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THE ISSUE IS NOT THE ISSUE

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The use of public space to peacefully assemble is essential to the success of any social movement fighting for social justice. Without a space for people to come together, it would be impossible to engage with one another, to plan, and to make our civil disobedience visible to the public. The convergence of public and private institutions to curtail the use of space to quash free speech is evident through the repression of the Free Speech Movement (“FSM”) in the 1960s and Occupy Wall Street (“OWS”) in 2011. At their core, the FSM and OWS were both protesting the socio-political landscape and the power structure. Both movements used symptoms of this larger issue, such as limiting free speech and the use of public space, to create such tension that society could no longer ignore injustice. Through this approach they were able to gain political concessions; but more importantly, they radicalized previously non-politically active individuals and changed the way people think.

The FSM was able to galvanize support through confrontations with a university’s administration,² while OWS attempted to create the world in which it envisioned. Different ideologies of civil disobedience played a part in shaping the movements and the tactics they chose to utilize. Off-shoots of OWS, such as Occupy Sandy and Strike Debt, show that the principles of the movement could be used as a model to achieve tangible successes in multiple arenas.

I. BERKELEY AT WAR

In the 1960s, Berkeley, California erupted with fervor. The University of California, Berkeley (“U.C. Berkeley”) and the communities surrounding

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² W.J. RORABAUGH, *BERKELEY AT WAR: THE 1960S* 10, 18 (1989).

it were a staging ground for various student movements protesting issues such as free speech at the University, the Vietnam War, civil rights, and racial/economic equality. Collectively, they became known as the “New Left.”³ Although each faction had their own philosophies, they all used the University and city property to disseminate information, to stage demonstrations, and to create the world they envisioned.

The discontent on campus came to a head in September of 1964,⁴ leading to the creation of the FSM. The administration of U.C. Berkeley announced that they would strictly enforce the prohibition of advocacy of political causes, outside political speakers, recruitment of members, and fundraising by student groups at the intersection of Bancroft and Telegraph Avenues, which were thought to be city property.⁵ The University supposedly discovered that this slither of land was actually their property and not the city’s, despite the fact that up until this point the University had sent students to the city hall to get permits to put tables in this area.⁶

On October 1, 1964, a former graduate student, Jack Weinberg, was sitting at a student groups table when University police attempted to arrest him.⁷ In an act of spontaneous solidarity, students surrounded the police car for thirty-two hours maintaining a continuous public discussion until the administration and the students agreed on a compromise, part of which included letting Jack go without filing charges against him.⁸ The FSM then organized a sit-in held on December 2nd in order to open a dialogue with the University regarding the restriction of political speech and action on campus.⁹ The students occupied Sproul Hall and staged a massive sit-in with estimates of 1,500 people participating and a total of 773 arrests made.¹⁰ From this occupation came a famous speech by Mario Savio (FSM’s de-facto leader¹¹), where he passionately spoke these words:

There’s a time when the operation of the machine becomes so odious, makes you so sick at heart, that you can’t take part. You can’t even passively take part. And you’ve got to put your bodies upon the gears and upon the wheels, upon the levers, upon all the apparatus and you’ve got to make it stop. And you’ve got to indicate to the people who run it, to the people who own it, that unless you’re free, the machine will be prevented

³ *Id.* at 25.

⁴ *See id.* at 10.

⁵ *Id.* at 10, 18.

⁶ *Id.* at 19.

⁷ *Id.* at 21.

⁸ *Id.* at 21, 23.

⁹ *Id.* at 31.

¹⁰ *Id.* at 31-33.

¹¹ *Id.* at 21.

from working at all.¹²

Savio's words echo sentiments of withdrawing consent from the social contract by advocating resistance to state control by no longer giving it legitimacy through any form of participation. By expounding the proposition that when state-imposed oppression is so vile, one should no longer take part in the system, Savio is establishing that there has been consent to a social contract with the government. From this recognition of a social contract, it is implicit that the individual has given up her sovereignty to the state. However, he does not adhere to Hobbes's social contract theory where individual liberty is completely foregone in exchange for safety and order.¹³ Instead, his speech lends itself more to Locke's social contract theory where a state violates the social contract by infringing on the people's right to life, liberty, and property.¹⁴ Savio illustrates this by recognizing that when an individual is not free and when one's natural rights are being denied, one can withdraw her consent from the social contract and thus take away the legitimacy of the state. This proposition puts forth the idea that the people are, in fact, the ultimate sovereign because it is from their consent that the state derives its power. The state's sovereignty is contracted to it by the consent of the people and thus, when people take away their consent, the government no longer has power and the individual is the sovereign again.¹⁵

Savio's speech implies a distinction between the New Left and Martin Luther King Jr.'s ("MLK") philosophy that one must willingly accept the punishments that are imposed for breaking a law.¹⁶ MLK gave legitimacy to positive law by accepting the consequences for defying unjust laws.¹⁷ However, at the end of his speech, Savio calls for preventing the State from operating in its entirety, which means not simply acquiescing to the judicial system. This was illustrated when students on campus surrounded a police car for thirty-two hours in order to prevent a comrade from being taken to jail for defying an order from campus police to show identification.¹⁸ The distinction is that MLK was not proposing that people withdraw their consent and dismantle the social contract. He was working within the system to advocate for social change and was appealing to positive law.¹⁹

¹² *Id.* at 31.

¹³ *See generally* THOMAS HOBBES, *LEVIATHAN, OR, THE MATTER, FORME, AND POWER OF A COMMON WEALTH, ECCLESIASTICALL AND CIVIL* (Oxford Univ. Press 1929) (1651).

¹⁴ *See* JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* 135 (Richard H. Cox ed., Harlan Davidson, Inc. 1982) (1689).

¹⁵ *See id.*

¹⁶ RORABAUGH, *supra* note 2, at 31.

¹⁷ *Id.* at 41.

¹⁸ *Id.* at 21.

¹⁹ *See id.* at 41.

On the other hand, according to the ideology of the New Left, any form of consent to an unjust system was intolerable.²⁰

MLK also pronounced that a law is unjust when those in power subject others to the law but not themselves and when only those in power took part in creating the law.²¹ From this perspective, the New Left's unwillingness to accept judicial consequences can be seen as a proclamation that the repercussions for breaking an unjust law are also unjust since they were not part of the decision-making process of enacting the law. Therefore, they are acting morally by going against MLK's philosophy that one must willingly assent to arrest for defying an unjust law. This reasoning is akin to Howard Zinn's proposition that the jailing of those engaged in civil disobedience is immoral and should be opposed if the civil disobedience is morally justifiable.²²

According to Zinn, protestors are not obligated to accept the rule of punishment any more than they are to accept the rule that was broken.²³ Zinn, unlike MLK, pays no homage to positive law. He does recognize, though, that sometimes people choose to go to jail as a way to continue their protest. We have seen MLK and Gandhi do this in order to expose injustice to the world. Other than for the above purpose, it is Zinn's belief that people should contest their jailing to the very end.²⁴

Students at U.C. Berkeley put Zinn's words into action when Governor Pat Brown ordered that they be arrested and removed from Sproul Hall.²⁵ The involvement of Governor Brown in a protest by college students shows the true nature of relations between the University administration and government officials. The University was backed heavily by government-sponsored research and the members of the Board of Regents were among the wealthiest and most powerful people in the state, with close ties to politicians and law enforcement.²⁶ When faced with arrest, the students refused to walk so that police would be forced to carry them out of the building. They kept their bodies limp in an act of non-violent resistance.²⁷ The purpose of this was to make it take longer to remove the students,

²⁰ *See id.*

²¹ Martin Luther King, Jr., *Letter from Birmingham Jail*, AFRICAN STUDIES CTR., UNIV. OF PA., http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html [<http://perma.cc/ZAV9-ST69>] ("A law is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law.").

²² *See* HOWARD ZINN, *DISOBEDIENCE AND DEMOCRACY: NINE FALLACIES ON LAW AND ORDER* 27-32 (1968).

²³ *See id.*

²⁴ *See id.*

²⁵ RORABAUGH, *supra* note 2, at 32, 41.

²⁶ *Id.* at 10-11, 32.

²⁷ *Id.* at 33.

which would allow classmates entering school the next day to see how they were being treated. This action was successful in that it took 367 officers until four o'clock the next day to remove the 773 students.²⁸ By defying their arrests until the very end, as Zinn would advocate,²⁹ the students were still able to expose the injustice by strategically dragging out their arrests so the rest of the campus would witness it. This act of defiance invoked MLK's theory that going to jail arouses public support.³⁰ The students were effectively able to use the ideology of Zinn while retaining the practical benefits of MLK's philosophy.

The students invoked Zinn's spirit throughout sentencing, as well. Many liberals had thought that they would follow in line with MLK's practice of pleading guilty and accepting a short jail term or fine.³¹ But at their core, these students were simply tired of liberals and their "patient obedience to legal authority."³² They sought alternatives to the liberals and Democrats they were used to. Instead of taking pleas, the students opted to go to trial, hoping that the University would reveal details about how the decision was made to send in the police.³³ However, the students could not agree on strategy and ended up waiving a jury trial.³⁴ This proved to be a fateful decision because without a jury trial they relinquished the opportunity to create a political forum. This would have extended their protest into the courtroom, the way Gandhi had done. The students were found guilty, drew fines, and were sentenced to up to one-hundred-and-twenty days in jail or up to two years' probation.³⁵ However, with civil rights protests and the Vietnam War in mind, many students opted to turn down probation in favor of jail time.³⁶ Although the students were found guilty, the FSM ultimately prevailed and the ban on political speech was lifted.³⁷

In a twist of irony, the parcel of land that the University had suddenly claimed and which sparked the student movement was later discovered to belong to the city of Berkeley.³⁸ The administration did not adhere to positive law; instead, they tried to use it as a way to shrink public spaces.

²⁸ *Id.*

²⁹ See ZINN, *supra* note 22, at 27-32.

³⁰ See King, *supra* note 21 ("[A]n individual who breaks a law . . . and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.").

³¹ RORABAUGH, *supra* note 2, at 41.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 42.

³⁵ *Id.* at 42-43.

³⁶ *Id.*

³⁷ See *id.* at 37.

³⁸ *Id.* at 19.

They subsequently hijacked public institutions (law enforcement and politicians) to enforce their own agenda of quashing political activity and dissent on and off campus.

II. WHOSE PARK? OUR PARK

The University's tactic of shrinking public spaces did not stop there and neither did the convergence of private and public institutions. In July 1967, Assemblyman Mulford encouraged the University to demolish buildings because they were inhabited by "hippies," other non-students, and students that were viewed as a threat to the status quo.³⁹ The University was given \$1.3 million to buy the remaining property it did not already own and subsequently destroy it.⁴⁰ The last building was not taken down until December of 1968 and the area remained a wasteland.⁴¹ In April of 1969, activists met to discuss a particular plot of land and the possibility of turning it into a park.⁴²

The concept behind the idea of building a park was that it could rally hippies, radical activists, students, environmentalists, and community members while creating a public space for community gatherings. Some organizers believed that the park would ultimately be crushed, but that this would expose the power structure and thus convert hippies and community members into more radicalized activists.⁴³ On April 20th a motley crew of supporters gathered at the site to build "People's Park."⁴⁴ Up until mid-May the park was being constructed and used for and by the community.⁴⁵ The Chancellor of the University was under increasing pressure from the Regents to take back control of the land in some form or another.⁴⁶ Attempts at getting a group of the park's supporters to take legal control of the park were unsuccessful, as well as an attempt to lease the site to the city so that it would be out of the University's hands.⁴⁷

Giving into pressure, the Chancellor announced on May 12th that the University was unable to find a responsible group to negotiate with, and two days later "No Trespassing" signs went up.⁴⁸ In an obvious attempt to clear the park when the majority of its supporters would not be there, at 4:30

³⁹ *Id.* at 150.

⁴⁰ *Id.*

⁴¹ *Id.* at 151-52.

⁴² *Id.* at 155-56.

⁴³ *Id.*

⁴⁴ *Id.* at 156.

⁴⁵ *Id.* at 159.

⁴⁶ *Id.* at 158.

⁴⁷ *Id.* at 158-59.

⁴⁸ *Id.* at 159.

A.M. on May 15th, California Highway Patrol police arrived to clear an area around the park and install an eight-foot chain-link wire fence.⁴⁹ In the following days there was an unprecedented battle between law enforcement and the Berkeley community. In a move to further quash dissent, the Governor called in the National Guard, and Berkeley was occupied for seventeen days.⁵⁰ Different acts of violence by law enforcement included corralling the campus as a helicopter released tear gas from above, shooting 110 students with buckshot, making it illegal for more than three people to congregate in one place, shooting one demonstrator in the back while he was running away, unintentionally shooting a bystander in the leg, guardsmen smashing windows of cars belonging to people they disliked, and the murder of one student who died from a buckshot “pellet lodged in his heart.”⁵¹

The government repression did exactly what organizers had wanted: it radicalized the community.⁵² Similar to their use of the issue of free speech on campus, activists used the issue of building a community park to create a confrontation with the power structure in order to expose injustice and gain supporters.⁵³ The activists understood that having a space to come together and engage in meaningful interactions was essential for their movement to enact change. Presumably, those in power understood this as well, which may be why the government went to great lengths to ensure that no space was truly accessible to the public.

III. OCCUPY WALL STREET

The tactic of using a symptom of a larger issue as the issue at face has also been used in recent history with the emergence of OWS. OWS was a social movement that believed our political institutions have been hijacked by corporate influences, which have put profits over people resulting in mass injustice and inequality.⁵⁴ Like the activists of the 1960s, OWS organizers knew how important it was to have a space to come together. Although OWS’s complaint wasn’t specifically about the right to assemble in public spaces—in the same way that FSM wasn’t truly about organizing on campus or building a park—it appeared this way on its face because of the confrontation that erupted between protesters and police over the use of

⁴⁹ *Id.* at 159-60.

⁵⁰ *Id.* at 162.

⁵¹ *Id.* at 161-63.

⁵² *Id.* at 164.

⁵³ *Id.*

⁵⁴ *The Declaration of the Occupation of New York City*, SPARROW PROJECT, <http://www.sparrowmedia.net/declaration/> [<http://perma.cc/ZJG8-GYMF>].

Zuccotti Park as its staging ground.⁵⁵

On July 13th, 2011, a Canada-based magazine, *Adbusters*, put out a call to action:

#OCCUPY WALL STREET

Are you ready for a Tahrir moment? On Sept 17, flood into lower Manhattan, set up tents, kitchens, peaceful barricades and occupy Wall Street.⁵⁶

This call to action came as public spaces around the world were being occupied to protest failing governments. North Africa, the Middle East, Europe, and Latin America were all involved in the uprising.⁵⁷ Popular protest spread to the U.S. in February 2011 when thousands of people occupied the Wisconsin State Capitol to protest the Governor's Budget Repair Bill.⁵⁸ That June, Bloombergville was created in NYC in opposition to proposed budget cuts that would lay off 4,000 public school teachers and close twenty firehouses.⁵⁹ Several dozen people slept on the corner of Broadway and Park for three weeks to protest the proposed budget.⁶⁰ When *Adbusters* put out the call to occupy Wall Street, some of the same organizers from Bloombergville, along with others, started planning for September 17th, not necessarily knowing what would come of it.⁶¹

Zuccotti Park would become the home to OWS from September 17, 2011 until November 15, 2011 in a non-stop occupation.⁶² Zuccotti Park is a privately owned public space (POPS), owned by Brookfield Properties.⁶³ POPS were created through a New York City zoning resolution from 1961 that gave incentives to private developers to create public space on their property in exchange for zoning variances.⁶⁴ In a city with already limited green space,⁶⁵ POPS may seem like a valuable resource to communities.

⁵⁵ WRITERS FOR THE 99%, *OCCUPYING WALL STREET: THE INSIDE STORY OF AN ACTION THAT CHANGED AMERICA* 99, 177 (2012).

⁵⁶ *Id.* at 10.

⁵⁷ *Id.* at 5-6.

⁵⁸ *Id.* at 6.

⁵⁹ *Id.* at 8.

⁶⁰ *Id.*

⁶¹ *Id.* at 11-13.

⁶² *Id.* at 16, 178.

⁶³ *Id.* at 13, 17.

⁶⁴ See *Privately Owned Public Space*, N.Y.C. DEP'T OF CITY PLANNING (2014), http://www.nyc.gov/html/dcp/html/pops/pops_history.shtml [http://perma.cc/92UM-C7ND]; see also N.Y.C. City Planning Comm'n, Zoning Maps and Resolution §§ 23-23, -26 (1961), http://www.nyc.gov/html/dcp/pdf/zone/zoning_maps_and_resolution_1961.pdf#page=43.

⁶⁵ See *Parks and Public Space*, N.Y.C. MAYOR'S OFF. OF SUSTAINABILITY (2015) <http://www.nyc.gov/html/planyc/html/sustainability/parks-public-space.shtml>

However, OWS shed light on the underlying problem of privately owned public spaces. Multiple issues come into play such as hours of use, usage purposes, and enforcement.⁶⁶ Who makes such decisions—the city or the private entity? The answer seemed ever complicated and it appeared as though law enforcement was being used to do the bidding of a large corporation.⁶⁷ The main message from OWS was essentially that public institutions were being hijacked by corporate influence. The importance of having space for people to peacefully assemble became increasingly evident when ad hoc restrictions were implemented at Zuccotti Park to limit protesters' freedom of speech.⁶⁸

On October 13th, police officers walked through the park handing out a notice from Brookfield announcing that the park would be cleaned the next morning and a new set of park rules would be enforced.⁶⁹ Tarps, sleeping bags, and tents were now prohibited.⁷⁰ Lying down on the ground, benches, and sitting areas were also banned.⁷¹ OWS saw this as a way for the City to shut down the occupation. Additionally, because of their vast network of occupations throughout the country, organizers were aware that Occupy Austin had been evicted that same day with the same letter.⁷² This was indicative of a coordinated national effort to expel the occupiers, which would soon come to light. In the meantime, the occupiers won a temporary victory the next morning when the police announced that the cleaning was postponed.⁷³ Occupiers worked desperately through the night to ensure that the park was clean, but the more practical reason for the City's willingness to back down was that an estimated 3,000 people had come to the park that morning to defend it.⁷⁴ It was clear that the issue was never about sanitation; it was merely used as a pretext to shut down the occupation.

For two months, OWS was able to create its own society within Zuccotti Park, attempting to create the world they envisioned—one founded in direct democracy, mutual respect, acceptance, and a shared sense of community. OWS held nightly General Assemblies ("Gas"), which were the "decision-making body" of the group.⁷⁵ GA's were used to keep everyone up-to-date on what was happening within the movement by giving report-backs from

[<http://perma.cc/87SF-CF96>].

⁶⁶ See WRITERS FOR THE 99%, *supra* note 55, at 32, 99.

⁶⁷ See *id.* at 99.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 100.

⁷³ *Id.* at 105.

⁷⁴ *Id.* at 100-04.

⁷⁵ *Id.* at 25, 27.

the working groups, as well as was making sure that the daily needs of the occupiers were being satisfied.⁷⁶ All decisions were made based on a consensus model using direct democracy.⁷⁷ Bounded in its belief in consensus, the GAs were sometimes a very tedious and drawn out process, but it was a price the occupiers were willing to pay in exchange for building an inclusive community.⁷⁸ Through the GA, occupiers agreed upon Gandhi and MLK's belief in non-violent civil disobedience, illustrated in one of the very few official OWS documents.⁷⁹ OWS was also heavily grounded in anarchist principles of autonomy, mutual aid, and solidarity.⁸⁰ Similar to the FSM of the 1960s, OWS opposed having any official leaders and believed in a horizontal movement in order to ensure that everyone had an equal voice.

The park was used as a catalyst for First Amendment rights simply by maintaining a presence there. OWS's encampment made the movement constantly visible, which forced a national conversation about corporate influence in politics, the role of big banks, and income and racial inequality. Inside of the encampment was a kitchen that served three meals a day, The People's Library, a legal table, a media center, meditation space, a medic tent, a designated area for drumming, information desks at the East and West end of the park, a "comfort" station that provided clothing and sleeping gear, a sanitation station, bike-powered generators, a de-escalation team, a space for artwork, and a variety of issue-specific tables.⁸¹ The park was also covered with the tents that housed the occupiers.⁸² Adhering to a strong belief in mutual aid, occupiers volunteered their services however they could best contribute in order to create a cohesive community that provided for the needs of the people.

It was through OWS's method of protest that they were able to make political disenfranchisement and social and economic injustice a national crisis, which people could no longer ignore. By maintaining a non-stop occupation in which a new community was created, the issue of inequality was dramatized to the point where the government was forced to acknowledge the uncomfortable reality of the status of the country that it had long refused to recognize. OWS personified the essence of MLK's notion of what the purpose of direct action is.⁸³

The park's proximity to Wall Street was also an important ideological

⁷⁶ *Id.* at 27.

⁷⁷ *See id.*

⁷⁸ *Id.* at 27, 31.

⁷⁹ *See* THE SPARROW PROJECT, *supra* note 54.

⁸⁰ *Id.*

⁸¹ WRITERS FOR THE 99%, *supra* note 55, at 62-63, 67-96.

⁸² *Id.* at 64-65.

⁸³ *See* King, *supra* note 21.

symbol for OWS.⁸⁴ Occupiers coined the phrase “All roads lead to Wall Street,”⁸⁵ proclaiming that the government had become a plutocracy controlled by large corporations and economic power, from which all of our grievances derive and connect.⁸⁶ With this assertion, OWS believed that it was the right of people to withdraw their consent from the social contract and create alternatives that offer greater possibility of equality.⁸⁷ The camp would remain intact for another month, until police violently evicted the protestors and threw out all of their belongings in the early morning hours of November 15th⁸⁸—the same tactic used by Governor Reagan when The People’s Park was demolished in 1969.⁸⁹

The City then ignored positive law by disregarding a temporary restraining order signed by Judge Lucy Billings of Manhattan Supreme Court, which permitted protesters to return to the park.⁹⁰ When the park was finally reopened, the police barricaded the perimeter, leaving one small egress.⁹¹ In an attempt to keep people from engaging with one another, the government waged a war on public spaces throughout the United States. In a November 16th interview with the BBC, Oakland Mayor Jean Quan inadvertently admitted that the raid on Zuccotti Park was part of a national effort by mayors from 18 major cities in conjunction with the Department of Homeland Security to quash the occupations.⁹² Curtailing OWS’s use of Zuccotti Park was indicative of a larger pattern of state infringement on the right of people to peacefully assemble.⁹³ The involvement of DHS implies how seriously the government took the occupations. Not because they were a threat to national security, but because they were a threat to the status quo.

Following the eviction, occupiers engaged in “sleepful protests” at various locations throughout the City, where they camped on sidewalks and engaged in protest during the day. Occupations were held at Union Square,⁹⁴ Trinity Church,⁹⁵ (located up the street from Zuccotti Park), Wall

⁸⁴ WRITERS FOR THE 99%, *supra* note 55, at 13.

⁸⁵ *On #S17 All Roads Lead to Wall Street*, OCCUPY WALL STREET, <http://occupywallstreet.net/event/s17-all-roads-lead-wall-street> [<http://perma.cc/BLT4-N2PD>].

⁸⁶ *See* SPARROW PROJECT, *supra* note 54, at 12-15.

⁸⁷ *Id.*

⁸⁸ WRITERS FOR THE 99%, *supra* note 55, at 178.

⁸⁹ *See* RORABAUGH, *supra* note 2, at 159-60.

⁹⁰ WRITERS FOR THE 99%, *supra* note 55, at 187.

⁹¹ *Id.*

⁹² *Id.* at 188.

⁹³ *See id.* at 99-100.

⁹⁴ Anonymous, *Sleepful Protest*, OCCUPIED STORIES (Apr. 15, 2012), <http://occupiedstories.com/sleepful-protest.html> [<http://perma.cc/AX9Y-NSAQ>].

⁹⁵ WRITERS FOR THE 99%, *supra* note 55, at 189.

Street itself in the summer of 2012, and finally the multi-million-dollar condo of Goldman Sachs CEO Lloyd Blankfein.⁹⁶ However, without a stable place for occupiers to sleep and organize, the movement slowly lost mass public support and press attention. Nevertheless, the organizing skills and allies OWS developed remained intact, and different offshoots sprung up.

IV. OWS – BEYOND ZUCCOTTI PARK

In response to Hurricane Sandy, OWS was at the forefront of relief efforts with Occupy Sandy.⁹⁷ Organizers initially worked out of two churches in Brooklyn where they would send fleets of vans to areas in need, such as the Rockaways.⁹⁸ An estimated thirty small hubs were quickly created at satellite sites in Staten Island, Coney Island, Sheepshead Bay, Gerritsen Beach, Red Hook, and the Rockaways.⁹⁹ Occupy Sandy claims they organized a network of more than 50,000 registered volunteers, provided over 300,000 meals, and helped rebuild over 1,000 homes.¹⁰⁰ Additionally, the group claims to have raised over one million dollars in supplies to go directly to the communities in need.¹⁰¹ The work of Occupy Sandy was even touted by Mayor Bloomberg and the National Guard.¹⁰² Many people frustrated with the Federal Emergency Management Agency's ("FEMA") inability to get help to people in the devastated areas in the early days of the storm say that Occupy Sandy was there when the government wasn't.¹⁰³ One activist recounts working out of a Rockaways storefront almost two weeks after the hurricane, handing out supplies to residents that were still without power and other basic

⁹⁶ *Goldman Sachs Is Occupied*, OCCUPY WALL STREET (Dec. 5, 2012 11:29 AM), <http://occupywallst.org/article/goldman-sach-occupied/> [http://perma.cc/C8PY-JHSK].

⁹⁷ Alan Feuer, *Occupy Sandy: A Movement Moves to Relief*, N.Y. TIMES (Nov. 9, 2012), http://www.nytimes.com/2012/11/11/nyregion/where-fema-fell-short-occupy-sandy-was-there.html?pagewanted=all&_r=1&_.

⁹⁸ *Id.*

⁹⁹ Rebecca Davis, *Occupy Sandy relief effort puts Occupy Wall Street activists in the spotlight again a year after Zuccotti Park*, N.Y. DAILY NEWS (Dec. 5, 2012, 7:00 AM), <http://www.nydailynews.com/new-york/occupy-sandy-relief-puts-occupy-wall-street-back-spotlight-article-1.1213249> [http://perma.cc/7XAU-V8B4].

¹⁰⁰ Allison Kilkenny, *Occupy Sandy: One Year Later*, NATION (Oct. 28, 2013), <http://www.thenation.com/article/occupy-sandy-one-year-later/> [http://perma.cc/QP5P-4A4E].

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ See Feuer, *supra* note 97.

necessities.¹⁰⁴ The FEMA office in the neighborhood was closed “due to weather” and the nearby firehouse closed for the night.¹⁰⁵

Another offshoot of OWS is Strike Debt.¹⁰⁶ Strike Debt was started by members of OWS who are particularly impassioned about building a debt resistance movement.¹⁰⁷ As part of its direct action they created the Rolling Jubilee, a project in which Strike Debt buys people’s debt for pennies on the dollar and then abolishes it.¹⁰⁸ Typically, these debts are bought by debt buyers who then try to collect the full amount from debtors.¹⁰⁹ As of today a total of 3,801 people have had their medical debt bought and abolished.¹¹⁰ Strike Debt raised slightly over \$700,000 and with this money was able to buy over \$14 million in medical debt.¹¹¹ More recently, Strike Debt has started tackling student debt as well. The group has abolished just under \$4 million in student debt for 2,761 debtors.¹¹²

V. ANOTHER WORLD IS POSSIBLE

Although occupiers showed the world that alternative societal models are indeed possible, this was often a very daunting task for the movement. Whilst trying to create a community based on personal and collective responsibility, acceptance, and direct democracy, the occupiers were still plagued with the societal ills of racism, sexism, classism, mental health issues, ableism, privilege, language barriers, and every other form of discrimination and dividing factor that is present in society at large.¹¹³ In OWS’s vision for a better world, it was important to come up with mechanisms to address the very issues of which they were trying to rid society.¹¹⁴ Occupiers attempted to do this in different ways. A structural component of the GA included the use of “progressive stack” to order people’s comments on proposals.¹¹⁵ Preference was given to groups whose

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ STRIKE DEBT, <http://strikedebt.org> [<http://perma.cc/P6WF-JUNT>].

¹⁰⁷ *Principles of Solidarity*, STRIKE DEBT, <http://strikedebt.org/principles/> [<http://perma.cc/3WAG-LXZB>].

¹⁰⁸ ROLLING JUBILEE, <http://rollingjubilee.org> [<http://perma.cc/UR4H-4WV4>].

¹⁰⁹ *Id.*

¹¹⁰ ROLLING JUBILEE, <http://rollingjubilee.org/transperancy/#debtbuys> [<http://perma.cc/2U9Y-Z2LY>].

¹¹¹ *Id.*

¹¹² *Debt Buys*, ROLLING JUBILEE, <http://rollingjubilee.org/transperancy/#debtbuys> [<http://perma.cc/X56L-ATV4>].

¹¹³ See WRITERS FOR THE 99%, *supra* note 55, at 63-67.

¹¹⁴ See *id.* at 67.

¹¹⁵ *Id.* at 29-30.

voices are traditionally less heard, such as people of color and women.¹¹⁶ Another tool that OWS used was “step-up/step-back.”¹¹⁷ This tool encouraged those who wanted to speak to consider whether they should “step-up” by acknowledging their privilege and relinquishing their talking time, or “step-back” to allow someone from a historically marginalized group make their voice heard.¹¹⁸ Despite attempts to make up for the inequalities in society, as well as the use of their own security/mediation team to deal with conflicts, two months of communal living did not make up for the years of socialization that occupiers brought with them into the movement.

Through OWS’s Occupy Sandy and Strike Debt initiatives and their communal living in Zuccotti Park, it seems as though the occupiers unintentionally exemplified a right-wing message that government isn’t the answer, while its ideology leans much more heavily towards a progressive stance that supports social welfare benefits and views government as a body that should uplift and protect the rights of the people. In John Rawls’ “nearly just” society where everyone decides principles of justice from the original position behind a veil of ignorance, it perhaps is possible that society would adopt the principles he puts forth.¹¹⁹ It is in Rawls’ nearly just society that ‘small government’ proponents may find their niche. However, Rawls’ proposition is based on a hypothetical that is not the world in which we live. Therefore, what should be taken from the seeming contradiction between OWS’s ideology and their action is not that “government is best which governs least,”¹²⁰ but that there are alternative societal models other than the plutocracy the country has turned into, and that when the government is no longer serving the people, the people must serve each other.

Thoreau’s proposition that “government is best which governs least” stems from his belief that government is inherently an agent of corruption and injustice.¹²¹ The sentiments of OWS do not necessarily align with his philosophy. Although the movement would contend that the present form of government can be characterized using Thoreau’s assertion, OWS has not ruled out the possibility that another form of government could exist which is not intrinsically corrupt.¹²² In fact, the purpose of OWS was to start a conversation to imagine a new socio-political and economic alternative to

¹¹⁶ *Id.* at 30

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ See JOHN RAWLS, A THEORY OF JUSTICE 118 (1999).

¹²⁰ HENRY DAVID THOREAU, *Civil Disobedience*, in THE THOREAU READER 1 (1849), <http://thoreau.eserver.org/civil1.html> [<http://perma.cc/HT7P-673Y>].

¹²¹ *Id.* at 2.

¹²² See WRITERS FOR THE 99%, *supra* note 55, at 190-91.

the paradigm we are living under now.¹²³ Thoreau adds that even democracy is not a cure for government corruption, which is why he takes it a step further and asserts that the best government is one that doesn't govern at all.¹²⁴

OWS has not advocated for the abolishment of government; however, it is a proponent of the abolition of government as we know it.¹²⁵ Because of the nature of OWS's horizontal movement and limited official statements, it would be impossible to characterize with certainty the exact model of government the movement would support. But through their use of direct democracy and consensus-based decision-making, it is safe to say that they have offered societal alternatives that would still be labeled as a "government." In fact, OWS utilized a governing body that exercised control over the actions of the occupiers: the GA.¹²⁶ It seems as though Thoreau's perception of government was limited to that of a representative or monarchical form. He says that in order for the State to be truly enlightened it must recognize individuals as the sovereign from which all the State's powers are derived.¹²⁷ However, in a direct democracy like OWS's GA, the governing body is nothing more than the sum of its parts. The disparity Thoreau speaks of between the State and the individual is non-existent when the people are directly part of the government because the people themselves *are* the government.

CONCLUSION

OWS's use of public space catapulted the issue of income inequality into the forefront of a national political dialogue and inspired occupations around the country, and the world.¹²⁸ By mid-October of 2011, occupations were taking place in 951 cities in eight-two countries.¹²⁹ The movement's enduring impact does not rest on the policy changes they were able to achieve. Despite the movement's refusal to engage in electoral politics, they can be credited for a number of policy changes. OWS was responsible for the extension of the New York "millionaire's tax," the reversal of Bank of America's plan to impose new fees on customers, and blocking the Stop

¹²³ *See id.* at 32.

¹²⁴ THOREAU, *supra* note 120, at 3.

¹²⁵ THE SPARROW PROJECT, *supra* note 54.

¹²⁶ WRITERS FOR THE 99%, *supra* note 55, at 25, 27.

¹²⁷ THOREAU, *supra* note 120.

¹²⁸ RUTH MILKMAN ET AL., CHANGING THE SUBJECT: A BOTTOM-UP ACCOUNT OF OCCUPY WALL STREET IN NEW YORK CITY 36-37 (2013), http://sps.cuny.edu/filestore/1/5/7/1_a05051d2117901d/1571_92f562221b8041e.pdf [<http://perma.cc/V3ZJ-JTU7>].

¹²⁹ *Id.* at 1.

Online Piracy Act from passing Congress.¹³⁰ On a local level, OWS has played a role in stopping housing foreclosures, has provided support to labor disputes such as the Sotheby lockout by creating an environment for SEIU 32B-J to successfully bargain their contract, and has influenced nationwide Wal-Mart and fast food worker strikes.¹³¹ The real wins for OWS were changing the national political discourse, the transformation of non-politically active individuals, and the new networks that they were able to build.¹³²

The ability to convert people who were previously apathetic and politically inactive into activists was one of the primary goals that the FSM set out to achieve with the issue of People's Park.¹³³ OWS was able to do the same by appealing to the masses through the catchy phrase of "we are the 99%," which represented the 99% of the population that were being controlled by the 1% of the wealthiest individuals.¹³⁴ This inclusive framework, along with the strategic decision not to list a set of formal demands, allowed people from different walks of life to find a place within the movement.¹³⁵ Not having a set of demands was often criticized in the mainstream media and negatively construed to mean that occupiers didn't have a message.¹³⁶ This was representative of a society that has been taught to think within very limited parameters. However, by not having any specific demands, the movement was sending the message that the whole system is broken, and there was not just one specific policy in need of change.¹³⁷

This same ideology was present within the FSM. As radical activist Jerry Rubin said, "We cannot be coopted because we want everything."¹³⁸ OWS did not directly engage in electoral politics for this specific reason: they refused to be coopted by the system they were trying to change.¹³⁹ One difference between the FSM and OWS is that the FSM was much more issue-specific. They were fighting for free speech on campus and to build a community park.¹⁴⁰ Although these issues were meant to expose the power

¹³⁰ *Id.* at 37.

¹³¹ *Id.*

¹³² *Id.* at 37-40.

¹³³ See RORABAUGH, *supra* note 2, at 170.

¹³⁴ *Id.* at 23.

¹³⁵ *Id.* at 23-24.

¹³⁶ Alain Sherter, *Why "Occupy Wall Street" Critics Are More Clueless Than the Protesters*, CBS MONEYWATCH (Sep. 29, 2011, 10:24 AM), <http://www.cbsnews.com/news/why-occupy-wall-street-critics-are-more-clueless-than-the-protesters/> [<http://perma.cc/YKK5-2F83>].

¹³⁷ See RORABAUGH, *supra* note 2.

¹³⁸ *Id.* at 91.

¹³⁹ See WRITERS FOR THE 99%, *supra* note 55, at 190-91.

¹⁴⁰ RORABAUGH, *supra* note 2, at 20, 155.

structure and to radicalize people, once the dust settled, the FSM faded.¹⁴¹ This is why OWS refused to protest a single issue. Instead, occupiers rallied around a systemic critique that the whole system is flawed.¹⁴² However, like OWS, the FSM's victories did not lie in their ability to revoke the ban of political speech on campus or to build a park, but in the activist networks they were able to build and the conversion of previously non-politically-active members of society.¹⁴³ The FSM was able to use the issue of free speech on campus to gain widespread student and faculty support.¹⁴⁴ Activists were then able to bring the community together through the Governor's militarized occupation of Berkeley in response to People's Park.¹⁴⁵ The FSM influenced student movements across the country and organizers in Berkeley went on to create the Vietnam Day Committee, which engaged in multiple direct action efforts against the war and a march on an army base in Oakland.¹⁴⁶

The use of public space was critical for both movements to create a confrontation in which society could no longer ignore the systemic issues plaguing the country. The FSM and OWS represented the culmination of raw emotion felt by those who were no longer willing to accept the status quo. In essence, the movements believed they could create a new socio-political system based on equality and justice. Both the FSM and OWS showed the true power that people hold when they come together and think of new ways of doing things. The government would not have violently suppressed the movements if they posed no threat to the power structure. By centering their issues around public space, the FSM and OWS were able to gain political victories, but most importantly they were able to foster a sense of community and radicalize individuals. In a society where we are taught to base success on things that are tangible, it may seem like the FSM and OWS were not very successful social movements. But both movements were trying to free people of this limited way of thinking. When the minds of people are changed and enlightened, when people are no longer willing to accept the crumbs they are given, and when people are willing to stand in the face of oppression, that is the true success of a social movement. Unlike the encampment in Zuccotti Park, the government cannot evict an idea.

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¹⁴¹ *See id.* at 170-71.

¹⁴² MILKMAN ET AL., *supra* note 128, at 24.

¹⁴³ RORABAUGH, *supra* note 2, at 91.

¹⁴⁴ *Id.* at 35-36.

¹⁴⁵ *Id.* at 91.

¹⁴⁶ *Id.* at 91-95.