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Little Engines that could: Community Clients, their Lawyers, and Training in the Arts of Democracy

Susan Bennett

American University Washington College of Law, sbennet@wcl.american.edu

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LITTLE ENGINES THAT COULD: COMMUNITY CLIENTS, THEIR LAWYERS, AND TRAINING IN THE ARTS OF DEMOCRACY*

SUSAN D. BENNETT**

INTRODUCTION

We assume a lot about the virtues of governance "from the bottom up." We trust in it as an antidote: to oppression from the other direction; to the kind of "top-down" planning that we blame for the tragedies of urban renewal; and to the hubris of any "helping professionals" who think they have good ideas about the way in which communities ought to be helped.[1] In short, we place a great deal of faith in the authenticity of the neighborhood-based organization as an engine of democracy. Less emphatically, we also (sometimes) assume that programs run by neighborhood-based organizations carry with them guarantees of efficiency and efficacy. It is an oft-repeated, if unproven, maxim that services delivered "low to the ground" may reach their intended beneficiaries with less slippage than if administered from a great height, and, benefiting from incorporation of local knowledge into design choice, may address needs more appropriately.[2]

As Robert Halpern has noted in his chronicle of over a century of neighborhood-based initiatives, when we persist in asking organizations based in poor neighborhoods to carry the weight for the social and economic renewal of their communities, we presume a great deal:

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1. *See Wallis, supra* note *, at 34 (describing the "rational community planning paradigm" of the 1960s and 1970s, which conceptualized urban problems as occasions for experimentation by outside experts).

2. For brief summaries of the shift in preference among all actors in urban development from federally generated and administered programs to locally based initiatives, see WILLIAM PETERMAN, NEIGHBORHOOD PLANNING AND COMMUNITY-BASED DEVELOPMENT: THE POTENTIAL AND LIMITS OF GRASSROOTS ACTION 2-4 (2000); Ross Gittell & Margaret Wilder, *Community Development Corporations: Critical Factors That Influence Success*, 21 J. URB. AFFAIRS 341, 341-42 (1999).

[T]o ask those with the fewest capital, institutional, and human resources to draw on those resources to better their lives; to ask those whose trust has been betrayed over and over . . . to join a process requiring significant trust; and to ask the excluded to be responsible for finding a way to become included.[3]

My interest lies in examining who invokes the mantra of bottoms-up control of development processes, and why; who puts their money where their rhetoric is, and to what end; how one measures success of something so evanescent as education in "the arts of democracy"; and under what rarefied conditions success has occurred. I approach this discussion from the perspective of a clinical law professor who, with students, has represented tiny neighborhood-based, mostly nonprofit organizations, in small and big settings, for a few years.[4] What I have seen confirms for me that the invocation of community control, of and by poor people, can be naive but genuine; sometimes it is cynical. The instances of representation that trouble me the most have been those in which my presence as a lawyer for a neighborhood-based group has been paraded as proof of access to a process of participation, when, in fact, that access has been foreclosed from the beginning. Examples abound of processes which seem to invite participation by community residents or community groups, but which either deliberately or mindlessly eliminate any real opportunity for them to affect any outcomes.[5]

There are benefits, but also dangers, in placing faith in neighborhood-based organizations for the regeneration not merely of services, but of

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3. ROBERT HALPERN, REBUILDING THE INNER CITY: A HISTORY OF NEIGHBORHOOD INITIATIVES TO ADDRESS POVERTY IN THE UNITED STATES 12 (1995).

4. Obviously others concerned with community development practice have also examined how, and when, democracy supports development. This discussion benefits from and continues those reflections; the persistence of the topic suggests that this issue never goes away. *See* Lucie White, *"Democracy" in Development Practice: Essays on a Fugitive Theme*, 64 TENN. L. REV. 1073, 1078 (1997).

5. For warnings, spanning thirty years, from organizers and planners, of the difference between appearance and actuality in the solicitation of citizen participation, see Sherry R. Arnstein, *A Ladder of Citizen Participation*, 35 J. AM. INST. PLANNERS 216, 216-17 (1969) (describing the "empty ritual of participation" implemented through the Community Action Programs of the 1960s); Kem Lowry et al., *Participating the Public: Group Process, Politics, and Planning*, 16 J. PLANNING EDUC. & RES. 177, 178 (1997) (concern about the susceptibility of "consultative processes" to manipulation). For an example of half-hearted eliciting of community participation at what Arnstein might peg at the "consultation" level, Arnstein, *supra*, at 219, see U.S. DEP'T OF HOUS. & URBAN DEV., GENERAL GUIDANCE ON RESIDENT AND COMMUNITY INVOLVEMENT (advising public housing authorities that, in the implementation of HOPE VI rehabilitation projects, the input of residents is integral to planning but should not control it), http://www.housingresearch.org/hrf/hrf_RefLib.nsf (last visited Feb. 14, 2002).

broad, democratic participation. The dangers lie for the organizations but also for the lawyers who represent them. Several authors have urged lawyers dedicated to social change to re-define themselves as practicing within the context of, if not for, "community."[6] It is not my goal to retread all that ground. Rather, I hope to hone in more narrowly on what the activity of the "community lawyer" would look like if she used some insights from other disciplines to re-examine some assumptions about what she seeks, and why, when she attempts to make her group client function as a democratically-run, democracy-generating organization.

For this discussion, I will continue to use the term "neighborhood-based organization" (NBO) as my unit of description. Explaining the choice fully would require a separate article. We could look at interests, or "lifestyle choices," or religion, or single galvanizing issues as defining organizations that work on behalf of "community."[7] But when we talk about community groups, whether sentimentally or historically or practically, we are talking, first, about groups rooted in neighborhoods bounded by the shared experience of place.[8] When they fund organizations

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6. *See, e.g.*, John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927, 1936-37 (1999) (asserting that "[l]eft-activist, non-regnant cause lawyering must first be community-based," or physically and emotionally grounded in poor communities); Robin S. Golden, *Toward a Model of Community Representation for Legal Assistance Lawyering: Examining the Role of Legal Assistance Agencies in Drug-Related Evictions from Public Housing*, 17 YALE L. & POL'Y REV. 527, 555 (1998) (advocating for legal services representation based on community, in priority over individual, interests). Here I would distinguish "community" from "collaborative" lawyering, with the former referring to a philosophy of practice grounded in the physical and cultural context of groups acting in a particular place, and the latter to a method of representation of individuals or groups which can encompass community and other kinds of lawyering—though some use these and other terms interchangeably. *See* Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 147 n.1 (2000) (mixing "community" and "rebellious" lawyering). For an exhaustive assessment of the scholarship propounding and criticizing "collaborative lawyering," see Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 433 (2000).

7. For an evocative essay describing the evolution of "community" as an intellectual, or even as sentimental, construct, as much as an ascertainable geographical one, see Robert J. Sampson, *What "Community" Supplies, in* URBAN PROBLEMS AND COMMUNITY DEVELOPMENT 241, 244-49 (Ronald F. Ferguson & William T. Dickens eds., 1999) [hereinafter URBAN PROBLEMS]. For a summary of some of the factors which lawyers may consider in attempting to define "community," see Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 112 (2000); Lucie E. White, *Facing South: Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 813, 825-26 (1998) (suggesting bases of common experience through which to evoke commonality of interest among diverse members of a neighborhood).

8. Raymond H. Brescia et al., *Who's in Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831, 848-49 (1998) (noting geographical and psychological components of "sense of community"); Dolores Hayden,

in community development efforts, federal programs use geographic boundaries as a marker—whether for representativeness or effectiveness is hard to tell.[9] As I will describe, several foundations are repeating historic practices of defining "community," "community development," and "community action" at the level of local geography, and are delineating the neighborhood as their basis of operations for new experiments in social change.[10] I use "neighborhood-based organization" in preference to its subset "community development corporation" (CDC).[11] CDC is too narrow—not all neighborhood associations are corporate entities, or need to be, and the corporate form allows the lawyer some conceptual and physical laziness in group representation that I will discuss later.

The NBO that is the focus of my concern is a group that, with or without corporate status, through its mission seeks to serve interests that may match and also transcend, those personally important to its members. For instance, while a tenants' association may have the immediate, self-serving goal of acquiring and rehabilitating its own housing, it may adopt a long-range, community-serving goal of keeping housing affordable through a limited equity co-operative, a land trust, or other device.[12] These groups are typically nonprofit organizations, and they operate in communities where people are poor and resources are lacking. Their staff, directors, and board members may or may not be poor themselves. The concern of this Article is whether an organization must be "neighborhood-constituted" in order to be "neighborhood-based," and whether being "neighborhood-constituted" confirms being "neighborhood-representative." Similarly, being based in a neighborhood is no guarantee of being "other-serving."[13]

The Power of Place: Claiming Urban Landscapes as People's History, 20 J. URB. HIST. 466, 466 (1994). *But see* PETERMAN, *supra* note 2, at 17 (criticizing the "urban village" model beloved of planners and others as rooted in a late nineteenth and early twentieth century paradigm of planning for exclusive suburban enclaves).

9. Congress and federal agencies have relied on geographically-based formulations in defining those "community development corporations" eligible for economic development funding. *See, e.g.*, 42 U.S.C. § 9802 (1994) (defining "community development corporation" as a "nonprofit organization responsible to residents of the area it serves").

10. *See* discussion *infra* Part II.B on comprehensive community initiatives ("CCIs").

11. I will use the term "CDC" when I refer to sources which focus specifically on CDCs as their unit of study.

12. *See* Deborah Kenn, *Paradise Unfound: The American Dream of Housing Justice for All*, 5 B.U. PUB. INT. L.J. 69, 77-83 (1995) (describing the use of community land trusts and limited equity cooperatives to restrict the market options of current owners/tenants in favor of the long-term affordability of the units to others); John Emmeus Davis, *Beyond the Market and the State: The Diverse Domain of Social Housing, in* THE AFFORDABLE CITY: TOWARD A THIRD SECTOR HOUSING POLICY 75-106 (John Emmeus Davis ed., 1994).

13. For instance, "residential community associations" have been described as microcosms of neighborhood-based governance, that both assert the parochial interests of their often wealthy members to the outside world, and at the same time restrict the autonomy of those members. Nancy L. Rosenblum, *Democratic Education at Home:*

If we are going to expect of neighborhood-based organizations not only that they deliver product, but that they do so democratically—or even more ambitiously, that they elicit not merely opinion but participation—then we are expecting an activation of processes that will tax their resources to the utmost. If we impose these expectations, then we must be prepared to meet the significant costs that they will entail. We should not set these organizations up to fail. Nor should we set them up as a sham, to be complicit in pointless exercises of "false populism" or "ritualized democracy."[14] Anybody who has spent uncomfortable hours (mentally and orthopedically) sitting at the back of the hall at a "community meeting" and watched a developer, government spokesperson, or engineer talk to neighborhood residents like they were two-year-olds about how this housing project, or that highway, or this waste treatment plant will be the best thing for them, knows that the last thing we want to do as lawyers is to enable meetings like that to happen. The question for this Article is what affirmatively we can or should do—to or for which clients, in pursuit of which goals, and when—to make sure that any democratic "community-building" in which our clients engage, or are engaged, is not ritualized, but real.

I. ON REPRESENTING THE MOST REPRESENTATIVE REPRESENTATION

A. *Picking and Choosing: Lawyers and the Selection of Community Clients*

Any "community lawyer" faces a critical threshold decision: will she pick the representative client or will she labor to make her client more representative? (Do you search for the one you love, or do you love the one you're with?) The choice is complicated by the ethical conventions controlling representation of a group. Technically, when you represent an entity, you are representing a representation: the aspirations of a created community, expressed through a mission statement necessarily made flesh through its elected or appointed articulators. The *Model Rules of Professional Conduct* allow you to rely on the group's self-representation that it is truly representative without delving much further.[15] In the absence

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Residential Community Associations and 'Our Localism', GOOD SOC'Y, 1997, at 12. "Business leagues," which in their guise as merchants' associations often figure into plans for local community economic development and are tax exempt, serve the narrow interests of particular groups (though not of individuals) and thus are set apart from public charities. *See* 26 I.R.C. § 501(c)(6) (2000).

14. Xavier de Souza Briggs, *Doing Democracy Up-Close: Culture, Power, and Communication in Community Building*, 18 J. PLANNING EDUC. & RES. 1, 10 (1998).

15. *See* MODEL RULES OF PROF'L CONDUCT R. 1.13(a) (2001) (stating that the lawyer represents the organization "through its duly authorized constituents"); *id.* at R. 1.13

of gross indicators to the contrary—the directors who take the proceeds of the bake sale with them to St. Lucia, the incumbents who stuff the ballot box—you *could* simply accept what you are given. Conversely, the lawyer may want to have some confidence that the human faces of the entity— those whom she will counsel and advise, carpool with, and make tuna casserole for—are honest stewards for the interests of their membership, or, if the organization lacks members, for its mission. In that case, the lawyer will have to decide whether she seeks indicators of that kind of stewardship fully formed, or whether she will assist in, or insist on, constructing them.

Community lawyers have adopted a range of approaches to the selection of the most "legitimate" community client. In each of these, the importance of "representativeness" of any one client group varies—as does, indeed, the importance of there being any particular client group at all. Some lawyers rely on the size and range of activities of the group as indicators of how faithfully it will advocate for the concerns of its constituency. For example, older, more sophisticated NBOs with elaborate practices in housing development may value technocracy over democracy and may have little interest in cultivating democratic participation from the neighborhood.[16] Echoing this fear of the anti-democratic nature of sophisticated development practice, others worry that their support of legalistic advocacy work may draw organizations away from a mission of grass-roots organizing.[17] One legal services office that recently converted its operations to group representation specifically looks for client boards with the capacity and desire to both adopt projects that address the needs of low income people and to train leaders and "activate" residents to participate in the design and implementation of programs.[18]

Another choice is to abandon concerns with "representativeness" or even conventional notions of "client-centeredness" altogether. One way to do this is not to pick the client, but the goals; that is, pick goals that are "defensible" according to the lawyer's internally developed and externally guided sense of the community's values and needs, and then find the client

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cmt. (stating that the lawyer must accept the decisions made by the organizational client's constituents "even if their utility or prudence is doubtful").

16. *See* Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 249-51 (1999).

17. *See* Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for "Facilitative" Lawyering?*, 1 CLINICAL L. REV. 639, 650-51 (1995) (expressing concern that diversion from the client organization's other activities is necessitated by the focus on challenges brought under the Community Reinvestment Act).

18. William C. Kennedy et al., *Cultural Changes and Community Economic Development Initiatives in Legal Services: What Happened in Two Programs*, 33 CLEARINGHOUSE REV. 440, 447 (1999) (describing the intake priorities of the community economic development unit of Legal Services of Northern California).

to suit those values and needs.[19]

A related method is to identify the goal and then create the client. For example, a representative of one program funded by the Legal Services Corporation (LSC) has disclaimed that his organization's best use was to be "client-centered" in terms of responsiveness to individual clients' perceptions of their legal needs. Among this program's accomplishments was the securing of 110 acres of riverfront property near Flint, Michigan for the development of retail establishments and affordable housing for poor people.[20] The future beneficiaries of the new housing and services are the poor people of this desperately depressed city. But no one client, or client group, generated the idea for this project. The client group that *will* direct the development is a nonprofit organization, which this legal services office helped form two years into the process.[21] Any input by members of the client community into the initial decisions to proceed was oblique; i.e., only through the legal services organization's experiences in individual representation, which demonstrated repeatedly the absence of housing, grocery stores, pharmacies, and other community necessities. The legal services organization also based its program decision on market studies and on sources of information gleaned from throughout the greater community.[22]

This is innovative work, with credible claims of improving the quality of life for far more poor people than if the program had dedicated its resources to the representation of multiple individual clients in their individual claims for health care, housing, or child support. Most emphatically, this is community development work, characterized by a preference for transactional over litigative solutions and networks over adversarial relationships. One can argue that the project is no less useful for having been generated by lawyers, not clients, and that the results arguably happen faster.[23] This suggests a "counsel for the situation"

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19. *See* Diamond, *supra* note 7, at 115-18.

20. Edward Hoort, Community Lawyering: The New Form of Client Impact Work for Legal Services 3 (Discussion Paper Prepared for the LSC-Sponsored Conference, "Creating Client-Centered State Communities of Justice" Apr. 25-28, 2001).

21. *Id.* at 8.

22. *Id.*

23. That lawyers faced with the dilemma of allocating scarce representational resources to under-served clients legitimately may pick the method of doing so, and the potentially most effective clients to do it for, is a recurring theme. Although the lawyers at Legal Services for Eastern Michigan, chose a community development model, this example of relying on market studies and lawyers' intuition, rather than on individual client demand, to set the priorities for a legal services program's projects repeats almost exactly the hypothetical of the ABC Center of Public Interest Advocacy, proposed by Bellow and Kettleson almost a quarter century ago. *See* Gary Bellow & Jeanne Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. REV. 337, 343-44 (1978); *see also* Paul R. Tremblay, *Toward a Community-Based Ethic for*

model; advocacy on behalf of a mission, with clients as little more than conduits.[24] While some strenuously dispute whether the exercise of such omniscience is appropriate for the attorney's role,[25] others ask that we acknowledge that our values of social justice matter immensely and that we consistently act on them through the causes and clients we pick.[26]

I agree with the premise that one can act justifiably as a community lawyer by carefully selecting the positions and the clients represented. But if one of your goals as a community lawyer is to represent an organization with some credibility to represent the community, then neither choice of client nor of cause will be infallible. While "bigness" and professionalization in an NBO may well move it away from its roots in the community, smallness, newness, and lack of sophistication do not necessarily put it any closer. My experiences and those of many others suggest that the financial and organizational instability of a new NBO, if anything, make fully engaging its community infinitely more difficult.[27] Organizing for democracy takes money and infrastructure: leafleting, setting agendas, developing databases for membership, and faxing are not cheap.[28] As we shall see, neither size, nor appearance, nor specialization predicts "representativeness." Many people more skilled in research design and evaluation than the average community lawyer have labored

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Legal Services Practice, 37 UCLA L. REV. 1101, 1146 (1990) (defending the choice to leave to lawyers' control, not community control, the decision of how best to represent poor clients).

24. For comment on the context in which the term "counsel for the situation" was applicable to Justice Brandeis, see Clyde Spillenger, *Elusive Advocate: Reconsidering Brandeis as People's Lawyer*, 105 YALE L.J. 1445, 1502 n.192 (1996).

25. *See, e.g.*, John S. Dzienkowski, *Lawyers as Intermediaries: The Representation of Multiple Clients in the Modern Legal Profession*, 1992 U. ILL. L. REV. 741, 748 (1992).

26. William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099, 1106 (1994).

27. Creators of the multi-actor, multi-sector consortia for development known as "comprehensive community initiatives" (CCIs) recognize that promoting widespread participation in development takes resources. The organizations which the Annie E. Casey Foundation chose as points of origin (though not as means of implementation) for its Rebuilding Communities Initiative were well-established and well-funded NBOs with the capacity to generate educational materials and events to reach out to their constituents—even if they had not always consistently done so. *See* Annie E. Casey Foundation, *Rebuilding Communities* (describing the lead organizations in the five RCI sites), *available at* http://www.aecf.org/rci (last visited Mar. 26, 2002). For more on CCIs, see *infra* Part II.B.

28. *See* Peter Dreier, *Community Empowerment Strategies: The Limits and Potential of Community Organizing in Urban Neighborhoods*, 2 CITYSCAPE 121, 127 (1996) (stressing that NBOs, most of them operating on a shoestring budget, need support to develop basic organizational capacities in using the media, fund-raising, holding meetings, and even constructing budgets, if they are going to survive long enough to be a force for activism in their communities).

long and inconclusively to figure out what the representative organization looks like. It is unlikely that any of us will do any better.

B. Defining "Representativeness"

As lawyers, we think we recognize the phenotype of "representativeness"—so does everyone else. But as lawyers we also know from our experience in representing community organizations that our first impressions are often wrong. There is the organization—the tenants' association is the most obvious model to come to mind—whose governing structure mirrors in every way the ethnic, economic, and racial make-up of its constituency, but whose leaders operate autocratically and disdain consultation.[29] At the other extreme, there may be the organization dominated by a board of outsiders and governed by technocrats that produces impressive housing and other programs and makes some show of eliciting the wishes of the community. Neither or both of these organizations may "deliver" on services and structures that the residents of the neighborhood want and need. The question is: do we really know representativeness when we see it? Conversely, do we really know oppression when we see it? As important, from "representativeness" can one automatically infer "responsiveness?" And does "responsiveness" necessarily translate into effectiveness?

C. Representativeness: Identity of Demography or Identity of Interest?

Something we commonly presume about "representativeness" is that we can gauge it by examining the fit between the composition of an organization's leadership and the demography of its neighborhood. In fact, researchers have taken great care to distinguish "substantive representation"—a similarity between an organization's and its constituents' perception of the neighborhood's needs—from "descriptive representation"—a similarity between an organization's and its constituents' demographic and socio-economic characteristics.[30] That "fit" varies from

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29. For her practice of dispensing such favors as construction jobs and apartments, one long-time leader of a public housing tenants' association at the ABLA projects in Chicago has been compared to a "volunteer ward boss." Larry Bennett, *Restructuring the Neighborhood: Public Housing Redevelopment and Neighborhood Dynamics in Chicago*, 10 J. AFFORDABLE HOUSING 54, 63 (2000) (quoting Flynn McRoberts, *Home Is Where Problem Is as the ABLA Homes Begin to Show the Promise and Peril of Rebuilding Public Housing, an Outspoken Leader's Holding Raises Questions*, CHI. TRIB., Oct. 25, 1998, at 18.)

30. David Swindell, *Issue Representation in Neighborhood Organizations: Questing for Democracy at the Grassroots*, 22 J. URB. AFFAIRS 123, 126 (2000) (citing Hanna Pitkin, *The Concept of Representation, in* REPRESENTATION (Hanna F. Pitkin ed., 1969)).

organization to organization. Avis Vidal's 1992 study of NBOs found that neighborhood residents and clients sat on the boards of 80% of those surveyed and constituted an average of 44% of all board members.[31] African-Americans and Hispanics held senior staff positions in the same proportion as their presence in the poverty population.[32] At one time or another, the typical director of a CDC in the study had experienced the same conditions suffered by her or his constituency.[33] Some research supports a thesis that NBOs with a greater proportion of women and minorities on their boards and staff support a broader (and the study assumes, more responsive) range of social service projects than do NBOs staffed with, and led by, white males, which tend to concentrate on housing and business development.[34] But examples from different NBOs provide exceptions to every prediction. To infer identity of interest from identity of demography takes a leap that studies of NBOs cannot easily make and ignores complexities of what it means to purport to represent a neighborhood in the face of class and ethnic division and faction.[35]

One performance review of three well-established CDCs suggests that they may owe their longevity and productivity to the care they take with both "substantive" and "descriptive" representativeness. The New Community Corporation (NCC) in Newark, New Jersey, the Mission Housing Development Corporation in San Francisco, California, and the Coalition for a Better Acre in Lowell, Massachusetts differ in size, assets, and circumstances of origin.[36] But all maintain governing boards with a majority of community residents, and attempt (with differing degrees of intensity) to base their agendas for development on residents' priorities.[37]

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31. AVIS C. VIDAL, REBUILDING COMMUNITIES: A NATIONAL STUDY OF URBAN COMMUNITY DEVELOPMENT CORPORATIONS 39 (1992).

32. *Id.* at 41.

33. *Id.* at 43.

34. MARILYN GITTELL ET AL., RACE AND GENDER IN NEIGHBORHOOD DEVELOPMENT ORGANIZATIONS 10 (1994).

35. For example, the Whittier Development Corporation in Minneapolis, Minnesota, was originally dedicated to creating cooperative housing for the poorer residents of its neighborhood, who were predominantly African-American. It had been led by a primarily white, non-resident board and staff which endorsed its founding principles. But when elections were held, and were opened as required by the organization's charter to the entire catchment area which was over sixty percent white and affluent, the results brought in a board determined to reverse the historic purposes of the organization. Recriminations abounded and the CDC faced collapse. XAVIER DE SOUZA BRIGGS & ELIZABETH J. MUELLER, FROM NEIGHBORHOOD TO COMMUNITY: EVIDENCE ON THE SOCIAL EFFECTS OF COMMUNITY DEVELOPMENT 42-43 (1997).

36. Gittell & Wilder, *supra* note 2, at 346 (providing an overview of the history and constituency of the three CDCs).

37. *Id.* at 346-50 & tbl.1 (describing NCC, the largest and one of the oldest CDCs in the country, with a payroll of 1,500, a portfolio of 2,600 apartment units that it owns and manages, and significant representation of minorities, women, and local residents on its

Their continued attentiveness to their constituencies over the years has enabled them to mobilize the political support essential for funding and stability.[38]

D. Representativeness: Identity of Interest or Democracy in Participation?

The organization that practices both "substantive" and "descriptive" representation of its constituents may enjoy significant success, but it may do so in the absence of any democracy in participation. Briggs and Mueller have noted that NCC's acumen in mobilizing residents comes not from involving them directly in decision-making, but from capitalizing on their gratitude for providing valuable services.[39] Indeed, they conclude that some members of NCC's highly effective and representative board consider the participation of residents to be unhelpful, or as the authors put it, "an impediment to efficiency."[40] NCC exemplifies only one instance in which "representativeness"—and even "responsiveness"—do not necessarily equate with engagement in democratic process or with establishing enduring patterns of democratic participation in development. Observers of community action agencies in the 1960s expressed great skepticism about the sincerity of attempts to use the groups to promote grass-roots participation in politics and development.[41] At least one assessment of fifty such neighborhood organizations found that, despite the "representativeness" of their boards, only twenty engaged in any serious community organizing.[42] In a much more recent attempt to evaluate how and whether CDCs' activities affect the cohesiveness of their neighborhoods, Briggs and Mueller compared neighborhoods with and

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board and staff); *id.* at 350-54 (describing Mission CDC, a significant affordable housing provider with similar board and staff representation and continued attention to community organizing and advocacy); *id.* at 354-57 (describing CBA, a smaller organization serving a smaller catchment area, with strong community representation and a foundation in organizing and advocacy).

38. *Id.* at 358.

39. BRIGGS & MUELLER, *supra* note 35, at 84 (describing how NCC's focus on providing housing for senior citizens has won the support of a powerful voting coalition in Newark's African-American community).

40. *Id.* at 193.

41. *See* Arnstein, *supra* note 5, at 216 (opining that the majority of the Community Action Programs flaunted the appearance and the substance of popular decision-making).

42. James J. Vanecko, *Community Mobilization and Institutional Change: The Influence of the Community Action Program in Large Cities*, 50 SOC. SCI. Q. 609, 625 (1969); *see also* Arthur B. Shostak, *Promoting Participation of the Poor: Philadelphia's Antipoverty Program*, SOC. WORK, Jan. 1966, at 64, 71 (describing the composition and activities of the Philadelphia Antipoverty Action Committee and noting that it was the only Community Action Program in a major city that included significant numbers of poor and minority community residents as members).

without CDCs to evaluate the impact of NCC and two other well-established CDCs on four indicia of "community-building": improvement in physical conditions, improvement in delivery of social services, "empowerment of residents," and a social connection, defined as whether CDCs engendered ties among residents and a "positive sense of community."[43] On the whole, they found that these CDCs were better at representing their neighborhoods' interests than involving their residents in decision-making, and that their presence in the neighborhood did not seem to generate any higher levels of activism.[44]

How can NBOs retain their professionalism but also express commitment to taking the neighborhood one step further by involving it in the design and implementation of development? David Swindell has hypothesized that many factors affecting an NBO's ability to be representative and participatory exist beyond the organization's control: the size, ethnic diversity, and mobility of the population; the intensity and frequency of threats to the neighborhood; and the strength of already existing connections among individuals. Among the few factors that an organization *can* direct are those tied to its own structure: the size of its membership, the quality and frequency of the membership's participation at meetings, and the degree of membership involvement in decision-making.[45]

Swindell used data from his own poll of over two hundred NBOs and from a survey conducted of almost four thousand households in Indianapolis to ascertain whether the NBOs and the residents in their neighborhoods identified the same issues as their most significant problems.[46] Generally, he found the concurrence between the residents' concerns and the problems targeted by the NBOs' projects to be weak.[47] Next, he asked the NBOs to indicate the size of their membership and staff, how often members participated generally in meetings, and how often members participated in meetings where they were encouraged to provide input on decisions.[48] Residents and NBOs did seem to share priorities when NBOs organized their meetings so that residents could participate actively in them (if this is not a cause, it is at least a correlation).[49] This suggests that democracy in representativeness enhances an organization's ability to be substantive in representativeness—not surprising, but for once, a hypothesis based in something more than "common sense."

The formula may sound simple—involve residents of the neighborhood in your work in such a way as to confirm to them that your goals and theirs

43.   BRIGGS & MUELLER, *supra* note 35, at 12.
44.   *Id.* at 242.
45.   Swindell, *supra* note 30, at 126-27.
46.   *Id.* at 129-30.
47.   *Id.* at 130.
48.   *Id.* at 127.
49.   *Id.* at 134.

are the same, give them an active voice in your meetings, and reflect their contribution in your projects. A program of solicitation and acknowledgment of a constituency's priorities may fall a step short of training that constituency to take over direction of the neighborhood's development, but it is still by no means easy. Simultaneously organizing residents to collaborate in "doing development," and "doing development" itself takes time and resources.[50] Ultimately, NBOs must ask whether the significant investment of time and resources in democratic development is worth it, either in terms of improved product, or for the intrinsic value of increased neighborhood involvement. Sometimes community engagement and community improvement go hand in hand. For the small proportion of community action agencies in the 1960s that did foster community organizing, researchers found that their neighborhoods enjoyed a quantifiable increase in the responsiveness of local institutions such as schools and social services agencies to the residents' needs.[51] More recently, some leaders of NBOs have affirmed that an organized and committed local citizenry stabilizes projects, and that development work cannot go on without it.[52] A recent overview of NBOs led by women emphasized their "preoccupation with community participation," and described what they do to get residents involved beyond their attendance at meetings.[53] Some techniques are as structured as staffing advisory committees for every project with residents who conduct focus groups or as simple as reducing the intimidation factor of any meeting by listening carefully to everyone who wants to speak.[54] Members of these organizations are committed to "human development" as integral to economic development, as both enhancing and resulting from it.[55]

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50. BRIGGS & MUELLER, *supra* note 35, at 66 (quoting the director of the Urban Edge CDC in Boston as saying that it took the organization fifteen years to learn how to accommodate both housing development and organizing).

51. Vanecko, *supra* note 42, at 615-16.

52. *See* Nancy Nye & Norman J. Glickman, *Working Together: Building Capacity for Community Development*, 11 HOUSING POL'Y DEBATE 163, 183 (2000) (stating that the staff of several CDCs emphasized the need to organize residents to take control of their neighborhoods). As one director in Detroit put it, "[o]rganizing is critical because we work in neighborhoods where the private sector doesn't go. If I rehab a house, five more are abandoned in the same period. The only way I can see to protect our investment is by organizing safe zones." *Id.*

53. MARILYN GITTELL ET AL., WOMEN CREATING SOCIAL CAPITAL AND SOCIAL CHANGE: A STUDY OF WOMEN-LED COMMUNITY DEVELOPMENT ORGANIZATIONS 65 (1999).

54. *Id.* at 73-74 (describing how providing both a forum for peer support and acknowledgment of life stories, and conventional technical assistance, helped clients of the Family Day Care Training Project in Oakland to move from receiving public assistance to running successful day care centers; and how the Warren Family Institute in Warrenton, North Carolina organized advisory committees for its projects).

55. *Id.* at 75 (noting the example of the New Columbia Community Land Trust in

So it seems that an organization's composition, or its proficiency at developing housing or day care or shopping malls, may indicate little about its responsiveness to community desires for housing, day care, or shopping malls (or anything else), or about its interest in involving its community in planning.[56] Given the difficulty of finding any obvious correlation between an organization's output and its authenticity as community representative, it is a wonder that the "rightness" of the NBO as an agent of democratic participation has persisted so long as one of the many under-examined "theories of change" that induce policy.[57] But it has endured and survived cycles of fashion in federal and private programs, as I will explain briefly below.

However, it is also clear that many NBOs strive to constitute themselves as more inclusive organizations, to develop and incorporate indigenous leadership, and to pay attention to their constituents' collective and individual needs. One could ask why NBOs seek to be more inclusive, given that they typically practice "substantive representation"—meeting their neighborhoods' needs in an autocratic manner. (Although, as Swindell might argue, NBOs are not as reliable at meeting those needs as other organizations that do solicit community participation.) In fact, something beyond sheer equity can underscore the lawyer's desire to support NBOs in their attempts to weave participation into their product. After long struggles, some NBOs have concluded that "training the neighborhood in the arts of democracy" is more than just the right thing to do; it is insurance for their investment. The lawyer who decides to encourage her group client to adopt an internal democratic process, to recruit and develop leadership from the neighborhood, and to use that "descriptive representation" as a bridge to the more important "substantive representation" (whether she will shepherd that transformation herself is discussed below) can do so based not only on her values, but also on some well-founded hope that the course of action will yield a tangible return.

Washington, D.C., which emphasizes training the tenants as collaborators in the process of housing development to enable them to own and manage the property).

56. *See* WILLIAM H. SIMON, THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS AND THE NEW SOCIAL POLICY 173-78 (2001).

57. *See* Carol Hirschon Weiss, *Nothing as Practical as Good Theory: Exploring Theory-Based Evaluation for Comprehensive Community Initiatives for Children and Families, in* 1 NEW APPROACHES TO EVALUATING COMMUNITY INITIATIVES 65, 77-78 (James P. Connell et al. eds., 1995) [hereinafter 1 NEW APPROACHES] (noting that foundations have adopted the notion that geographic neighborhoods constitute the optimum unit for delivering services, nurturing democracy, and incubating social change as their predominant "theory of change"), *available at* http://www.aspenroundtable.org/vol1/ (last visited Feb. 16, 2002).

II. HISTORIC CHOICES: "ENGINES OF DEMOCRACY" OR "DELIVERY SYSTEMS?"

A. Paying the Piper (and Calling the Tune) for the Arts of Democracy: Federal Funding and "Maximum Feasible Participation"

A review of attempts to involve public housing residents in the management and ownership of their own apartments has deduced three theories of empowerment, each predominating at different times, from a quarter century's worth of such programs.[58] One involved tangible product, better maintenance of housing.[59] A second focused on product, but in less tangible form; the transformation, through training, of individual renters into managers and home-owners who could use their training to move up and out.[60] A third concerned process.[61] The products were incidental and little more than an occasion for a different transformation: that of changing renters into organizers and advocates.[62]

The difficulty for NBOs in juggling community organizing and running programs reflect not only practical realities, but also ideological divisions among practitioners and funders. The lawyer's view of her representation of NBOs cannot help but be tied into this debate. Whether neighborhood-based organizations should function as more than grass-roots "delivery systems"[63] for measurable products such as housing units, day care slots, and jobs has occupied space in the literature of practitioners and observers of community development for some time. Some "developmental activists" feel passionately that they should; organizations fail fundamentally if their mission becomes one of sheer production. The failure is either ideological—when organizations must make compromises with governmental, nonprofit, and commercial funders to pay for big development projects that co-opt them away from their constituents—or simply managerial—when NBOs crumble under the expectations for production that neither their organizational structure, nor the available

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58. *See* William Peterman, *The Meanings of Resident Empowerment: Why Just About Everybody Thinks It's a Good Idea and What It Has To Do With Resident Management*, 7 HOUSING POL'Y DEBATE 473, 478-80 (1996).

59. *See id.*

60. *See id.*

61. *See id.*

62. *Id.*

63. The term doubtless has been used elsewhere, but I have seen it used in this context by the community development theorist Herbert Rubin in his distillation of an "organic theory" used by "developmental activists" from interviews with staff from over a hundred neighborhood-based organizations. Herbert J. Rubin, *There Aren't Going to Be Any Bakeries Here If There Is No Money to Afford Jellyrolls: The Organic Theory of Community Based Development*, 41 SOC. PROBS. 401, 402-03 (1994).

financial and technical assistance, equips them to meet.[64]

The tension between expecting NBOs to function as more efficient delivery systems or as community organizers may not be necessary or inevitable, but it is historical. An internally incompatible coalition of academicians, program staff at major foundations such as Ford, labor and community activists, and political pragmatists contributed different pieces to the policy that produced the Community Action Program and its descendants including Model Cities and the Special Impact Program.[65] The participants approached the project of community renewal with motives as mixed as their constituencies. Some needed badly to show immediate victories in the war on poverty, chief among them measurable decreases in indicators of juvenile delinquency and increases in supply of jobs. The pressure for immediate results co-existed uneasily with other goals, primarily doing what was necessary to organize, train, and support neighborhood residents for meaningful engagement in the design and implementation of the programs that would affect them. That the academic theoreticians who influenced "maximum feasible participation" also explicitly wished to structure decision-making mechanisms that by-passed entrenched (and elected) local political elites did not make the community-organizing aspects of the early development programs any more popular. [66]

Many chroniclers of these developments have described how the internally explosive politics and the impossibility of consensus on the appropriate processes and products of neighborhood-based development narrowed what government and foundations would support.[67] As John

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64. *See, e.g.*, HERBERT RUBIN, RENEWING HOPE WITHIN NEIGHBORHOODS OF DESPAIR: THE COMMUNITY-BASED DEVELOPMENT MODEL 134-35 (2000) (describing how some NBOs hold fast to the political goals of redressing inequities of wealth by using development to generate and keep wealth in impoverished communities); Randy Stoecker, *The CDC Model of Urban Redevelopment: A Critique and an Alternative*, 19 J. URB. AFFAIRS 1, 12-13 (1997) (noting problems of co-optation, and advocating for the practical and ideological defensibility of giving priority to organizing over development activities).

65. For a brief overview of the development of the Community Action Program, see SIMON, *supra* note 56, at 14-15.

66. There is a lot of writing about the genesis of the Equal Opportunity Act of 1964 in Ford's Mobilization for Youth and Grey Areas programs, and about the implementation of and reaction to other "War on Poverty" programs that included the empowerment of communities as a goal. For a sampling, see HALPERN, *supra* note 3, at 106-126; VIDAL, *supra* note 31, at 33; George Adler, *Community Action and Maximum Feasible Participation: An Opportunity Lost but Not Forgotten for Expanding Democracy at Home*, 8 NOTRE DAME J.L. ETHICS & PUB. POL'Y 547, 549 (1994); Alice O'Connor, *Swimming Against the Tide: A Brief History of Federal Policy in Poor Communities, in* URBAN PROBLEMS, *supra* note 7, at 77, 99-108. For a useful history of federal funding of grassroots groups to develop their capacity for community organizing, see Dreier, *supra* note 28, at 134-38.

67. For descriptions of the trajectory of government funding away from support for organizing and community education towards professionalized production of goods and

Gaventa pointed out, some skills that funders value reflect an ideological shift in the 1980s from favoring outer-directed organizing skills to more inner-directed "capacity-building," enabling organizations to function as more professionalized providers of products and services. [68] As "niche" organizations with the mission of operating outside of markets,[69] NBOs depend on government and private sector nonprofit funding.[70] Often, NBOs choose either to conform their mission to that of their funders, or to exercise no mission at all. Some contend that the necessity of working "in partnership" with apolitical actors—or with actors with very different politics—deprives NBOs of their "edge," forcing them to favor the softer skills of consensus-building over the more traditional modes of confrontational organizing.[71] These developments have meant that, until very recently, "bricks and mortar" have been the by-words of neighborhood-based development. And while there seems to be little argument that, for good or ill, NBOs have jumped into areas where, until

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services, see VIDAL, *supra* note 31, at 36; Alice O'Connor, *Evaluating Comprehensive Community Initiatives: A View From History*, in 1 NEW APPROACHES, *supra* note 57, at 23, 24-25.

68. John Gaventa, *Citizen Knowledge, Citizen Competence and Democracy Building*, GOOD SOC'Y, 1995, at 28; *see also* Nye & Glickman, *supra* note 52, at 168 (stating that funders of "community development partnerships" emphasize increased housing production as a goal of providing technical and financial assistance to CDCs); *id.* at 183 (stating that most staff interviewed in a study of CDCs in seven cities stated that organizing leadership in communities was critical to insuring the stability of development, but that funders feared that organizing was too confrontational).

69. Herbert J. Rubin, *Community-Based Development Organizations*, in ECONOMIC DEVELOPMENT IN LOCAL GOVERNMENT: A HANDBOOK FOR PUBLIC OFFICIALS AND CITIZENS 45, 55-60 (Roger L. Kemp ed., 1995) (describing the fragility of community-based development organizations, precariously staffed and dependent on government and other grants, and how they are willing to experiment with risks in poor neighborhoods that for profit and larger nonprofit organizations are unwilling to take).

70. Although the data are hard to compare or interpret, CDCs may be depending increasingly on federal support. *See* NAT'L CONG. FOR CMTY. & ECON. DEV. (NCCED), COMING OF AGE: TRENDS AND ACHIEVEMENTS OF COMMUNITY-BASED DEVELOPMENT ORGANIZATIONS 16 (1999) (showing an increase from 1995-1998 of 77% to 90% in the percentage of community development corporations surveyed that received over $50,000 in federal funding); VIDAL, *supra* note 31, at 53-54 (showing that 78% of 116 respondents in 1992 study received a third of their unearned income in federal grants). For a comment on how mission and program can suffer when NBOs pursue funding from foundations, see Peter Dreier, *Philanthropy and the Housing Crisis: The Dilemmas of Private Charity and Public Policy*, 8 HOUSING POL'Y DEBATE 235, 277 (1997) (noting that CDCs must endure the volatility of their funders' changing priorities, their preference for withdrawing support after two or three insufficient years of "start-up" seed money, and their desire to see results that reflect well on their own innovativeness).

71. For an analysis of how NBOs have blunted their community organizing as sources of support have dried up, and how they must less overtly accommodate their funders' political priorities, see ROSS GITTELL & AVIS VIDAL, COMMUNITY ORGANIZING: BUILDING SOCIAL CAPITAL AS A DEVELOPMENT STRATEGY 51 (1998).

recently, more established providers have scorned to tread, there is divergence of opinion on whether "bricks and mortar" is what all NBOs do well.[72]

It may be romanticizing the past to think that NBOs ever could look to sources of power to enable them to take over power in their communities. For the present, commentators have been extremely critical of current overtures to the idea of neighborhood-based democracy. Though federal programs such as the Empowerment Zones (EZ) initiative invoke community decision-making and control,[73] observers have found that the structure of the legislation has simply reinforced entrenched patterns of interaction among elites. Most EZ sites thus far have been unable to use the EZ to enlarge democratic participation beyond already established CDCs and other organizations.[74]

B. Foundations and "Capacity-Building": Comprehensive Community Initiatives and Re-Invention of the Agenda for Neighborhood Participation

The history of private foundations' role of in setting the federal agenda for grass-roots community development has been well documented.[75] An irony of the guiding principle, that democratic engagement of residents was

72. NCCED, supra note 66, at 4 (estimating that CDCs have produced 245,000 units of affordable housing between 1995 and 1999, and thirty percent of the assisted housing in the United States was developed by CDCs); VIDAL, supra note 31, at 82, 87 (assessing the production of affordable housing units by CDCs as comparable to for profit housing developers). But see Stoecker, supra note 60, at 3 (citing surveys suggesting that NBOs do not build anything that would not have been built anyway, and—except in their lack of efficiency—differ little in goals from those of for profit developers).

73. In order to receive federal EZ funds, the unit of local authority of community development block grants and many other social services and development programs premised on a "cooperative federalism" model, must explain how it will comply with the broad federal strictures—here, in its "strategic plan." Rounds I and II of EZ funding only require recipients' strategic plans to describe the roles planned for the participants in the design and implementation of the plan. 24 C.F.R. § 598.215(b)(5)(iv) (2001). The local authority must also explain how participants in the design of the plan were selected and must prove that they would "broadly represent the racial, cultural, gender and economic diversity of the community." 24 C.F.R. § 598.215(b)(5)(iii). Round II adds the requirement that recipients document in their plans how they will "ensure continuing community and grassroots participation in the implementation of the strategic plan and in the governance of the Zone's activities." 24 C.F.R. § 598.215(b)(4)(iv)(F).

74. See Shah, supra note 16, at 243 (citing experience with Philadelphia's Community Trust Boards); Marilyn Gittell et al., Expanding Civic Opportunity: Urban Empowerment Zones, 33 URB. AFF. REV. 530, 532, 554 (1998) (finding that better established CDCs tended to dominate the planning processes and that elite networks designated the established CDCs to be the recognized voices of the community).

75. Alice O'Connor, Community Action, Urban Reform, and the Fight Against Poverty: The Ford Foundation's Gray Areas Program, 22 J. URB. HIST. 586, 587 (1996).

essential to community development, was that its proponents picked their neighborhoods, picked their projects, and picked the means and processes of democratic engagement, all from the outside in (or the top down).[76] Thus, when in the late 1950s the Ford Foundation's program officers seized upon the theme of isolating and treating the causes of juvenile delinquency, they adopted Mobilization For Youth (MFY) as their flagship demonstration project in New York City, the optimum site for implementation. MFY was not created out of whole cloth; it drew on neighborhood institutions like the Henry Street Settlement, and theory-generating institutions uptown, like Columbia University.[77] But what set this and other urban development initiatives apart was their genesis in theories of causes and effective approaches, their faith in implementation of the theory, and their emphasis on evaluation.

The current instantiation of Ford's theory-driven, community-based experiments in social policy is the "comprehensive community initiative" (CCI).[78] CCI refers to an approach as much as to a funding source—even federal programs such as the Empowerment Zone have been referred to and are being evaluated as CCIs—but a chief characteristic of CCIs is that they are supported by major foundations such as Ford and Annie Casey.[79] By one count, by the mid-1990s there were some fifty CCIs spread all over the country, targeting different populations and making different choices about their goals.[80] What they share, at least at first glance, resembles their predecessors in the 1960s: the idea that an outside funder can occupy a

76. *See, e.g.*, DANIEL P. MOYNIHAN, MAXIMUM FEASIBLE MISUNDERSTANDING: COMMUNITY ACTION IN THE WAR ON POVERTY 55 (1969) (describing MFY's plans to design its neighborhood offices as "store front cultural centers . . . each having the outward aspect of a coffee house . . . each shop will be 'jazzy' and 'cool'") (quoting MOBILIZATION FOR YOUTH, INC., A PROPOSAL FOR THE PREVENTION AND CONTROL OF DELINQUENCY BY EXPANDING OPPORTUNITIES 164 (1962)).

77. O'Connor, *supra* note 75, at 599. My thanks to Susan Jones, whose description of her family's history in social work practice with the Henry Street Settlement and her own engagement with MFY's programs has made me appreciate the positive impact of MFY's design.

78. The similarities between today's CCIs and the community action initiatives of the 1960s apparently are obvious to all. *See* Norman J. Glickman & Lisa J. Servon, *More than Bricks and Sticks: Five Components of Community Development Corporation Capacity*, 9 HOUSING POL'Y DEBATE 497, 500 (1998) (referring to "community-building" as the "modern incarnation of the 'maximum feasible participation' perspective of the War on Poverty").

79. For a description of CCIs and some of their funding sources, see GITTELL & VIDAL, *supra* note 67, at 39-47; Annie E. Casey Foundation, *Rebuilding Communities* (describing programs at the five Rebuilding Communities Initiative sites), *at* http://www.aecf.org/rci/ (last visited Feb. 16, 2002).

80. Anne C. Kubisch, *Comprehensive Community Initiatives: Lessons in Neighborhood Transformation*, SHELTERFORCE ONLINE, Jan./Feb. 1996, *at* http://www. nhi.org/online/issues/85/compcominit.html (last visited Feb. 16, 2002).

space, seize definition of a problem, and cut across existing official and unofficial structures of decision-making and control. The "comprehensiveness" of comprehensive community initiatives lies in their design of an intensive attack on one or several problems, coordinating new and existing resources within a geographical area. Some CCIs, such as the Annie E. Casey Jobs Initiative, address one solution to urban poverty by concentrating their energy on placing and sustaining young adults in decently paying jobs.[81] Others, such as Ford's Neighborhood and Family Initiative, look more broadly at factors that affect the well-being of families at each site.[82] For at least one funder, one theme recalls the Ford initiatives of a generation ago: that each site is the staging ground for experimentation, for expanding the base of knowledge about what works and what does not in programs to revitalize communities.[83]

CCIs juxtapose two contradictory theories and make them compete for space. One is that theorists operating out of academic and other policy-generating institutions can design, implement, and evaluate models for urban regeneration more effectively than those working in existing formal structures, whether they be in the private or public sector. For example, well before the sites were selected, Annie E. Casey's Rebuilding Communities Initiative (RCI) settled on broad, but very definite goals and governance structures for its five sites, and obviously planned its programs independently of any consideration of existing local relationships and resources.[84] The other theory is that urban regeneration depends on "community-building": on locating and supporting neighborhood leadership and building patterns of widespread neighborhood participation in decisions.[85] That the neighborhood—neighborhood control of neighborhood-based services, facilities, physical, and social institutions—is

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81. Scott Hebert & Andrea Anderson, *Applying a Theory of Change Approach to Two National, Multisite Comprehensive Community Initiatives: Practitioner Reflections*, in 2 New Approaches to Evaluating Community Initiatives (Karen Fulbright-Anderson et al. eds, 1999) [hereinafter 2 New Approaches], http://www.aspenroundtable.org/vol2/hebert.htm (last visited Feb. 16, 2002).

82. *See* Prudence Brown, *Comprehensive Neighborhood-Based Initiatives*, Cityscape, May 1996, at 161, 163.

83. Annie E. Casey Foundation, *Rebuilding Communities Initiative: What Do We Hope to Learn from Rebuilding Communities?* (stating that "[i]n undertaking a major national demonstration like this one, knowledge development is always a driving force for AECF . . . . We want to test our hypothesis that there is a significant role for community-based development organizations in changing public systems . . ."), http://www.aecf.org/rci/ faq.htm (last visited Feb. 16, 2002).

84. Winton Pitcoff, *Comprehensive Community Initiatives: Redefining Community Development, Part I: New Partnerships*, Shelterforce Online, Nov./Dec. 1997 (commenting that AECF came into a community and prematurely scoped out an agenda without getting the lay of the land), *at* http://www.nhi.org/online/issues/96/ccis.html (last visited Feb. 16, 2002).

85. Brown, *supra* note 82, at 161.

the key unit of social, economic, and "human capital" development is a tenet of CCIs, with an emphasis on nurturance of structures that will enhance neighborhood activism.[86]

There is an inherent tension in a research design that imposes participatory democracy from the top down. CCIs have implemented their goals of community organizing through a variety of governance structures, consisting sometimes of expansions of existing organizations[87] and sometimes of newly formed nonprofits that operate independently of them.[88] While the NBOs may be represented on the governing boards for the CCIs and may even receive technical assistance and funding from them, in return they may lose their exclusive voice as representative of their constituencies.[89] One summary of Annie E. Casey's Rebuilding Communities Initiative described what this approach is intended to accomplish: (1) to force NBOs to shift from what may have been a necessary preoccupation with their institutional survival to a focus on community-organizing, and (2) to train NBOs to educate their constituencies to share decision-making power with them, rather than simply to continue to deliver services to them.[90]

Merrill Singer, who has described the movement to develop a "community-centered praxis" in anthropology, distinguished between projects that are "community-based" and those that are "community-placed." That is, the indigenous versus the externally initiated and controlled.[91] CCIs resemble in some respects the many "community-

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86. *See* Weiss, *supra* note 57, at 9-10.

87. *See* Pitcoff, *supra* note 84, at 5 (noting that the Dudley Street Neighborhood Initiative (DSNI) in Boston struggled successfully to persuade AECF to fund DSNI to organize a CCI itself, rather than create a new organization).

88. *See, e.g.*, Sharon Milligan et al., *Implementing a Theory of Change Evaluation in the Cleveland Community-Building Initiative: A Case Study*, *in* 2 NEW APPROACHES, *supra* note 77. This article describes the composition of the Cleveland Community-Building Initiative, which began as a thirty-member Commission on Poverty formed by the Cleveland Foundation. *Id.* Based on the Commission's recommendations for a strategy to address poverty in the city, the Initiative was funded to implement the strategy as the independently incorporated twelve member Cleveland Community-Building Initiative Council, composed of six members from the original commission plus six more leaders from public and private sectors. *Id.*

89. *See* Winton Pitcoff, *Comprehensive Community Initiatives: Redefining Community Development, Part II: Collaborating for Change*, SHELTERFORCE ONLINE, Jan./Feb. 1998, *at* http://www.nhi.org/online/issues/97/ccis.html (last visited Feb. 16, 2002). This article described the creation of the Annie E. Casey-funded Germantown Community Collaborative Board, Casey's RCI in Philadelphia. *Id.* The new organization was intended to derive initial direction from a well-established nonprofit, Germantown Settlement, but ultimately to supersede it as the leader of RCI. *Id.*

90. Bill Traynor, *Organizing's Challenges*, RCI NEWS, Winter 1999-2000, htpp://www.aecf.org/publications/rcinews/rciv2n3/index.htm (last visited Feb. 16, 2002).

91. Merrill Singer, *Community-Centered Praxis: Toward an Alternative Non-Dominative Applied Anthropology*, 53 HUM. ORG. 336, 340 (1994).

placed" urban redevelopment programs of the past, and yet they aspire to generate programs that will be "community-based." Those who design them recognize that many NBOs either have gone "off-mission" to survive, or never saw community organizing as a mission in the first place. While it is possible that the "community-building" component of CCIs may look more like corporate networking than advocacy, the CCI movement nonetheless offers one of the few sources of funding now available to support the intangibles of community organization and leadership development. Whether outsiders can succeed in "growing" neighborhood-based, participatory democracy remains to be evaluated.

III. DEFINING AND TEACHING THE COMPETENCIES OF "REPRESENTATIVENESS": THE LAWYER AS COACH FOR THE COLLECTIVITY?

A. "Capacity-Building" or Training for Social Change? Absorbing the Skills of Community Development in an Uneasy World

What are the benchmarks for effective development of grass-roots leadership? What does it look like? And perhaps to reach the greater premise, what does locally grown, indigenous leadership accomplish more effectively than leadership developed other than from the ground up? Can one define, and then teach, the "citizen competencies" or "competencies . . . for democracy building?"[92]

Within the framework of CCIs and without, observers have identified a number of "skills" that earmark any one of a number of visions of an effective NBO. Some clearly support an ideology of activism and outreach within the neighborhood. Participants in the Rebuilding Communities Initiative, one of Annie E. Casey's CCIs, believe that activist NBOs must develop a "culture of organizing" through which to filter all their activities in the community.[93] Reflecting upon how to execute tasks from this perspective is as much a skill as it is a mastery of systems for community mobilization such as building databases and old-fashioned door-to-door outreach.[94]

In contrast to designers of CCIs—which, as noted earlier, sometimes gave no deference to existing CDCs as adequate representatives of the community and passed them over to form new organizations—supporters of existing CDCs work to shore up, but expand, their preoccupation with production and with their own institutional soundness. The National

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92. The phrase, and paraphrase, are John Gaventa's. *See* Gaventa, *supra* note 68, at 28.

93. Traynor, *supra* note 90, at 3-4.

94. *Id.*

Community Development Initiative (NCDI), a project of a consortium of foundations and federal and corporate sponsors, has directly targeted community development corporations to support "capacity-building" by CDCs in twenty-three cities over the past ten years.[95] Operating through the major intermediaries of the Enterprise Foundation and the Local Initiatives Support Corporation, NCDI assisted the formation of locally-based consortia of CDCs that receive funds for technical assistance to develop their internal capacities.[96] Each collaborative constructs its own categories of competencies for which its members may receive technical assistance, and against which they will assess their progress. These categories may include community outreach and organizing. For example, the "milestones" that the member CDCs of the Community Development Support Collaborative in the District of Columbia set to evaluate their performance included "improved internal capacity," "increased housing/economic development activities," "fundraising," "community involvement," and "building relations with funders, community, and colleagues."[97]

Overall, NCDI has supported developing the capacities that will enable organizations to become representative, as well as to engage in more tangible development work. It has also avoided the trap of narrowly equating the production of housing units with effectiveness.[98] These capacities are critical to building any strong organization, especially for organizations that plan to stretch themselves over the amorphous exercise of community organizing. They include planning, resource development, self-governance, the ability to follow through on delivering programs and services, and networking.[99] Others have constructed criteria that combine a similar range of skills.[100]

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95. For a description of the NCDI project, see Mark Weinheimer, *Boosting the Capacity of Community Development Corporations*, SHELTERFORCE ONLINE, Mar./Apr. 1999, *at* http://www.nhi.org/online/issues/104/weinheimer.html (last visited Feb. 16, 2002).

96. *See* CHRISTOPHER WALKER & MARK WEINHEIMER, URBAN INST., COMMUNITY DEVELOPMENT IN THE 1990s 18 (1998).

97. *See* ASS'N FOR THE STUDY & DEV. OF CMTY., COMMUNITY DEVELOPMENT SUPPORT COLLABORATIVE: ANNUAL EVALUATION REPORT 14 (2000) (listing the five categories of "milestones" for the first half of the year 2000); *id* at 15 (noting that several member CDCs had engaged in tenant organizing and education, in organizing residents' participation in local and citywide hearings, and in community priority-setting). My thanks to Martin Mellett, Executive Director of the Community Development Support Collaborative, for providing me with a copy of portions of this report.

98. *See* WALKER & WEINHEIMER, *supra* note 96, at 42-43.

99. *Id.* at 43.

100. Glickman and Servon have isolated five "capacities" of the effective CDC: resource capacity (ability to get funding); organizational capacity (ability to sustain a stable director, staff, and board); networking capacity (ability to forge alliances with other players); programmatic capacity (ability to deliver services); political capacity (ability to

The reluctance of most funders in the recent past to underwrite projects beyond "brick and mortar" stemmed, in part, from the sheer difficulty of setting goals for "community-building" and then measuring performance against the goals.[101] In short, you cannot pay for what you cannot see. Any funder dedicated to investments in a process—the inculcation in local leaders of the "arts of democracy"—must worry about how to measure the success of those investments. Measuring the number of housing units produced is easy. Measuring not social change, but what contributes to it, is hard. (One can measure increase in high school graduation rates or decrease in infant mortality, but not necessarily what happened to generate the outcomes.) Measuring what generates activism in a community, and then how that activism contributes to social change, may be impossible. Any assessment that attempts to pinpoint what causes change must deal with the problem of creating a "counter-factual": what conditions would look like without the intervention.[102] (Imagine George Bailey hovering over Bedford Falls as the town goes on—badly—without him, and you get the idea.) Proponents of different theories of evaluation have acknowledged the difficulty of generating "counter-factuals," or indeed any assessment at all, of intangibles such as gains in a neighborhood's sense of empowerment, or in participation.[103]

As noted earlier, researchers *have* compared civic engagement in neighborhoods with and without NBOs, and those with NBOs have come up short.[104] Also, scholars have constructed indicia of civic engagement generally.[105] But CCIs, and any NBO with the same agenda, face the

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draw on community support in negotiations with third parties such as local government); and flexibility. *See* Glickman & Servon, *supra* note 78, at 503-05.

101. *See* WALKER & WEINHEIMER, *supra* note 96, at 74-75 (explaining that the newness and ambiguity of actors and goals in activities such as community-building, compared to the relatively well-defined factors involved in housing development, may explain the spottiness of support for these less tangible projects).

102. Robert C. Granger, *Establishing Causality in Evaluations of Comprehensive Community Initiatives*, *in* 2 NEW APPROACHES, *supra* note 81; Peter H. Rossi, *Evaluating Community Development Programs: Problems and Prospects*, *in* URBAN PROBLEMS, *supra* note 7, at 521, 538.

103. *See* Granger, *supra* note 102, at 11; *see* Robinson G. Hollister & Jennifer Hill, *Problems in the Evaluation of Community-Wide Initiatives*, *in* 1 NEW APPROACHES, *supra* note 57, at 127.

104. *See supra* notes 39-43 and accompanying text.

105. *See* ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 291 tbl.4 (2000) (enumerating several indicia of "community organizational life," including holding office in a local organization, number of club meetings attended in the last year, and number of civic organizations per thousand population as constituting one of fourteen components of a "social capital index"); Michael Greenberg, *Understanding the Civic Activities of the Residents of Inner-City Neighborhoods: Two Case Studies*, 19 URB. GEOGRAPHY 68, 70 (1998) (surveying residents of and near public housing properties in New Jersey to ask whether they had

special problem of cause and effect: what are the conditions that promote these indicia of civic participation, and what must an organization do to create them? Researchers have propounded a methodology for evaluating how CCIs achieve neighborhood change through neighborhood participation and leadership. "Theory of change-based evaluation" proceeds from the easily supportable premise that social programs issue from many untested and unarticulated assumptions about how to improve communities. It seems intuitive to incorporate a feature such as "job readiness training" into a program to prepare youth living in areas of high unemployment for the job market. Yet unexamined acceptance of the assumption that job readiness training is effective in helping youths obtain jobs relies on a multitude of other assumptions about why youths are unemployed. Consequently, intuitive acceptance of one program misses a host of programs that might work better.[106] Since policy planners rarely think when they should (at the beginning) about whether a particular programmatic step will achieve a particular desired result, evaluators use a "theory of change" methodology to do so after the fact. They retrace the steps of the planning process, often canvassing some of the original participants to prod them to spell out the goals, the means chosen to achieve them, and whether results were meeting expectations.[107] Evaluators who apply this methodology to CCIs solicit the views of not only the initial planners and the project staff, but all the "stakeholders"— residents, institutions, anyone targeted to be affected by the work of the CCI—as to how the project should be evaluated. In one instance, evaluators convened a "learning community" composed of representatives of the project under review and the residents of the community.[108] The learning

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gone to a public meeting, contacted an elected official, called the police, or volunteered for or organized a neighborhood function in the past year); Kenneth Temkin & William H. Rohe, *Social Capital and Neighborhood Stability: An Empirical Investigation*, 9 HOUSING POL'Y DEBATE 61, 65-67 (1998) (using tangible and intangible indicators—such as whether interviewees helped or borrowed items from their neighbors, what percentage of their friends lived within the neighborhood, whether the neighborhood had a name, and whether interviewees felt greater loyalty to the neighborhood or the city—to define a community's "sociocultural milieu").

106. For a thorough explanation of "theory of change-based evaluation," and of the many unexplored hypotheses underlying the example of the job training program, see Weiss, *supra* note 57, at 2-3.

107. *See, e.g.*, Hebert & Anderson, *supra* note 81, at 4-6 (describing how evaluators of the six Annie E. Casey Jobs Initiative and eighteen Enterprise Zone/ Enterprise Community sites applied a "theory of change" analysis where formal plans for the projects were well-established, where participants were reluctant to re-hash them, and where "stakeholders" were difficult to identify).

108. Daniel V. Folkman & Kalyani Rai, *Reflections on Facilitating a Participatory Community Self-Evaluation*, 20 EVALUATION & PROGRAM PLAN. 455, 458 (1997) (on setting up the "learning community" to evaluate the results and appropriateness of the design of the Ford Foundation's Neighborhood and Family Initiative in Milwaukee).

community was not designed to function as a one-shot source of interview data, but rather, as an evolving, continuing commentator on whether the project was meeting its goals, and whether its goals were meeting the neighborhood's needs.[109] This style of evaluation is intended to provide continuous feedback to those implementing the program, to allow them to make mid-course corrections.

"Theory of change-based evaluation" is to conventional evaluation what a ten-student seminar with a multi-draft seminar paper is to an eighty-student lecture course for which the whole grade is determined by one blind-graded exam. The heart of the seminar is interaction; every interchange between student and teacher on a draft allows the student to adjust her original goals and her implementation. Evaluation in such a seminar is a process that leaves neither participant unchanged. Conversely, the blind-graded lecture course is a one shot deal—there is relative anonymity between the grader and the graded, and the exam freezes misconceptions without hope of improvement. In light of this analogy, community lawyers could do worse than to ponder the aspirations and the process of "theory of change-based evaluation." The aspirations are to clarify the under-examined assumptions of cause and effect underlying attempts to generate something as multivariate as neighborhood change through something as evanescent as "community building." The process consists of a service provider and client in looping, continuous dialogue (here, an evaluator who doubles as a sounding board and coach, eschewing the usual dictates of distance).[110] While community lawyers need no new enjoinders to self-reflection and castigation,[111] there is value in the constant examination of theories of why certain strategies should be the most efficacious strategies, and in the continuous loop that encourages mutual adjustment and correction.

B. Can or Should Lawyers Act as Democracy Coaches?

Towards the beginning of this Article, I gave some examples in which lawyers view community development practice as a series of problems to be solved, with or without appropriate clients attached. This is an approach that focuses on product. In that regard, it replicates one position in the debate I have just described—whether to support community

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109. *Id.*

110. Folkman and Rai refer to this interactive relationship among evaluator, evaluatee, and observers of the program in question as "constructivist evaluation." *See* Folkman & Rai, *supra* note 108, at 456.

111. My thanks to our colleague and symposium co-participant Bill Simon for his plea to stop worrying so much about authenticity and get on with it already. I suspect that anyone who asks this can do so because he has already put in significant worrying time—not everyone has been so thoughtful.

development work that has democratic processes as its goal, or work that seeks primarily to deliver the goods. The lawyer who adopts the "deliver the goods" perspective may well assist her client more broadly than with the legal needs of the immediate project at hand. She may help find the technical assistance and funding to build her client's systems of financial management or may advise in matters of board recruitment and development. She may even suggest mechanisms, or outside help, for community outreach. But she will undertake these expansions of what some might consider to be conventional legal representation for the purpose of developing her client's capacity to be a more efficient "service delivery engine," not an enhancer of indigenous capacity in the community. That "service delivery" approach is consistent with concerns about whether to seek out or even attempt to develop the "substantively" or "descriptively" representative client. It does not concern itself with finding or developing the client whose goal is to be an "engine of democracy."

A few writers discussing client representation generally, and discussing the representation of group clients particularly, endorse (at least implicitly) the path of process, of involving the client more deeply in internal development and external outreach. William Simon has described a process of constant exchange between client and lawyer, one through which the lawyer's accountability to the client in part consists of developing in the client the capability "of holding her (the lawyer) accountable."[112] While this does not advocate expressly that the lawyer become pre-occupied with group process, it suggests a reality, an unconscious process of mutual evolution. Made explicit, the happenstance interchanges between client and lawyer can be transformed into a "learning loop" that resembles the function performed by the "learning community."[113] Indeed, inside and outside the process of program evaluation, observers of NBOs refer to them frequently as "learning organizations," or organisms capable of introspection and self-correction.[114]

In her study of microentrepreneurs and innovative lending programs to microenterprises, Lisa Servon observed that for all the emphasis placed on educating unsophisticated borrowers in the ways of mainstream financial and other institutions, it may be the institutions that meet the encounter, and change.[115] There is nothing static about any of the on-going, long-term

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112. William H. Simon, *Visions of Practice in Legal Thought*, 36 STAN. L. REV. 469, 489 (1983-84).

113. For an influential comparison between the ability of members of an organization to participate in "single-loop learning" (which involves constant modification of behavior within accepted, static norms) and "double loop learning" (which modifies both the norms and the behavior), see CHRIS ARGYRIS & DONALD A. SCHON, ORGANIZATIONAL LEARNING: A THEORY OF ACTION PERSPECTIVE 18-22 (1978).

114. Nye & Glickman, *supra* note 52, at 164.

115. *See* Lisa J. Servon, *Credit and Social Capital: The Community Development*

relationships between actors engaged in creating strong institutions for their communities; the lawyer-client bond is just one of those many relationships. The community-based lawyer should anticipate reciprocating her client's evolution.

Others have honed in on specifics, recommending that the community lawyer begin with democracy-building at home, with her client's intra-group dynamics. Stephen Ellmann's disquisition on the duties of the attorney who faces possible oppression, or lack of representativeness, in the client group suggested that the attorney seriously intervene in the process of *not* "taking the client where you find her" (or, as we probably would say in community development practice, "find it") and make the client a self-consciously democratically-run organization.[116] He suggested that lawyers intervene at meetings to encourage the participation of those who normally might feel silenced, while avoiding the appearance of challenging the authority of the client's elected officers.[117] His analysis runs smack into the apparent conundrum imposed by conventional ethical rules—the lawyer's legal duty to preserve the entity conflicts with her broader duty to develop individual capacities and protect against oppression—so Ellmann explored the limits of what the lawyer may or may not do in order to accommodate both. Ultimately, when the power of the group and the individual voice collide, he favored the assertion of the more just and defensible position, whoever may hold it.[118]

Concerns for whether the organizational client will accept the imposition of democratic process upon itself overlay the broader issue of whether the organizational client will promote democracy within its community. Ellmann's example, a tenants' association, illustrates only a sub-set of NBOs. By its very mission, a tenants' association must preoccupy itself with what Ellmann has characterized as lawyers' concerns: the association will measure its success as a collective by how effectively it can deliver for the individual, and it will need the willing participation of every individual to enable it to succeed as a collective. The intense interdependence of the individual and the collective welfare within the four corners of one building forces a tenants' association to harmonize individual and factional voices every day. Arguably, the question of how to balance individual and group priorities within an organization bounded by

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Potential of U.S. Microenterprise Programs, 9 HOUSING POL'Y DEBATE 115, 135 (1998).

116. Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103 (1992).

117. *Id.* at 1141 (recommending that the lawyer promote group-wide participation at meetings); *id.* at 1134 n.86 (cautioning that the lawyer's concern for intra-group democracy not overshadow the lawyer's responsibility as attorney for the entity of strengthening the group and the positions of its leaders).

118. *See id.* at 1144.

streets, not walls, is a more porous inquiry. Neither does the internal process of an NBO's board, nor does the inclusiveness of its membership meetings, totally predetermine how effectively an NBO will produce housing or credit unions. I have already noted that some NBOs are willing to spend resources on the very inefficient and unpredictable process of engaging residents in collaboration, as well as on training them in leadership, because they anticipate a tangible return. Forming a more sophisticated constituency can support the organization and its projects. The success of this kind of collaboration may or may not depend on a commitment to internal democratic process. Therefore, for the lawyer to insist that her client practice internal democratic process and external democratic outreach may be a choice, but not necessarily an imperative.

Ellmann's suggestions draw from the lawyer's existing stock-in-trade of conducting a counseling session; he does not go further to recommend that the lawyer pull skills from the discipline of community organizing or engage in organizing herself. Others have questioned whether lawyers can or should do so, especially in light of a tendency to conflate the many activities that go into "organizing."[119] Attempts from within the social work profession to enumerate what constitutes "organizing" confirm that it comprises not only many modes of action, but many kinds of client mission and stages of client development. In that respect, these analyses are useful to community lawyers first, to clarify whether what they do intuitively is in fact "organizing," and second, to suggest some of the factors that determine whether these techniques will succeed or fail.

According to one typology, social workers in non-therapeutic practice may gravitate towards any of three categories of activity, known as "modes of intervention": "locality development," concentrating on developing leadership and participatory processes across class and ethnic boundaries within a geographic community; the more hands-off "social planning," collecting data concerning social problems to support policy initiatives; or "social action," mobilizing aggrieved groups to address a discrete problem.[120] It is noteworthy that social work theorists describe "locality"

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119. *See* Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 480 (2001).

120. Jack Rothman, *Approaches to Community Intervention*, in STRATEGIES OF COMMUNITY INTERVENTION 27, 29-34 (Jack Rothman et al. eds., 6th ed. 2001). For a corresponding typology, see STEVE BURGHARDT, THE OTHER SIDE OF ORGANIZING: RESOLVING THE PERSONAL DILEMMAS AND POLITICAL DEMANDS OF DAILY PRACTICE 141-42 (1982) (characterizing strategies as community development, social planning, or social action). For a list of tactics appropriate in varying degrees and at different times to many different kinds of practice, see Barry Checkoway, *Six Strategies of Community Change*, 30 COMM. DEV. J. 2 (1995) (listing "mass mobilization, social action, citizen participation, public advocacy, popular education, and local services development" as strategies useful over a range of community organizing).

or "community development" as focused inward on the goals of developing individual capacities for leadership and alliances across disparate groups, as ends in themselves and in preparation for some undefined, future collective action.[121]   Community development practice in this context has been characterized as emphasizing "process over task, social interaction over concrete goal directions."[122]   A simultaneous strength and drawback of "locality development" is its emphasis on coalition-building and its tool, consensus: what strengthens the collective may devalue the discordant concerns of unfavored groups.[123]   In contrast, if "social action" practice concentrates on developing individual capacities, it will be on behalf of members of those unfavored groups; the choice of projects assumes little possibility of cooperation with those whose hostility to inclusion has created the circumstances that necessitated the social action in the first place.[124]

Regardless of the mode of intervention in which the practitioner engages the client group, all groups traverse similar stages of development, categorized by one theorist as "orientation" (identifying a problem or task and meeting the group's other members); "evaluation" (refining group processes and definition of the problem); and "control" (an "action" stage emphasizing completion of tasks and de-emphasizing intra-group dynamics).[125]   The stages are sequential, but within the context of any given project, groups may move back and forth through them. Some stages of group development predominate in certain "modes of intervention." Under this analysis, groups in "community development" mode may spend considerable time and energy in the "evaluation" stage, as the focus on strengthening residents' long-term control over neighborhood projects requires an investment in building up relationships and patterns of process among the actors.[126]

Steve Burghardt has offered as an example of developmental stages within a "community development" group a settlement house program which decreases the isolation of senior citizens in the neighborhood by engaging them in different activities.[127] Meeting first as a social club, the participants moved through three or four months of an "extended evaluational stage" of sensing each other out and recognizing the natural leaders.[128]   After the group seemed to have coalesced, the organizer suggested that it adopt some projects—an "orientation stage" of identifying

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121. Rothman, *supra* note 120, at 43.
122. BURGHARDT, *supra* note 120, at 143.
123. Rothman, *supra* note 120, at 40.
124. *Id.* at 41.
125. *See* BURGHARDT, *supra* note 116, at 138-41.
126. *Id.* at 149.
127. *Id.* at 150-51.
128. *Id.*

needs in the neighborhood that this group was uniquely equipped to meet.[129] The choice, to set up a lunch program for elderly home-bound residents, fit well with the network the participants had created informally over years with the intended beneficiaries.[130] The seniors then returned to an "evaluation stage" to break the project down into tasks and assign responsibilities.[131] That done, nine months after its first meeting, the group moved into a "control stage," where it set aside its peripheral social activities to concentrate on the chosen tasks of fundraising and pinning down the logistics for a pilot program.[132] Within the next three months, the group succeeded in raising money, proving the need, and securing commitments sufficient to sustain an on-going lunch program for fifty shut-in seniors.[133]

Community lawyers who see themselves as advocates for those disenfranchised by development might be surprised to see "community development" characterized as non-confrontational and more consumed by process than by problem-solving. Yet the settlement house project illustrates the slow alternative route to social activism that a social work "community development" strategy provides, and that some lawyers have attempted.[134] A year after they had first convened as casually-connected neighbors, the seniors in this settlement house's catchment area had coalesced into a group. Burghardt attributed the group's success to "mixing and phasing" of activities appropriate to all the stages of group development, a cycling that built and sustained membership through both "getting to know you" events and concrete projects.[135] In contrast to "social action" groups, which orient themselves around a problem, this program, typical of community/locality development strategies, began with some loosely connected participants, and "grew" its problem out of their developing relationship. Initially, this emphasis on building relationships may have pushed aside serious individual grievances. But the ties formed during this stage made it less likely that future consensus was forced. While "social action" groups move into "control" phases and strike at social problems almost immediately, their inattention to relationship-building at their inception can mean later lapses in membership or even future leadership.[136]

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129. *Id.* at 150.
130. *Id.*
131. *Id.*
132. *Id.*
133. *Id.* at 150-51.
134. *See, e.g.*, White, *supra* note 4, at 1082 (describing a woman's support group initiated as a one-year federally-funded project at a food pantry, whose participants decided to collaborate in making a quilt, a tangible product of "locality development."
135. BURGHARDT, *supra* note 116, at 150-52.
136. *Id.* at 151-52.

Lawyers need not act, as the organizer did in the settlement house example, as orchestrators of different phases of activity depending on their sense of their clients' readiness to move on; organizers may serve as a necessary resource in that regard. But alertness to those dynamics may assist a lawyer in understanding why certain initiatives falter at certain times. Examples of some long-term engagements by community lawyers show how they shift, perhaps intuitively, between using "community development" or "social action" modes of intervention, and adopt activities appropriate to different phases of group development in each strategy. Over the course of seven or eight years of assisting the residents of the West Lodge Apartments in Toronto in their struggle to secure decent housing conditions, Parkdale Community Legal Services moved in and out of a "social action" strategy with their individual and tenants' association clients: they mobilized mass applications for rent abatement, held demonstrations at the city council's budget hearings, and accompanied legal and political events with media coverage.[137] But when opportunities presented themselves for coalition building with the city and with nonprofit developers to buy the properties, the lawyers and client groups set aside their more adversarial tactics in favor of building those relationships.[138] In another example, lawyers attempted to organize public housing tenants in Los Angeles to take advantage of the federal requirement that the housing authority involve them in drafting its strategic plan.[139] After two hours of lecture and discussion failed to make clear to the residents what the housing authority meant in its plan by "income targeting," the attorneys shifted to the popular education technique of role-playing: each of the fifteen resident leaders assumed the part of an applicant for public housing from one income range, and the resident leaders figured out under the targeting guidelines who would be admitted and who would be excluded.[140] Personalizing the impact of cold rules made the point in a way that traditional public education, a mainstay of community development

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137. Mary Truemner & Bart Poesiat, *The West Lodge Files: Joining Clinic and Community to Overcome Tenants' Subordination*, 35 OSGOODE HALL L.J. 697, 701-03 (1997).

138. *Id.* at 706-07.

139. Elena Popp & Francisca Gonzalez Baxa, *Creating, Preserving and Improving Housing Through Community Economic Development*, 33 CLEARINGHOUSE REV. 668, 673 (citing 24 C.F.R. § 903.13 (2000)).

140. *Id.* at 674-75. For a description and assessment of attempts to broaden the repertoire of a traditional legal services practice into community education in the context of workplace issues in a Chicago Latino immigrant community, see Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433, 454-79 (1998); *see also* Michele Lang, Nat'l Econ. Dev. & Law Ctr., *A Different Way to Provide Legal Services*, CED EXCHANGE 4 (June 1993) (commenting on Buffalo Legal Services' "Dandelion Project," in which the author interviewed welfare recipients to gauge their needs and interests, and designed educational programs for them).

strategy, never could.

Disciplines traditionally oriented less towards advocacy than law and social work have struggled with whether or how to adopt organizing strategies. For the planners and particularly the anthropologist, the dilemma is whether openly to eschew the stance of neutral expert or academic researcher for that of advocate for the disenfranchised. "Advocacy planning," an artifact of the 1960s which recently has re-gained some credence, rejects the premise of the professional retained by the purportedly non-partisan municipal or private-sector commission to draft the best plan for all. Instead, invoking a model similar to that of pro bono legal services or legal services paid through a third party, it propounds support in the form of planning advice to groups judged likely otherwise to go unheard.[141] "Community-centered praxis" in anthropology describes a movement to enlist research in the service of "a particular community-based . . . 'target group,'" for the ultimate purpose of enhancing the autonomy of the group.[142] Supporters of "advocacy" in these disciplines endorse collaboration, the transference of skills, and the encouragement of democratic participation as values basic to advocacy practice.[143]

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141. For a summary of the "advocacy planning" movement, and its permutation within local government planning offices as "equity planning," see PETERMAN, *supra* note 2, at 25-30. For an early expression of the philosophy of advocacy planning, see Paul Davidoff, *Advocacy and Pluralism in Planning*, 31 J. AMER. INST. PLANNERS 331, 333, 335 (1965) (promoting advocacy in planning as "professional support for competing claims about how the community should develop." With the "planner as advocate" solely responsible to his client, the cost would be defrayed via devices similar to legal aid). For a recent adjustment of the concept to the work of planners in community development contexts, see Marie Kennedy, *Transformative Community Planning: Empowerment Through Community Development* 6-7 (1996), *at* http://www.plannersnetwork.org (espousing "transformative planning," a mode of planning linked to "participatory action research," which relies and builds on local knowledge and gives residents the products of the research to use in advocating for their priorities in projects).

142. Singer, *supra* note 91, at 340 (citing W. Barger & E. Reza, *Policy and Community-Action Research: The Farm Labor Movement in California, in* MAKING OUR RESEARCH USEFUL 257 (John van Willigen et al. eds., 1989)).

143. *Id.* at 340 (stating that for community-centered praxis, "[a] primary value is that democratic self-determination is the most effective and constructive means of change") (quoting Barger & Reza, *supra* note 142, at 257). For a slightly different take on the moral and professional obligation of the planner to not espouse the cause of one particular client group, but to insure that all groups get a fair shake in participating in public planning processes, see Briggs, *supra* note 14, at 10 (arguing that community planners develop the skill of "community entree," the technique of sounding out the positions of as many different actors as possible in order to guard against any manipulation of the agenda that might drown out the voices of the less powerful). .

IV. CONCLUSION: CONTINGENCY AND SERENDIPITY: SOME
LESSONS ABOUT COMMUNITY LAWYERING FROM THE BURGESS SHALE

The Yoho Pass-Burgess Pass Circuit is a 12.2 mile loop trail beginning and ending at Emerald Lake, in Yoho National Park in British Columbia. As the guidebook understates, "[i]f you can only do one hike at Emerald Lake, and you are up to a fairly long day, this is the one to consider."[144] After traversing a vast alluvial fan, ascending over three waterfalls, and scanning across the President Range and down to the glacial lake, one could be forgiven for forgetting to look up and to the left around mile seven, past a "No Access" notice to a bare ridge of scalloped, layered rock. These are the Burgess Shale Beds—the source of one of the richest fossil deposits ever discovered, and of a disquieting theory about the linearity and dependability of change.

When I hiked the Yoho Pass circuit this past August, I had forgotten that Stephen Jay Gould's *Wonderful Life: The Burgess Shale and the Nature of History* lay about a third of the way down in the "will read this on sabbatical" pile. The power of George Bailey's story in American culture, cited by Gould, is such that it is never surprising to see it invoked anywhere (and I would not presume to put myself in a class of writers with Professor Gould). But there was a pleasing serendipity in having visited the physical place, in returning to both an article set aside for a month and a book set aside for several years, and then in discovering that an esteemed author had also invoked George's adventure as an example of the "counter-factual."

For Gould, a paleontologist and historian of science, *It's a Wonderful Life* illustrates the theory of "contingency,"or, in his chosen metaphor of movies, "re-playing life's tape."[145] As shown by George Bailey, and by the objects of Gould's primary focus (the tiny, fantastic creatures from the Cambrian captured within the Burgess Shale), "contingency" refers to the possibility that, no matter how logical one outcome may seem to flow from one sequence of events, any slight alteration in the sequence could produce an equally reasonable outcome.[146] Gould used, among others, the five-eyed, nozzle-faced Opabinia, perfectly adapted for its time and phylogenetically eliminated from all but its trace in stone,[147] to challenge the orthodoxy of evolution as an inexorably progressive force, or what he refers to as "[t]he iconography of the cone of increasing diversity."[148] The

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144. BRIAN PATTON & BART ROBINSON, THE CANADIAN ROCKIES TRAIL GUIDE 302 (7th ed. 2000).
145. STEPHEN JAY GOULD, WONDERFUL LIFE: THE BURGESS SHALE AND THE NATURE OF HISTORY 14 (1989).
146. *See id.* at 287-89.
147. *Id.* at 124-36.
148. *Id.* at 40.

"cone" is literally depicted in texts as a cone, or a branching tree, with the narrow point at the bottom, and the wide circumference of the cone or the spread of the branches at the top. This branching signifies the "march" of evolution of species from least to most diverse, with every phylum, genus, and species traceable from its predecessors. What is inconvenient about the creatures of the Burgess Shale is, they have no spot on the tree. They flourished, and vanished, connecting with nothing, and progressing to nowhere. They flout the accepted wisdom that evolution defines a continuity of diversification in development.

For Gould, the significance of the fauna of the Burgess Shale is that, if you "played the tape forward," any alteration could have meant that Opabinia or Hallucigenia could have been the lucky species that got to carry on, and the speaking, reasoning beings we know as ourselves could also come equipped with five eyes and a nozzle. Gould cautions that "contingency" need not mean chaos; Darwin himself took care to distinguish between "laws in the background" and "contingency in the details."[149] One may work with caution to build details that may not produce the intended result, within frameworks that may offer some stability of prediction. But the lesson of the Shale is humility and openness to possibility.

For community development lawyers and their clients, the lesson of the Shale is not that we stop doing the little things that we hope will build the competency and capacity, of our clients: assisting with the agendas of meetings, advising on the appropriate framing of a grant proposal, urging compliance with a zoning regulation or an occupancy code. It may be that we retain the flexibility to know that the death of a board member, or the disappearance of a funding source, may cast all the best laid plans aside and force a re-assessment; or that we concentrate on the "laws in the background" to create as much stability in structure and grounding in the community as possible; or that, most important, we recognize that the traits that our clients retain that seem most maladaptive may be the ones that carry them through, perhaps past us and on to their next lawyers. Barry Checkoway has suggested one last definition of "community": "a unit of solution in society."[150] To do what we can to preserve our clients as those "units" is how we help them in playing out the tape, and in doing as much as possible to make it theirs.

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149. *Id.* at 290.
150. Checkoway, *supra* note 120, at 3.

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