428–37 (describing the Workplace Project).

297. Indeed, the ethical rules encourage attorneys to educate laymen on the workings of the law. See MODEL CODE OF PROF'L RESPONSIBILITY EC 2-2 ("The legal profession should assist laypersons to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise.").

298. See ABA Comm. on Ethics and Prof. Responsibility, Informal Op. 1274 (1973) ("Use of legal assistants such as the 'senior advocates' is permissible when the lawyer delegates the tasks and remains responsible for their work.").

299. See Galowitz, *supra* note 242, at 2145 ("Generally, the practice of the legal profession itself reflects an individualistic, non-collaborative view."). Some commentators have even suggested that the current structure of the ethical rules makes lawyer-nonlawyer partnerships impossible: "true multiprofessional offices remain beyond the range of feasibility, despite the fundamental appeal of the concept of holistic problem solving centers." Munneke, *supra* note 262, at 573. In recognition of the need for expanded collaboration in the legal field, the ABA's Special Commission on Multidisciplinary Practice is examining possible changes to *Model Rules of Professional Conduct* 5.4 and 5.7 that would enhance the ability of lawyers to work more closely with nonlawyers. See Michael Jonathan Grinfeld, *A Tangled Web*, CAL. LAW., June 2000, at 39, 39–40.

must pay close attention to how they structure relationships with their organizing counterparts and vigilantly monitor their involvement in grassroots activities.

CONCLUSION: TOWARD A NEW SOCIAL CHANGE PRAGMATISM

The law and organizing movement has energized discussions of progressive lawyering by outlining a community-oriented approach to social change that links legal advocacy with grassroots organizing efforts. The theoreticians and practitioners of law and organizing have developed a model that privileges movement politics over litigation strategies and locates the seeds of social transformation squarely within marginalized communities. Rather than remaining entrenched in traditional poverty law practice, law and organizing proponents have highlighted innovative techniques designed to foster community empowerment.

This Article has reviewed the evolution of the nascent law and organizing movement and identified specific contexts in which the law and organizing model has been successfully applied. Specifically, in the areas of workers' rights, environmental justice, and community development, the combination of organizing techniques with more traditional forms of legal advocacy has led to the development of strategies that have effectively redressed problems faced by low-income constituencies. For example, law and organizing practitioners have succeeded in increasing the wages of poor workers, creating job training and placement programs for the unemployed, and protecting communities of color from environmental contaminants.

However, despite the broad appeal of law and organizing, the movement is still in its early stages. Although the advantages of law and organizing have been presented in the academic literature, the actual practice has not yet been tested in a variety of contexts, scrutinized by reflective practitioners, and evaluated by critical scholars. This paucity of analysis has resulted in wasted resources, client dissatisfaction, and lawyer disillusionment.

In order to initiate a critical reflection on law and organizing, this Article has highlighted the challenges that have emerged from this type of work. In particular, this Article has argued that law and organizing practitioners need to pay special attention to the distinctions between different forms of organizing strategies, develop mechanisms to connect local organizing to broader institutional reform, and be aware of the possibility that organizing practice can reinforce group hierarchy. Additionally, advocates must negotiate tensions in law and organizing practice that can lead to decreased client services, lawyer-organizer role confusion, and client coercion. Finally, law and organizing practitioners confront a series of

practical and ethical dilemmas in implementing their programs that demand creative and well-informed responses.

As law and organizing continues to evolve as a form of poverty law practice, a more focused effort must be made to evaluate its strengths and weaknesses, examine its tensions, and use these analyses to chart new directions for practice. Future scholarship in this area should address the structural, practical, and ethical concerns raised in this Article. In the end, the dynamism generated by law and organizing advocates should continue to infuse debates about the future of progressive lawyering and the contours of legal pedagogy. However, this dynamism should be tempered by a thoughtful consideration of the difficulties of this approach.

Most significantly, law and organizing should not be promoted as an idealized model for producing meaningful social change. Instead, law and organizing should be viewed as an important tool—albeit one fraught with its own inherent limitations and contradictions—that practitioners can use to complement more conventional legal strategies. With this understanding, progressive lawyers can begin to move away from one-dimensional modes of advocacy and toward a more pragmatic, multifaceted vision of social change practice.