TOWARD A SYNTHESIS: LAW AS ORGANIZING

Aaron Samsel†

ABSTRACT

This paper analyzes tensions within current models of partnership between law and organizing. It draws on the insight developed from recent projects to propose further development of "Law as Organizing" as a new synthesis in which social movement lawyers incorporate organizing principles and techniques into their practice. Part II traces the historical trajectory of public interest lawyering, leading from impact litigation, through rebellious lawyering, and into Law and Organizing. Part III focuses in on "Know Your Rights" trainings as a common site of collaboration between organizers and lawyers, in order to draw out the tension between litigation-oriented and organizing-oriented frameworks in law and organizing. This analysis is based on articles by prominent practitioners and theorists as well as on primary source research conducted by the author in 2012. Part III concludes by articulating the challenge presented to social movement lawyers seeking to address the contradictions in the partnership model. Part IV proposes moving away from the partnership model, and toward a synthesis between law and organizing. This approach draws on principles and techniques of organizers and popular educators, and thereby moves toward relationship-building over longer periods, and focuses on a problem as a socio-political question, not merely a discrete legal issue. The current examples of synthesis are analyzed with an eye toward ongoing tensions, and the potential benefits that may be found in such a synthesis.

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† Aaron Samsel is from Richmond, Virginia where he worked as an immigrant rights organizer and co-founded the Wayside Center for Popular Education. While living in New York City, he interned at numerous immigrant and workers' rights organizations, including Brandworkers International, Make the Road New York, and Common Law Inc., and worked as a law clerk at Outten & Golden LLP and the National Labor Relations Board Division of Judges. Mr. Samsel was also a Peggy Browning Fellow at CASA de Maryland. He received the 2014 Samuel M. Kaynard Award from the New York State Bar Association for his accomplishments defending the rights of low-wage workers. Prior to moving to New York, he completed a Master's program in Socio-Legal Studies at York University in Toronto, Canada. He is a 2015 graduate of City University of New York School of Law.

Introduction

In an effort to draw the Central Virginia Latino community together for a new immigrant rights campaign, an organizer with the Wayside Center for Popular Education invites a public interest attorney to lead a "Know Your Rights" training at a community meeting. The organizer thinks of the training as a draw, a way to get more people through the door and involved in the group. The attorney thinks of the training as a way to empower individuals to know how to use the law to defend their interests. These goals may have seemed compatible on the surface, but in reality, a substantial problem emerged: "[W]e [were] trying to organize an immigrant rights march, [it was] fully legal and permitted, [but the lawyers we invited for the training] recommended that people just don't participate in political actions like that." He reflected further, "[I]t's harder to build a base with enough numbers and real power to demand change because the people who are telling them how to protect themselves by exercising their rights in interactions with law enforcement are telling them also, either directly or subtly, to not rock the boat."[1]

In an ideal situation, by providing legal education in partnership with community organizing efforts, attorneys empower participants and strengthen the organizing initiative. However, efforts by well-meaning attorneys frequently frustrate the goal of the organizers and reinforce (generally poor or marginalized) participants' dependency on lawyers and other social elites for fixing their problems. This contradiction is generally due to two fundamentally distinct frameworks that guide the work of lawyers and organizers. Part II of this paper charts the path that lawyers have taken in seeking to grapple with the contradictions contained within public interest practice. The section traces the historical trajectory of public interest lawyering, leading from impact litigation, through rebellious lawyering, and into "law and organizing," in order to contextualize more recent contributions to the discussion.

Part III focuses on Know Your Rights trainings for undocumented immigrants to draw the contradictory frameworks out into the open to explore the tension between a "litigation-oriented" framework and an "organizing-oriented" framework. Know Your Rights trainings are one of the most common forms of collaboration between organizers and lawyers. Through this pedagogical experience, public interest lawyers and their co-trainers promote a

[1] Research interviews, on file with author. 2012.

specific way of viewing rights and the law. These trainings provide a space in which the tension between the two frameworks is clearly visible, and, at times, particularly troublesome. While the organizing-oriented framework leads trainers to focus on building horizontal relationships, or a politically engaged community that can act in its own interests, the litigation-oriented framework views the trainings as an opportunity to distribute information about formal legal rights and how to identify violations, with the recommended solution almost without fail being "call a lawyer."

The use of these terms does not mean that all lawyers follow a litigation-oriented framework, or that all organizers follow the organizing-oriented framework; there are many examples of transgression from the expected roles. However, because of the relatively narrow focus of legal training, it is likely difficult for lawyers to imagine other types of solutions. Alizabeth Newman captured this dilemma in her article *Bridging the Justice Gap,* reminding us that "it is tempting, if the only tool you have is a hammer, to treat everything as if it were a nail."[2]

At the core, these frameworks promote different roles for the participants. For example, the litigation-oriented framework conceives of the participant as a rights-bearing legal subject, who may suffer a legally cognizable injury, but is then dependent on the lawyer to get any sort of remedy or resolution. This implicitly reinforces the authority and legitimacy of the legal system, and obscures the relationship between formal legal structures and systems of domination such as capitalism, nationalism, white supremacy, patriarchy, and heteronormativity. In addition, deference to formal legal process reproduces the relationship of dependency between lawyers as members of the professional elite and marginalized populations. While formal legal discourse understands the client as an injured individual, the organizing-oriented framework understands participants as members of a subordinated group. The purpose of the training, as conceived by the organizer, is to empower participants to enact collective control over decisions that affect them. The litigation-oriented framework, on the other hand, implicitly encourages participants to abdicate decision-making capabilities, granting them to professional advocates. While an emphasis on "client-centered lawyering" is welcome, this approach remains individualized representation hemmed in by the limits of forma legal practice.

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2 Alizabeth Newman, *Bridging the Justice Gap: Building Community by Responding to Individual Need,* 17 CLINICAL L. REV. 615, 616 (2011).

After articulating and exploring the implications of this tension, Part IV focuses on innovations law and organizing, to learn how to overcome the oppositional logic. This paper proposes, as one possible methodology, that public interest lawyers approach law and organizing as a synthesis rather than a partnership. This means breaking the dichotomy between litigation and organizing by creating spaces for building a collective power through commonalities in legal issues faced by participants. Building a collective identity is a long-term process and cannot be done in one Know Your Rights training. Such trainings may retain some value, but are unlikely to be the space of a synthesis because they do not allow for a long-term relationship, which is necessary for transformative organizing work. The practical examples of this approach are few, but are crucially important guides for moving toward a synthesis of law and organizing, or Law *as* Organizing.

Part II

Public interest lawyering is a broad term, encompassing various approaches to legal work that share the common goal of addressing issues faced by poor or marginalized people in order to achieve a more just society.[3] A basic premise of public interest lawyering is that as distributed through a private market, the law does not serve the needs of the subordinated.[4] A second premise is that, without a political consensus to create greater protections or redistribute wealth, governmental regulation and service provision are woefully insufficient to fill the gap left by the market.[5] Public interest lawyering emerged with the recognition that social justice legal work must be developed in a third space, outside of both the private market and public offices.[6] Since its emergence, however, there has been significant disagreement about the best way to use the law to meet the needs of poor and marginalized people.

At the beginning of the 20th Century, public interest lawyer-

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[3] I am using a broader definition to encompass the many different approaches that have emerged under this title. Other definitions have included "efforts to provide legal representation to interests that historically have been unrepresented or underrepresented in the legal process." Nan Aron, Liberty and Justice for All: Public Interest Law in the 1980s and Beyond 3 (1989); Scott L. Cummings & Ingrid V. Eagly, *After Public Interest Law,* 100 Nw. U. L. Rev. 1251, 1252 (2006).

[4] Aron, *supra* note 3, at 3; Burton A. Weisbrod, Public Interest Law: An Economic and Institutional Analysis 1 (1978).

[5] Weisbrod, *supra* note 4, at 1.

[6] Despite operating outside the government, public interest lawyering generally has sought to push the government to regulate private activity in the interest of the public welfare.

ing consisted of a charitable model in which private lawyers performed pro bono work for indigent clients who otherwise would have no legal representation.[7] Continuing today, this model depends heavily on formal engagement with the law and focuses on the individual's legal problem in isolation from the social context. In the early 1900s, organizations like the NAACP, followed by the ACLU, developed precedent-setting litigation strategies to protect the interests of African Americans and political dissidents, respectively.[8] By the 1950s and 1960s, cases such as *Brown v. Board of Education* stood as a symbol to public interest lawyers, suggesting that carefully prepared litigation can transform society.[9] This much-celebrated form of legal work was institutionalized in 1967 by the creation of the Office of Economic Opportunity's Neighborhood Legal Services Program as part of the federal government's War on Poverty.[10] Impact litigation was further promoted by the spread of the non-profit corporate model, supported by foundation funding, and it came to be one of the most prominent forms of public interest lawyering.[11] In general, impact litigation (both the practice and the theory that accompanies it) prioritizes precedent-setting litigation over other social change strategies.[12] It is premised on the belief that changes in laws and policy can provide a remedy for deep-seated social injustices.

A series of victories in the Supreme Court and the "existence of structural opportunities and organizational resources, fed a sense of optimism about the power of law to change society."[13] From the 1950s through the 1970s, the Supreme Court was the site of significant legal transformations with broad implications for society. These included outlawing racial segregation in *Brown v. Board of Education*, guaranteeing a right to an attorney when defending against criminal charges in *Gideon v. Wainwright*, establishing the entitlement to a pre-termination hearing for recipients of public benefits in *Goldberg v. Kelly*, and recognizing women's right to

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7 Handler et al., *supra* note 3, at 43.

8 *Id.* at 44.

9 *Id.*; *see also* Cummings & Eagly, *supra* note 3 at 1252.

10 Weisbrod, *supra* note 4, at 45.

11 *See* James DeFilippis, *Community Control and Development* in The Community Development Reader, 33-35 (2012).

12 Cummings & Eagly, *supra* note 3, at 1252 ("In the classic legal aid model, law is used to achieve individual client goals through case-by-case representation. In the public interest law reform model, law is used to advance a lawyer-defined reform agenda using impact lawsuits to build legal precedent.").

13 *Id.* at 1268.

choose to terminate pregnancy in *Roe v. Wade*.[14]

However, these cases (and others in other areas of law) constituted the high water mark for legal protections for the poor, people of color, women, and workers. Since the late 1970s, the rights secured through such impact litigation have been narrowed. This was related to a number of social transformations, including the advent of neoliberalism,[15] deindustrialization and the decline of unions,[16] the emergence of a "color blind" regime of racial ordering,[17] the militarization of police,[18] and immigration enforcement,[19] and a general counter-mobilization by conservative sectors of society in response to the symbolism of progressive legal victories.[20] These tendencies reshaped United States culture, society, and the economy, closing the political opportunities for future progressive change through impact litigation.

Concurrently with these systemic and institutional transformations, public interest lawyering and the use of "impact litigation" came to be heavily critiqued by lawyers and academics inspired by postmodernism and Critical Legal Studies (CLS). Analysis coming from the CLS perspective sought to "demystify the power hierarchies embedded in liberal individual rights discourse by showing the indeterminacy of legal rules and the inherently political choices underlying the current legal order."[21] CLS charged that under the current legal system "judges and other individuals who wield public power could impose their own views of the moral or political good on others under the cover of law."[22] This included a

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14 These victories have been critiqued as primarily symbolic. GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 420-25 (2nd ed. 2008) ("A further danger of litigation as a strategy for significant social reform is that symbolic victories may be mistaken for substantive ones, covering a reality that is distasteful . . . . [For example,] the celebration of *Brown* may serve an ideological function of assuring Americans that they have lived up to their constitutional principles of equality without actually requiring them to do so.").

15 *See generally* DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM (2005).

16 *See generally* BARRY BLUESTONE & BENNETT HARRISON, THE DEINDUSTRIALIZATION OF AMERICA: PLANT CLOSINGS, COMMUNITY ABANDONMENT, AND THE DISMANTLING OF BASIC INDUSTRY (1982).

17 MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 15 (2012).

18 *See generally* RADLEY BALKO, RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES (1st ed. 2013).

19 *See generally* MIGUEL ANTONIO LEVARIO, MILITARIZING THE BORDER: WHEN MEXICANS BECAME THE ENEMY (2012).

20 ROSENBERG, *supra* note 14, at 425.

21 Scott Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 452 (2001).

22 ANDREW ALTMAN, CRITICAL LEGAL STUDIES: A LIBERAL CRITIQUE 13 (1993).

critique that "rights discourse" is "incoherent and manipulable, traditionally individualist, and willfully blind to the realities of substantive inequality."[23] Moreover, rights discourse is seen as a "trap" that "imposes constraints on those who use it . . . . [It is] difficult for it to function effectively as a tool of radical transformation."[24] Within CLS, analysis of these general characteristics exposes the law as "a major vehicle for the maintenance of existing social and power relations . . . . The law's perceived legitimacy confers a broader legitimacy on a social system . . . characterized by domination."[25]

These CLS critiques of liberal rights and the rule of law, combined with the conservative and neoliberal shift that narrowed the political opportunities for transformation, led many progressive lawyers to prioritize direct action and popular mobilization over impact litigation.[26] In addition, legal scholars began to challenge the narrative that placed pivotal Supreme Court cases of the 1950s through the 1970s at the center of social transformation.[27] Impact litigation was seen as a distraction from movement building that draws resources away from other social change efforts.[28]

Related to this, another critique of litigation, and traditional

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[23] *Id.* at 13

[24] DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY (1983), *reprinted in* LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY 9, 39-42 (2004).

[25] DAVID KAIRYS, THE POLITICS OF LAW 5-6 (3d ed. 1998), *reprinted in* ANDREW ALTMAN, CRITICAL LEGAL STUDIES: A LIBERAL CRITIQUE 15 (1990).

[26] Cummings & Eagly, *supra* note 21, at 446 ("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.").

[27] ROSENBERG, *supra* note 14, at 420-21 (providing a thorough analysis of efforts to produce social reform in civil rights, abortion, women's rights, the environment, reapportionment, criminal rights, and same-sex marriage, and concluding that impact litigation can be successful only if it overcomes three fundamental constraints: (1) the need for political support of the court's decisions; (2) the judiciary's structural lack of implementation powers; and (3) the need for established legal precedent supporting claim).

[28] *Id.* at 423 ("[N]ot only does litigation steer activists to an institution that is constrained from helping them, but also it siphons off crucial resources and talent and runs the risk of weakening political efforts . . . . Funding a litigation campaign means other strategic options are starved of funds."); *see also* Ann Southworth, *Lawyers and the 'Myth of Rights,' Civil Rights and Poverty Practice*, 8 B.U. PUB. INT. L.J. 469, 470-71 (1999); Anthony V. Alfieri, *The Antinomies of Poverty Law and A Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 664 (1988) ("[P]overty cannot—indeed should not—be remedied by [direct service and impact litigation]. Remedial litigation should not be mounted, even where altruistic relief is possible, without the activiza-

public interest lawyering in particular, focused on how social domination of poor and marginalized people is reproduced through the relationship between lawyer and client.[29] This critique argued that even well-meaning lawyers can be "active impediments to social change, disempowering clients by controlling litigation strategies and disregarding client stories."[30] In this analysis, lawyers develop a paternalistic relationship that denies the agency of their clients.[31] Gerald Lopez's influential book *Rebellious Lawyering* juxtaposed traditional public interest lawyering (which he calls "regnant lawyering") against an alternative form that understands the lawyer-client relationship as a partnership of equals and opens the space for other social actors to join in the collaboration.[32] Lopez's argument that "lawyers, clients, and other community members should work together in nonhierarchical relationships to challenge existing systems of power"[33] has had a major impact on how public interest lawyering is taught and practiced.

Coincidentally, however, as these critiques of public interest lawyering emerged and sought to push the profession to make deeper systemic changes, there was a backlash against the legal reforms made by activist lawyers through impact litigation. Federal funding for public interest lawyering was reduced and restricted to a very specific framework that sought to tie lawyers to practices that did not threaten the social order.[34] This diminished the capacity of lawyers to pursue strategies aimed at social transformation, but innovation and critique continued to grow regardless.

Both the scholarly and applied fields of public interest lawyer-

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tion of class consciousness among the poor, nor without the political organization and mobilization of the poor.").

29 Gerald Lopez, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603, 1609 (1989) ("In the regnant idea of lawyering for the subordinated . . . lawyers work for clients, almost always by formally representing them, through offices designed to facilitate if not compel a relationship where lawyers regularly (perhaps even ideally) dominate and where clients quite nearly vanish altogether, except when circumstances make their presence absolutely necessary."); Steve Bachman, *The Hollow Hope: Can Courts Bring About Social Change?* 19 N.Y.U. REV. L. & SOC. CHANGE 391, 391-92 (1992) (book review) ("When ordinary people perceive that they can change nothing or that they have to rely on 'experts' or 'magic' to solve their problems, they come to believe they are powerless . . . the deplorable conditions of the status quo are intensified, not ameliorated.").

30 Cummings & Eagly, *supra* note 21, at 458.

31 *Id.*

32 GERALD LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAWYERING 23-8 (1992).

33 *Id.*

34 *See* Ingrid V. Eagly, *Community Education: Creating A New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433, 438-9 (1998).

ing that emerged from these critiques have developed theories and methods of collaboration between lawyers and organizers. Emerging out of the CLS and rebellious lawyering critiques of traditional public interest lawyering,[35] "Law and Organizing" argues that legal strategies should be deprioritized, and subordinated to the strategies developed by community and social movement organizations.[36] Law and Organizing adopts the perspective that social change must come from below, and that, fundamentally, the lawyer's goal should be no different than that of the organizer: to empower subordinated people to transform society.[37] Within this process, lawyering is "viewed instrumentally—not as a means to achieve specific legal victories, but as a spur to collective action."[38] By subordinating legal tactics to a community-based decision making process, Law and Organizing also carries the potential to disrupt the hierarchical relationship between lawyer and client. This also necessitates a reformulation of a lawyer's interpersonal relationships, in which a lawyer must "join rather than lead . . . listen rather than speak . . . [and] assist people in empowering themselves rather than manipulating the levers of power for them."[39] This form of lawyering "involves not advocacy for individual interests, but advocacy with a group of people organized to reclaim what is rightfully theirs, their own power."[40]

There are many ways that lawyering and organizing converge. In *Power With*, Michael Grinthal maps out five different models of such convergences, seeking to provide a set of vocabulary and concepts for lawyers to reflect on their work, including the corporate model, MASH model, enabling model, organizing on the scaffold

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35 In the trajectory mapped out here, the term "Law and Organizing," and its prominence as a framework for lawyering, developed out of the CLS and rebellious lawyering critiques, but the conceptual framework predates the emergence of CLS. *See, e.g.*, Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1050 (1970) ("Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together. The lawyer who wants to serve poor people must put his skills to the task of helping poor people organize themselves. This is not the traditional use of a lawyer's skills; in many ways it violates some of the basic tenets of the profession. Nevertheless, a realistic analysis of the structure of poverty, and a fair assessment of the legal needs of the poor and the legal talent available to meet them, lead a lawyer to this role.").

36 CAUSE LAWYERS AND SOCIAL MOVEMENTS 2-3 (Austin Sarat & Stuart A. Scheingold eds., 2006).

37 Wexler, *supra* note 35, at 36.

38 Cummings & Eagly, *supra* note 3, at 1268.

39 William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 479 (1995).

40 *Id.* at 472.

of litigation, and lawyering *as* organizing.[41] As discussed in the Part IV of this paper, however, Grinthal promotes a collaborative relationship between lawyers and organizers, not a synthesis.

Because of a lawyer's position in relationship to the legal system, she may have a unique role in either reinforcing or demystifying legal authority. Demystification of this authority is a necessary precondition to community empowerment.[42] To assist in mobilizing social power and collective action, a lawyer must serve to disrupt the legitimacy of legal authority, and thereby create space for people to locate authority within their organization.[43] In this process, the lawyer must expose the ways in which the law upholds relationships of domination, offering an analytical framework that supports what the community members already know to be true.

Lawyering skills can support organizing efforts in a number of significant ways. For the purposes of this paper, it is sufficient to focus on the practice of community education[44] in general, and Know Your Rights trainings in particular, because this context highlights the tension between litigation-oriented and organizing-oriented frameworks. Community education is used in lawyering "to increase the legal knowledge of a specific community or about a particular issue to support individuals in developing their own problem-solving skills."[45] It is additionally seen as valuable for its potential as a non-traditional lawyering practice that can empower the participant beyond the legal sphere "by planting seeds for leadership development, community empowerment, and mobilization."[46] Ingrid Eagly states that in its full potential "community education reaches under-served populations, provides opportunities for clients to have their voices heard, responds to concerns that

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41 Mike Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 44-58 (2011).

42 Quigley, *supra* note 39, at 477 ("In contemporary society, the lawyer holds a position of power partly because the law has drawn away from regular people and become a system unto itself, unaccessible to a nonlawyer, with its own language, and its own liturgies of practices . . . the ignorance of the client enriches the lawyer's power position. Thus, the lawyer, even the well intentioned public interest lawyer, has a share of power that is only the result of others not having access to it.").

43 *Id.*

44 Eagly, *supra* note 34, at 480 ("Community education is a lawyering model grounded in theories of progressive practice that view client empowerment as one of the goals of social change . . . . [B]y creating opportunities for community leadership, encouraging poor people to resolve their own problems, and providing a space for lawyer/client collaboration, community education [has] helped to expand the boundaries of traditional Legal Services practice.").

45 *See* Newman, *supra* note 2, at 631.

46 *Id.* at 632.

cannot be adequately addressed by the legal system, encourages individuals to solve their own problems, and develops leadership skills in community members."[47] It should be noted that this is the ideal and that not all community education initiatives necessarily meet these goals.

Community organizers (and occasionally lawyers[48]) often reference popular education as a tool for mobilization and/or a philosophy of revolution,[49] in which marginalized people come together to collectively analyze their immediate and systemic situation and engage in context-specific problem solving strategies. In this process, the narratives that disguise systemic injustice behind a veil of "objectivity" can be disassembled and the educational space becomes a site of building new identities, relationships, and worldviews. When utilized as a law and organizing strategy, popular education cannot simply be a presentation of formal legal structures, but must be a space to question the law and to build confidence in challenging an unjust social order. It is within this theoretical framework that I place Know Your Rights trainings in order to examine how they promote legal knowledge and analyze their potential for both liberation and oppression.

Part III: Know Your Rights Trainings

With a general goal of empowerment, Know Your Rights trainers offer participants a set of tools for resolving difficult situations. They provide a narrative that bolsters the position of participants in interactions with authorities. The following section will draw on the sociological concept of "discourse" as an analytical tool for examining the effects of using a litigation-based versus an organizing-based framework in the trainings. Discourse refers to how every-day language shapes relationships of social power (such as racial, gendered, etc.). It produces distinct, stigmatized, and hierarchized categories of persons.[50] According to this theory, "the ways in which discourses constitute the minds and bodies of individuals is

47 Eagly, *supra* note 34, at 436.

48 *See* Newman, *supra* note 2, at 631.

49 *See generally* Peter McLaren, Che Guevara, Paulo Freire, and the Pedagogy of Revolution 34-6 (2000); Paulo Freire, Pedagogy of the Oppressed (2009); Sameer Ashar, *Public Interest Law and Resistance Movements*, 95 Calif. L. Rev. 1879, 1890 (2007).

50 *See* Michel Foucault, "Society Must Be Defended": Lectures at the College de France, 1975-76, (David Macey trans., Picador, 2003) (lectures three & eleven); Michel Foucault, History of Sexuality Volume I (Robert Hurley trans., Pantheon Books, 1978) (Part V).

always part of a wider network of power relations."[51] A Know Your Rights training will promote a narrative that relates to existing systems of power and legal authority. The framework used by trainers determines the degree to which the power relations will be reinforced or challenged.

Using the immigration context as an example, one of the most powerful discursive concepts is the term "illegal." The heightened importance of immigration law in the production of national identity has produced subordinated populations through legal codifications of immigration status.[52] The "illegal," at its root, is constituted by the civil infraction of either violating the terms of one's visa (such as overstaying, or working while on a tourist visa) or illegally crossing a national border. In addition to the technical definition, it is simultaneously inscribed with a moral judgment, framing migrants to be "increasingly perceived as 'criminal.'"[53] This, in turn, fosters public support for, or at least acceptance of, "the broad range of crackdown measures currently being implemented, including stripping these individuals of procedural and substantive rights."[54]

The implications embedded within this term suggest that the person is stripped of her "right to have rights."[55] This also suggests that the "illegal" is the enemy of the state, which, in turn, must work to detect, detain, and deport this population. Following the logic further, the legal system should not afford the "illegal" the various rights established by federal and state law.[56] To the extent this set of ideas is widely held, the "illegal" person is also vulnerable to subordination, abuse, and exploitation by other actors throughout society and the economy.

In response to this this, Know Your Rights trainings operate as a "counter-discourse". Counter-discourse promotes a way of thinking that disrupts the dominant discourse's legitimacy. A counter-

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51 CHRIS WEEDON, FEMINIST PRACTICE & POSTSTRUCTURALIST THEORY 105 (1996).

52 *See* Hoffman Plastic Compounds Inc. v. NLRB, 535 U.S. 137 (2002).

53 CATHERINE DAUVERGNE, MAKING PEOPLE ILLEGAL: WHAT GLOBALIZATION MEANS FOR MIGRATION AND LAW 16 (2008).

54 *Id.* at 16-17.

55 HANNAH ARENDT, THE ORIGINS OF TOTALITARIANISM 296-97 (1966). Arendt identifies a contradiction between the universal and inalienable Rights of Man and the right of the Nation-State to decide who is a legitimate member of its political community and who may be excluded. She argues that the "right to have rights" is dependent on state recognition of such a right. "We became aware of the existence of a right to have rights . . . and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights . . . ." *Id.*

56 *See* Hoffman, 535 U.S. at 156 (Breyer, J., dissenting).

discourse provides a person with the tools to "speak on [her] own behalf, to demand that [her] legitimacy or 'naturality' be acknowledged, often in the same vocabulary, using the same categories by which [she is] disqualified."[57] In the immigration context, Know Your Rights trainings offer counter discourses that seek to subvert the narrative that creates the "illegal" by asserting that the participants do have the right to have rights. In this way, discourse operates as both "an instrument and effect of power as well as a starting point for resistance."[58]

For lawyers conducting Know Your Rights trainings, with or without the help of organizers, two frameworks emerge. The litigation-oriented framework presents formal notions of rights as they are written and practiced within the legal system. In contrast, the organizing-oriented framework promotes a struggle for new claims and challenges the authority of formal legal structures to the extent they are interlaced with systems of oppression and subordination.[59]

In Know Your Rights trainings, a primary objective in the litigation-oriented framework is to "demystify laws and procedure. The hope is that with more understanding and knowledge [of the legal system], the immigrants develop confidence in their own abilities and feel less powerless."[60] This goal represents a formalistic approach to the trainings that covers rights such as "the right to remain silent, the right to be free from unreasonable searches and seizures, the right to consult with a lawyer, and the right to advocate for change."[61] This is a formal presentation of rights, which depoliticizes the legal structure and promotes faith in due process and rule of law. While this type of training asserts that undocumented immigrants do in fact have the right to have rights, it maintains deference to the legal system as the source of those rights and therefore narrows the remedy to those offered under the law. This

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57 Michel Foucault *in* WEEDON, *supra* at note 51, 109-10.

58 Bettina Lange, *Researching Discourse and Behavior as Elements of Law in Action*, in THEORY AND METHOD IN SOCIO-LEGAL RESEARCH 176, 177-78 (Reza Banakar et al. eds., 2005).

59 Wendy Brown, *Suffering the Paradoxes of Rights*, *in* LEFT LEGALISM / LEFT CRITIQUE 420, 431 (Wendy Brown, et al. eds., 2002) (analyzing the rights of discourse as presenting a seemingly irresolvable paradox between and within these two currents, and arguing that in a critical framework, emancipatory rights tend to reproduce the subordinated subject in need of those rights, while in the formal framework, the notion of universal rights "depoliticize the conditions they articulate").

60 Bill Ong Hing, *Legal Services Support Centers and Rebellious Advocacy: A Case Study of the Immigrant Legal Resource Center*, 28 WASH. U. J.L. & POL'Y 265, 283 (2008).

61 *Id.*

understanding suggests that the law operates independently from oppressive systems of power (heterosexism, white supremacy, and capitalism, for example); as a counter-discourse, it does not recognize the inherently political nature of the legal system,[62] or the imbalance that results from the treatment of unequals as though they were equal.[63] In teaching formal conceptions of rights, Know Your Rights trainings promote the mythology of the unbiased, autonomous power of the rule of law. This framework is unable to expose the systems of oppression that reinforce and are supported by legal structures without destabilizing its own foundation.

Contrasting with the litigation-oriented trainings, some law and organizing practitioners have designed alternative frameworks that recognize the political nature of law, displace its authority, facilitate broader rights claims, and foster collective mobilization. In *Suburban Sweatshops*, for example, Jennifer Gordon reflects on the trainings she helped coordinate with the Workplace Project, an immigrant worker's center in Long Island. Contrasting their "Worker's Course" with the litigation-oriented model of Know Your Rights training, she explains how rights were not presented as objective fact, but as a site of contention.[64] Organizers and lawyers with the Workplace Project used the concept of rights primarily to generate discussions about systems of oppression, to envision how things should be, and to brainstorm how to get there.

Drawing on a popular education model, the goal was "to sensitize workers to the commonality of their exploitation, to make them understand that theirs were not isolated instances of individualized abuse, but part of a larger structure with deep historical and political roots."[65] Representing the organizing-oriented framework in Know Your Rights trainings, this counter discourse simultaneously decenters legal authority and challenges oppressive discourses. Also, this exemplifies the seemingly emancipatory po-

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62 WENDY BROWN, STATES OF INJURY: POWER AND FREEDOM IN LATE MODERNITY 97 (1995) ("[The abstract concept of rights is] an ahistorical, acultural, [and] acontextual idiom: they claim distance from specific political contexts and historical vicissitudes, and they necessarily participate in a discourse of enduring universality rather than provisionality or partiality.").

63 Brown, *supra* note 59, at 423 (arguing that these forms of rights sustain the "invisibility of [their] subordination," as well as enhance it); *see also* Duncan Kennedy, *The Critique of Rights in Critical Legal Studies*, in LEFT LEGALISM / LEFT CRITIQUE 189 (2002).

64 Cummings & Eagly, *supra* note 3, at 1257 ("In ordinary 'know-your-rights' classes, lawyers stand up and lecture to workers about their entitlement to a minimum wage, a safe workplace, and freedom from discrimination. The Workers Course, in contrast, was interactive and confrontational.").

65 *Id.* at 1258.

tential of context-specific rights that Wendy Brown identifies as paradoxical. Brown warns that by mobilizing context-specific rights discourse, the injured subject may reinforce their subordinated subjectivity, locking themselves into a particular category.[66] An example of this may be seen in analyzing how rights established specifically for "immigrants" work to reinforce the outsider designation of "immigrant," the national identity of the "citizen," and borders of the nation-state.

In *Making People Illegal*, Catherine Dauvergne seeks to explain how globalization contributes to the construction of "illegal". While "in the sphere of international law, it had always been true that sovereignty is nowhere more absolute than in matters of 'emigration, naturalization, nationality, and expulsion,'"[67] Dauvergne argues that the threat of losing national sovereignty due to neoliberal globalization has made migration law an even more important site of "national assertions—of power, of identity, of 'nationness.'"[68] As an assertion of sovereignty, the basic power of migration law is to determine who can enter and who must be turned away, thus reinforcing an insider population "and also spell[ing] out degrees of belonging and entitlement through the hierarchical systems they establish."[69] Dauvergne shows that migration law does not remain at the border; it is also directed internally to enforce these distinctions within United States society.[70] Thus, the heightened importance of migration law in the production of national identity has produced subordinated populations through legal codifications of immigration status.[71]

The moral judgment invoked by the term "illegal" "reinforces migration law's exclusionary capability."[72] As "illegals," racialized migrants are treated as "permanent outsiders, as less than fully human, as people with fewer rights because of first and foremost who they [are and] where they [are] from, a characteristic the migrants [have] no control over."[73] The production of an illegal population "accomplishes this exclusion when the border itself does

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66 Brown, *supra* note 59, at 423.

67 Arendt, *supra* note 55, at 278.

68 Dauvergne, *supra* note 53, at 17.

69 *Id.*

70 *Id.* at 17; Michael Wishnie, *Prohibiting the Employment of Unauthorized Immigrants: The Experiment Fails,* 2007 U. Chi. Legal F. 193 (2007).

71 *See* Hoffman Plastic Compounds Inc. v. NLRB, 535 U.S. 137, 156(2002) (Breyer, J., dissenting) (arguing that the majority's decision "level(s) helpless the very persons who most need protection from exploitative employer practices").

72 Dauvergne, *supra* note 53, at 17.

73 Joseph Nevins, Dying to Live 177 (2008).

not . . . . [The population] is excluded from within."[74] In a study of the United States-Mexico border, Wendy Brown argues that the barrier "is built from the fabric of a suspended rule of law and fiscal nonaccountability," that it functions within a "state of emergency."[75] Drawing on Dauvergne, Brown's analysis can be extended from the border to the manifestation of migration law throughout society in the construction of the "illegal." In the narratives that create the "illegal" classification, legal status and legal rights are systematically suspended. Undocumented migrants are then seen first as criminal, and second as outsiders. An obvious consequence of this is the constant threat of being detected by authorities, detained, and deported. Additionally, fear of the state acts as an obstacle to the assertion of rights or legal defense of interests when in conflict with non-state actors. This creates an environment that facilitates slavery, non-payment of wages, sexual harassment or other forms of workplace abuse, domestic violence, robberies and other street-crime, and contracting of illnesses.[76] These are forms of structural violence that are inflicted by society against the perceived threat of the "illegal."

At their core, Know Your Rights trainings are an attempt to disrupt the power-effects of illegality by asserting a legal claim to the right to have rights. Trainers often talk about the trainings in ways that go beyond a legal framework of "rights knowledge" and suggest the importance of knowing how to negotiate cultural power.[77] I use the phrase "cultural power" to signal the way that culturally constructed ideas of family, language, work, and race uphold relationships of power.[78] Cultural power further suggests that "common sense" ideas reproduce informal systems of domination, echoing a Gramscian understanding of the political nature of cultural production.[79] Cultural power strengthens the idea of the "ille-

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74 DAUVERGNE, *supra* note 53, at 17.

75 WENDY BROWN, WALLED STATES, WANING SOVEREIGNTY 38 (2010).

76 JENNIFER GORDON, SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRATION RIGHTS 46 (2007); *see also* Mathew Coleman, *The "Local" Migration State: The Site-Specific Devolution of Immigration Enforcement in the U.S. South*, 34 L. & POL'Y 159 (Apr. 2012); Ingrid V. Eagly, *Prosecuting Immigration*, 108 NW. U. L. REV. 1281 (2010); *see generally* DAVID BACON, ILLEGAL PEOPLE: HOW GLOBALIZATION CREATES MIGRATION AND CRIMINALIZES IMMIGRANTS (2008); Virginia P. Coto, *Lucha, The Struggle for Life: Legal Services for Battered Immigrant Women*, U. MIAMI L. REV. 749 (1999).

77 Interviews conducted by author.

78 Ann Swidler, *Cultural Power and Social Movements,* in SOCIAL MOVEMENTS AND CULTURE 30 (2013).

79 Antonio Gramsci, *Selections from Prison Notebooks*, in ESSENTIAL CLASSICS IN POLITICS: ANTONI GRAMSCI 142-46 (Quentin Hoare & Geoffrey Nowell Smith eds. & trans., 1999) (arguing that intellectuals in the fields of sciences, art and philosophy generate

gal" as a threat to society. Know Your Rights trainings do not merely develop legal strategies to defend oneself, but also generate *cultural* strategies that disrupt the concept of the "illegal."

Susan Coutin identified a similar form of strategic cultural production in her research on legalization strategies of Central Americans in Los Angeles during the mid-1990s. Coutin showed that in response to increasingly restrictive immigration policies (such as the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and Proposition 187 in California), Central Americans and their allies fought back with cultural strategies that disrupted the idea of their foreign-ness. They sought to show: "that as a group . . . they had adapted to the United States, formed strong community ties, and given birth to U.S. citizen children who needed to go to U.S. schools . . . . [In short, they] had to demonstrate that they had *acculturated*"[80] and were, in fact, a legitimate part of U.S. society. In making this claim, undocumented immigrants must "meet definitions of 'Americanness' not unlike those promoted by English-only advocates."[81] They claimed that Central Americans have the right to stay because of the degree to which they have become integrated into the dominant U.S. culture.

The construction of this identity emphasizes certain qualities that fit into the expectations and demands of the dominant cultural power. It is a strategy that also necessitates the suppression of qualities deemed "foreign," in order to put forward a normalized image of the immigrant as a member of United States society. Coutin argues that this is both a cultural and a legal strategy, citing the importance of law and culture in identity production. In this strategy, "claiming rights requires assuming an identity that the legal system can recognize, a process that can be simultaneously dehumanizing and empowering."[82] She explains further that "as they challenge the established order, subordinate groups appropriate and redefine what might otherwise be derogatory or restrictive terms."[83] Through emphasizing cultural power, Coutin shows how immigrant rights claims engage in strategic negotiations of identity

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ideas amongst civil society that allow for a seemingly "'spontaneous' consent" to the social, economic and political order, reinforcing the social hegemony of capitalism, and that social hegemony does more to ensure capitalism's existence than the political force of the state).

80 Susan Coutin, *Reconceptualizing Research: Ethnographic Fieldwork and Immigration Politics in Southern California*, in PRACTICING ETHNOGRAPHY IN LAW 108, 111 (June Starr and Mark Goodale eds., 2002) (emphasis added).

81 *Id.*

82 *Id.* at 112.

83 *Id.*

within discourses of subordination, producing both oppressive and liberatory senses of self.

The tensions and contradictions made visible through analysis of Know Your Rights trainings, theoretical contributions offered by critical scholars, and empirical research on liberatory social movements are significantly more profound than the dichotomy I have drawn between litigation-oriented and organizing-oriented frameworks. Challenging questions emerge about the efficacy of social change agents and the impact of compromises made to achieve substantive goals. For the purposes of this paper, however, it is enough to understand the potential and serious pitfalls present when drawing on legal practice to engage clients in a relationship of transformative change of self and system. The next section moves from this foundation of critique toward an exploration of recent trends in law and organizing. It identifies an emerging model that synthesizes law and organizing, creating the space for lawyers to re-imagine and reconfigure their relationship to the individuals and communities they serve.

Part IV: Attorney as Organizer

Lawyers seeking to grapple with the tensions articulated thus far should experiment with moving past the partnership model, and toward a synthesis of the two: "Law *as* Organizing." By proposing deeper development of Law as Organizing, I draw on the contributions of recent authors who have developed models of Law as Organizing that build relationships of support, develop leadership, and deepen critical consciousness of clients.[84] I also challenge some recent contributions that argue that a clear division of roles is strategically and ethically preferable to a model that enmeshes lawyers in organizing-oriented relationships with clients.[85] By bringing these authors into dialogue with each other, I hope to overcome any conclusions that lawyers are only fit to play certain professionalized roles in social change work, highlight the dynamic innovations that are occurring, and stoke our collective imagination to produce innovations in lawyering practice.

There are significant arguments against lawyers' direct involvement with organizing activities. These critiques focus on problems

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84 Newman, *supra* note 2, at 625-26; Karen Gargamelli & Jay Kim, *Common Law's Lawyering Model: Transforming Individual Crises into Opportunities for Community Organizing*, 16 CUNY L. Rev. 201, 205-06 (2012).

85 Tammy Kim, *Lawyers as Resource Allies in Workers' Struggles for Social Change*, 13 N.Y. City L. Rev. 213 (2011); Grinthal, *supra* note 41, at 61;

such as "role confusion," the presence of distractions that act as obstacles to competent lawyering, and the concentration of leadership authority in the attorney-organizer.

Faced with the tensions between law and organizing, Tammy Kim, an attorney at Urban Justice Center, has argued for a greater degree of separation between the two roles. She characterizes her work as "resource ally" lawyering and argues that the role of community-minded lawyers should be to "support community organizing through legal representation of members of external grassroots organizations."[86] Kim highlights dysfunctional aspects of past law and organizing projects and argues that lawyers should "avoid role confusion" by distancing themselves from day-to-day organizing.[87] She recommends that lawyers should be "distinct but accessible entities . . . able to prioritize our most basic and fundamental duty—to be excellent in our craft."[88] This model retrenches the lawyer's work in the technical role of "resolv[ing] discrete legal problems."[89]

There appears to be very little distinguishing the lawyer-client relationship in resource-ally lawyering from more traditional legal services models of lawyering. Although the source of the client is based on strategic support of social movement organizations, and although the attorneys may take into consideration the ally organization's goals in representation of the client, the model's design offers little to avoid reproducing the relationship of domination that may emerge within a traditional attorney-client relationship. This power relationship is not likely to be disrupted by merely "wearing street clothes, avoiding legalese, and speaking in . . . clients' languages."[90] If deconstruction of hierarchical relationship between attorney and client were to occur within this model, it would be due to the social skills and intention of the individual attorney, not due to any programmatic design offered by the "resource ally" model.

In *Power With: Practice Models of Social Justice Lawyering*, Michael Grinthal maps out five distinct models of collaborations between lawyers and organizing initiatives. Although Grinthal envisions a myriad of manifestations of partnerships between organizers and lawyers, he shares Kim's belief that the "lawyer as organizer" model

86 Kim, *supra* note 85, at 220.
87 *Id.*
88 *Id.*
89 *Id.* at 221.
90 *Id.* at 231.

is not desirable, citing the danger that the lawyer's involvement in organizing could actually increase dependency through the new role as an organizer. Grinthal characterizes this approach as an unstable and, ultimately, undesirable methodology.[91] When it is used, he recommends that the organization "should work toward differentiating the roles of lawyer and organizer as soon as possible."[92]

His cursory review of this approach to lawyering, apparently based only upon the histories of two New York City-area worker centers, is unsatisfying. Grinthal presents the idea that a paradox exists within the Law as Organizing model: while Law as Organizing may at first appear to be "the most radical enactment of the core values of organizing, in practice it often aggrandizes and foregrounds the lawyer."[93] However, this threat is not inherently more dangerous in Law as Organizing than it is in traditional organizing. Any organizer runs the risk of dominating the community empowerment process and stifling leadership development. It is the explicit goal of an organizer, however, to develop leaders that can go on to organize others independently of the original organizer. Despite any shortcomings in practice, the organizing framework pushes the lawyer/organizer to seek opportunities to develop new leaders in ways that the litigation framework never could.

While the articles by Kim and Grinthal propose that lawyers retreat (to varying degrees) from the milieu of organizing, other practitioners have charted an alternative path for addressing difficulties of law and organizing. Instead of retrenchment in traditional lawyering roles, two recent articles describe innovative Law as Organizing projects: i) *Bridging the Justice Gap: Building Community by Responding to Individual Need*, by Alizebeth Newman;[94] and ii) *Common Law's Lawyering Model: Transforming Individual Crisis into Opportunities for Community Organizing*, by Jay Kim and Karen Gargamelli.[95] These two articles provide concrete and successful examples of Law as Organizing, emphasizing the need to retrain ourselves to practice law in a new way.

A synthesis of law and organizing may take on various manifestations. At its core, Law as Organizing builds community power by addressing individual legal problems within the context of a transformative collective process. Newman, a clinical instructor at CUNY

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91 Grinthal, *supra* note 41, at 58-9.

92 *Id.* at 59.

93 *Id.*

94 Newman, *supra* note 2, at 630-6.

95 Gargamelli & Kim, *supra* note 84, at 199.

School of Law, has developed "Collaborative Individual Lawyering" (CIL) as a form of Law as Organizing.[96] CIL is a model that addresses individual legal problems through a group process designed to form a community of support, develop leaders, foster critical consciousness, and bolster a community organization's membership base.[97] Newman proposes this model as a way to "bridge the gap" between individualized legal services and lawyering to support already mobilized organizations.[98] Newman identifies an "opportunity to have the overwhelming demand for free legal services become a path for our clientele toward joining the social justice efforts already underway in their communities."[99] The legal work meets the needs of individual clients, but also acts "as a bridge between the individual and the mobilized group."[100] Newman emphasizes that CIL, "must be grounded in a long-term vision for mobilization and the project design must be non-hierarchical, participatory, and community-driven."[101]

In this model the attorney "partners with a social justice organization to increase its membership and build leadership"[102] by utilizing popular education methodology in a community-oriented legal clinic. As discussed earlier in this paper, popular education "is the process of nonhierarchical learning through dialogue in which people come to a critical understanding of their own conditions of power and oppression, which then forms the basis for collective action."[103] For Newman, it offers a solution to the obstacles of role confusion, and the oppressive power relations identified by Kim and Grinthal. CIL calls for the lawyer to act as a "facilitator" who "sets the stage for leadership to emerge but does not insert herself in a position of power."[104] The clinic runs a course in which participants "not only learn the law and obtain assistance with their immediate legal cases" but also examine "a problem's historical, economic, social, and political roots, thereby encouraging the natural human tendency to come together with others toward social change."[105] This process "requires the lawyer to relinquish the distance embedded in the traditional professional role," and provokes

96 Newman, *supra* note 2, at 636.
97 *Id.*
98 *Id.* at 637.
99 *Id.*
100 *Id.* at 636.
101 *Id.* at 637.
102 Newman, *supra* note 2, at 636.
103 *Id.* at 649.
104 *Id.* at 638.
105 *Id.* at 637.

"disorienting moments" in the lawyers practice that "destabilize predominant norms and dichotomies of professionalism . . . [encouraging] students to craft their own legal identities in pursuit of justice."[106] In this way, Newman seems to suggest that some degree of role confusion is, in fact, necessary to catalyze the deconstruction of the traditional relationship of domination between lawyer and client.

The substantive focus of the clinic is to assist women in preparing applications under the Violence Against Women Act to secure visas as survivors of domestic violence.[107] Through the group process, each participant gained "a deep understanding of the abusive dynamic in her own marriage, the tactics used by her abuser, and the patterns and cultural norms of her community."[108] In addition to facilitating individual empowerment, the collaborative process facilitates group building, shared problem-solving, and collective action in support of each other. In the long-term, the clinic supported the ally organization by developing its volunteer base and leadership capacity.

Through Common Law, Karen Gargamelli and Jay Kim have developed a similar approach to lawyering, but in a different substantive area: foreclosure defense. Although Gargamelli and Kim do not give their model a particular label, nor do they locate it within the literature on law and organizing, their approach shares core elements with Newman's CIL model. Common Law runs foreclosure defense clinics for *pro se* homeowners.[109] Participants receive assistance from the attorneys in the form of consultations, drafting motions, preparing for court appearances, and referrals.[110] However, in addition to this formal legal work normally associated with *pro se* assistance, the clinics are carefully crafted to allow homeowners from many different backgrounds to build community and gain a deeper understanding of how their lives relate to the foreclosure crisis.[111] The participants also learn from and help each other prepare their own defenses. Through this process, Common Law deviates from a traditional legal services model by utilizing a participatory group setting for legal education that "emphasiz[es] and valu[es] the homeowners' knowledge and experience," and "expos[es] the widespread nature of seemingly

106 *Id.* at 649.
107 *Id.* at 639.
108 Newman, *supra* note 2, at 654.
109 Gargamelli & Kim, *supra* note 84, at 208.
110 *Id.* at 213-14.
111 *Id.* at 209-210.

individual problems."[112] As with Newman's U-Visa clinic, Common Law's weekly foreclosure clinic is simultaneously a legal clinic and a space of community organization. They support clinic participants in identifying commonalities, carefully develop leadership among the homeowners, and prepare the homeowners for collective mobilization and extra-legal action against banks and lenders.[113]

Through this process, Common Law's organizing has supported the clinic participants in forming a homeowner organization called Foreclosure Resisters.[114] This newly formed organization is still closely tied to Common Law. The weekly foreclosure clinic functions as a source of new members and leaders. Kim and Gargamelli provide ongoing facilitation, strategic and tactical advice, and access to networks of resources such as foundations, and ally organizations. Though the Foreclosure Resisters continue to rely on the support of Common Law, as homeowners they now have the infrastructure to shape their power, and develop a reciprocal relationship of solidarity and collective action with other homeowners. This organization is the fruit of a law and organizing synthesis, and sets an important precedent for other practitioners to follow.

Conclusion

This comment does not advocate for a cessation of more established forms of public interest lawyering. It aims instead to highlight and contextualize innovations in law and organizing. I believe that public interest lawyers should develop a new skillset, and be able to draw on an organizing-oriented framework. Without the capacity to choose between tools and without an organizational structure that allows space for alternative approaches, a lawyer will inevitably default to a formal representation of rights and the law, leaving intact an associated model of lawyering that can reproduce, even unintentionally, a paternalistic relationship of dependency.

The projects discussed in this comment chart a path for a sus-

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112 *Id.*

113 Catherine Curan, *Mortgage crisis pickets hit Midtown*, N.Y. Post (Apr. 6, 2014, 4:54 AM), *available at* http://nypost.com/2014/04/06/mortgage-crisis-pickets-hit-midtown/; Saabira Chaudhuri, Mortgage Complaints Overrun Wells Fargo Shareholder Meeting, Wall St. J. (Apr. 29, 2014, 12:28 PM), *available at* http://online.wsj.com/news/articles/SB10001424052702304893404579531643398601288?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702304893404579531643398601288.html.

114 Foreclosure Resisters, http://foreclosureresisters.org/ (last visited April 26, 2015), *archived at* http://permacc/LJC2-9TKN.

tainable Law as Organizing model, which may be exported to other practice areas. The emphasis on addressing discrete legal issues, and on carefully facilitating a process of community building and collective action, are two key elements of this model. The first element is, in some ways, a limitation to social mobilization through Law as Organizing. It is not clear whether this model could extend to areas in which some form of legal rights do not already exist. In addition, there are likely some claims that require more technical legal skills than would be amenable to a collective process.

While this model necessarily entails a longer-term relationship to the clients than the Know Your Rights trainings, an unresolved issue is how to extend the relationship beyond the duration of the legal problem. Once the participants obtain a U-Visa or successfully fight off foreclosure, what keeps them engaged in the community? Structurally, these models do not offer a clear path to continued membership or participation. It seems to ultimately depend on the partner organization's capacity to absorb new members who have passed through the leadership development process. Although the question is not adequately addressed by the authors, this does not undermine the important contributions discussed above. Newman, Kim and Gargamelli have shared important innovations that lead toward re-imagining what it is to be a public interest lawyer.