2021 AALS Conference on Clinical Legal Education
Hot Topic Concurrent Session
April 28, 2021
2:45 – 3:30 p.m. ET

NAVIGATING NEW BOUNDARIES IN TEACHING LAWYERING AND SUPERVISING STUDENTS

Background Materials:

Additional Reading:

Meera E. Deo, *Unequal Profession: Race and Gender in Legal Academia* (Stanford Univ. Press 2019)

When Children Become Coworkers

Sarah Sherman-Stokes

March of 2020 is the month my children become my unwitting coworkers. I teach in an immigration clinic at a northeastern law school, providing representation to asylum seekers and folks in immigration detention. In between teaching trial skills by Zoom to students with Tiger King Backgrounds, and oft-interrupted attempts at scholarship and service, my students and I do client work. And in the Spring of 2020, that workload was heavy; in the first three months of the pandemic, more than one third of my clients contracted COVID-19, nearly all of them essential workers. Through it all, my children - four and six years old at the start of the pandemic - are, almost unrelentingly, present.

It's during an early pandemic meeting, when Zoom technology is still novel, that my six year old, watching closely, overhears someone refer to me as "professor." He's quick; he doesn't miss a beat, "wait, what! You're not a *real* professor, mama!" I consider telling him how hard I worked for this, reminding him about that *Mommy Lawyer* book I read him so many times with pictures of gilded legal tomes and heavy client files. But soon my four year old has interrupted and whatever "lesson" I'm supposed to impart here has swiftly been lost. On another day (what is time anymore, anyway?), I'm in a supervision meeting with two second year law students who are representing a torture survivor in his asylum case. The subject matter is heavy and I have on headphones to create some semblance of distance between the sensitive ears of my repeat-everything-they-hear children and two law students who need to debrief a particularly harrowing client interview. Unfortunately, however, headphones do almost nothing when the meeting is accompanied by a very riotous serenade (that's one word for it) by my four year old, whose extemporaneous harmonica playing ~~can be heard~~ *can't be missed* in the background. It quickly becomes the soundtrack to many afternoons. A few weeks later, in a large meeting where neither audio nor video are muted, my six year old interrupts, monologuing as if on stage for everyone to hear. He is desperately looking for "sunglasses and fingerless gloves for P.E. class!" (I can assure you that neither were on the remote-school supply list).

In late spring, things get a bit edgier. I'm watching lawyers I admire discuss filing a class action for immigrant detainees impacted by COVID-19. Suddenly, we are all unexpectedly privy to a full frontal of both my children, as they emerge delighted from a spontaneous afternoon shower. Indeed, as the weeks stretch into months, my already "spirited" children are growing restless. The mini trampoline I was certain would save us from ourselves and from each other, is only intermittently helpful. As for the twenty dollar inflatable pool, it is a non-starter after a recent traumatic morning that had the three of us debating whether I could fish out a no-longer-alive-squirrel with my eyes closed. (I couldn't).

In May, my six year old, still recovering from stitches (please, *do* ask me about visiting the emergency room during a pandemic), develops an exciting new game that he and his brother can play to entertain themselves while I work. The game is called KnightFight™. It is exactly what it sounds like, it is "much funner than the trampoline," and I (try to) shut it down immediately. Mostly through silent threats with my eyes because my work call's Zoom video is still on. Undeterred, they resort to "light wrestling." Which can only be done directly underneath my desk.

Late in the summer, I prepare my children: I have to participate in a telephonic immigration court hearing at 8:30 AM the next day. The stakes are high for my detained client, and I explain that the Judge will be upset if he can't hear me clearly. My children nod along in considerate agreement. I pat myself on the back for setting clear expectations and everyone cooperates at bedtime, sleeps soundly and we wake up refreshed and in good spirits.[1] Barely three minutes into the hearing, both of my children trot into my kitchen-table-office and unleash a small toy called "the fart machine"[2] directly into the microphone. I am not on mute. Their comedic timing is perfect, but only in retrospect.

In truth, the first six months of the pandemic are a blur. I say yes to too many things that I don't actually have time for, and like most caretakers and parents, my primary hours of productivity are after 8:00 pm. Which means there aren't very many of them, and laundry always needs folding. Daytime is mostly a wash, as Zoom school turns my six year old into a flailing, inflatable car wash "air dancer" and my four year old is so spooked by Zoom that attempts at remote preschool are met with prostrate-on-the-floor protest. We soon give up in favor of learning a foreign language and birding. Just kidding, I'm not a monster. We watch TV.

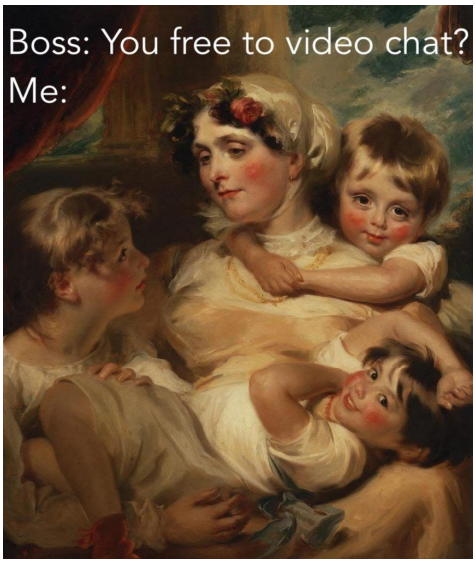
Of course, there are other moments, too - moments when I (briefly, let's not get carried away) see my children thinking about people and values outside themselves. The values ~~PBS Kids has been~~ I have been trying so desperately to hammer into them, but not too hard, lest they rebel and start reading Atlas Shrugged.

On one day, my six year old sits in with me on a call about surveillance and technology in immigrant and BIPOC communities, concerned and focused. He doesn't ask questions about what a FOIA request is, or why face surveillance is inherently racist, but I'm pretty sure he's noted the details of both. After George Floyd is murdered, I watch my children working quietly, and with almost unprecedented cooperation, to put on a Black Lives Matter protest with a bevy of stuffed animals in our living room. Weeks later, it's raining outside (again!) when I hear my four year old marvel to his big brother over the size of a court filing and what it takes to "get people out of jail that [sic] don't suppose to be there." Over dinner one night, I ask my six year

[1] Hahahahaha.
[2] But seriously, who bought this? (Me. It was me.)

old what sport he wants to play next year. He spends a moment considering his answer. “Politics,” he announces.

The pandemic isn’t over - and may not be for some time. There is still far too much work to do, for too many, and not enough time to do it well enough. But by the end of the summer, my rising first grader is referring to me as “mother of justice.” And occasionally, it’s even a compliment.



Actual footage of the author with her children

Clinical Law Prof Blog

Friday, November 17, 2017

An Open Book? Self-disclosure in Clinical Teaching

By LindsayMuirHarris

As a clinical teacher, how much of your self do you share with the students you are supervising? What effect does that sharing, or lack of sharing, have?

Thanks to a thought-provoking session at the Northwest Clinical Conference earlier this month, led by the University of Montana's Eduardo Capulong, and Kim Ambrose and Lisa Kelly from the University of Washington, I have been mulling over these questions for the last few weeks.

In their session, titled *Teaching Professional Identity and Values through Narrative and Our Own Stories*, Professors Ambrose, Capulong, and Kelly, asked participants, including myself, to think about how law professors are perceived by our students. Then they asked us to look inward with a partner, sharing how we saw ourselves first and then how our students saw us.

The question is, when *do* you self-disclose with students, and what are the risks and benefits? In many ways, in a clinical setting we are asking students to become reflective lawyers. We ask that they constantly assess their goals, their progress, and what they bring to the lawyering experience. In a way, with self-disclosure, we are modeling for students what we ask them to do in terms of being introspective and self-aware attorneys.

One faculty member at my institution recently recounted an experience with a student years ago. The student was having panic attacks in class and requested to sit by the door. Rather than simply saying "yes" and moving on, this Professor shared that she too had the same anxiety challenges. She gave the students two options – "sit by the door, or, sit in the front row so that when I am struggling, you can help me out and we can support each other." This message communicated to the student that she was not alone—that she and her Professor are on a learning journey together. The Professor humanized herself and made clear to the student that someone who struggled with anxiety can be a lawyer, and, eventually even a law professor.

With students struggling with statutory interpretation, do you share that in law school you in fact bombed the exam for course you are now in fact teaching because you neglected to closely read the statute? Do you share experiences of professional failure or struggle? How much do you share with students regarding your own career? Would you ever share the anxiety or stresses associated with promotion, tenure, renewal of your contract, or funding?

On an even more personal level, in many of our clinics, we introduce students to the concept of secondary or vicarious trauma or Post-traumatic Stress Disorder. Studies show that raising awareness of the issue can actually lower the chances of manifesting secondary trauma symptoms. In teaching this topic, do you share your own experiences with trauma? Does this empower students to do the same, or, can it pressure them to reveal experiences they would rather not share? In the moments where I have decided to share my own past trauma with students, I have felt that it has empowered them to think about how their own trauma experiences influence their lawyering and approach to working with their clients.

Do you share personal losses, such as the loss of a family member or a pregnancy? In the past year, I have been open with my students about the fact that I am grieving the loss of my beloved father, who passed away after battling with pancreatic cancer nine months ago, just two days after his 60th birthday. That openness has actually enabled me to be there for my students, one of whom lost her father not long before. Because she knew I faced the same new reality, she shared with me when her mid-semester evaluation was scheduled the same day as her father's birthday. This

semester, another student tragically lost a sibling. She was initially reluctant to even share the fact of the death, for fear of being given less meaningful clinic work, but after she did disclose, the fact that she knows about my own loss means I am able to connect with and support her in these difficult times in a more genuine way.

When, how, and with whom to share is definitely a question and a question that will be resolved differently at different times. This summer, when teaching a five week refugee law course, I did not disclose to my students, in standing up to teach the day after a miscarriage, what I had endured. One week I was pregnant and looking forward to growing my family, one week later, standing behind the same lectern, I was not. They had no idea. At that time, of course, the loss was too raw and I hadn't done any processing myself. But, several months later, in discussing the topic of pregnancy with students during a long car ride to a detention center, it felt inauthentic to refrain from sharing with my students that I too had lost a pregnancy a few months earlier. What feels right and enables connection in one moment will not always in another.

In the personal arena, as a parent, do you share the joys (and challenges!) of parenting? Does this present as unnecessary bragging (or whining?) or is it helpful insight and modeling being a working professional parent? On this line of sharing, I have erred on the side of sharing when a student asks or seems interested. I was pregnant and then delivered my first child as a clinical teaching fellow at Georgetown. Students obviously knew that I was pregnant and then that I had a small infant. A couple of female students wrote in my evaluations how much they appreciated our discussions of work-life balance and parenting and how it gave them hope for figuring out how career and family could work together.

Obviously, self-disclosure is context and situation dependent, but I appreciated the way in which Professors Kelly, Ambrose, and Capulong opened up this conversation. Does sharing some of our personal journeys make us vulnerable to our students? Will they judge us and think less of us as "Professors?" Or, are we normalizing conversation around difficult topics and reducing stigma associated with so many experiences we have in life. Are we making ourselves more approachable and relatable? In sharing, are students more likely to share what is happening in their own lives with you? Is this a positive development, or are you crossing the line into quasi-therapist/friend? Is that so dangerous in the end – hierarchy and grading aside, are we not just human beings interacting inside and outside of the classroom in all the messy and confusing ways that human present?

In practicing self-disclosure, are you actually working to humanize a profession that is so often disconnected from emotion? Given that lawyers are prone to self doubt, drug and alcohol abuse, stress and over work, could self-disclosure by leaders in the profession, including law professors, work to undo some of those complicated and negative dynamics? Can self-disclosure help to humanize professors to help to undo some of the ways in which law school is an environment rife with the challenges posed by implicit bias and stereotype threat?

I think I tend to self-disclose more than average, and increasingly wonder whether this may introduce an unhelpful dose of casualness into the professor-student relationship. It's possible that bringing our more authentic and complete selves to the table could potentially undermine students' respect for us. This may be of particular concern for young professors of color and women who face documented biases in the classroom due to gender, race, sexual orientation, class, age, or other differences. As a female law professor in my mid-thirties, I know students find me more accessible and less intimidating than my male and older colleagues. In disclosing tidbits of my personal or professional struggles here and there, am I encouraging a lack of respect? Am I crossing lines in a way that undermines my students' ability to hold me in the same category of "professor" as some of my colleagues? Or, am I actually humanizing myself and enabling students to relate to me more easily human to human?

In conclusion, I have reached none, except that it is worth us asking ourselves, as clinicians, where we draw our lines and when, and what effect that may have. It is also worth opening up conversations with one another to understand how self-disclosure has played out, particularly across race, gender, age, sexual orientation, and other differences.

For myself, I am often a fairly open book. But, that book will be opened to various pages as and when I feel appropriate. There may sometimes be pages I wish I had not shared in that moment, but I am willing to experiment with self-disclosure because I believe that the potential gains in truly connecting with students outweigh the risks.

Tulane University

LAW SCHOOL

Critical Interviewing

Laila L. Hlass & Lindsay M. Harris

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CRITICAL INTERVIEWING

Laila L. Hlass & Lindsay M. Harris [*]

ABSTRACT

Critical lawyering—also at times called rebellious, community and movement lawyering—attempts to further social justice alongside impacted communities. While much has been written about the contours of this form of lawyering and case examples illustrating core principles, little has been written about the mechanics of teaching critical lawyering skills. This Article seeks to expand critical lawyering theory, and in doing so provides an example of a pedagogical approach to teaching what we term "critical interviewing." Critical interviewing means using an intersectional lens to collaborate with clients, communities, interviewing partners, and interpreters in a legal interview. Critical interviewers identify and take into account historical and structural biases, privileges, and the role they play in the attorney-client relationship.

This Article urges law professors and legal professionals to operationalize critical legal theories into practice, and ultimately to develop experiential pedagogies to teach these critical lawyering skills. This call to developing new pedagogies is particularly urgent in the wake of nationwide uprisings in response to the killing of George Floyd and others, as well as corresponding law schools' commitments to identify and dismantle institutional racism. In this Article, we first set forth the contours of the canonical client interviewing pedagogy. Second, we outline the tenets of critical lawyering—a lawyering practice animated by critical legal theories. Next, we advance the pedagogy of critical interviewing, building upon client-centered lawyering texts. We describe one methodology of teaching critical interviewing: the Legal Interviewing and Language Access films. Ideally positioned to use with

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virtual learning, these videos raise a multitude of issues, including addressing bias and collaborating with clinic partners, interpreters, and clients. Finally, the Article considers areas ripe for further exploration within critical interviewing, concluding with a call for engagement with new pedagogical tools to teach critical interviewing, along with other aspects of critical lawyering.

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CRITICAL INTERVIEWING

INTRODUCTION

Clinical and critical legal scholars have long sought "to illuminate the assumptions, biases, values, and norms embedded in the law's working in order to heighten awareness of the political and moral choices made by lawyers and the legal system."[1] Experiential faculty have not, however, always weaved an understanding of these assumptions, biases, values and norms into the pedagogy of lawyering. In this Article, we urge clinical scholars to do exactly this. As law schools are responding to calls to dismantle racism within legal education, experiential faculty have a special role to better teach students how to identify and disrupt racism and other systems of discrimination in the practice of law. We examine one pedagogical tool to promote conversations and deep discussion around what we term "critical interviewing."

[1] Phyllis Goldfarb, *Beyond Cut Flowers: Developing A Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717, 722 (1992).

Critical interviewing means using an intersectional[2] lens to collaborate with clients, communities, interviewing partners, and interpreters, with an eye toward interrogating privilege differentials in these relationships and accounting for existing historical and structural biases.[3] Conversations around race, gender, ability, immigration status, and other identities people hold and related bias they experience can be challenging. The Legal Interviewing and Language Access videos[4] we introduce provide an accessible opening to surface important dynamics that must be addressed.[5]

In this Article, we add our voices to the body of literature from clinical scholars engaging in critical legal theory.[6] While conjoining theory and pedagogical methodology within one article may seem disjointed, the marriage of theory and the pedagogy of law practice is precisely our point. We seek to expand critical[7] lawyering theory,[8] and in doing so provide an example of a pedagogical approach to

[2] Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policies*, 1989 UNIV. OF CHI. L. F 139 (1988) (introducing the concept of intersectionality, the interconnectedness of social categories such as race, gender, and sexual orientations and how individuals may face overlapping and intertwined systems of discrimination and oppression depending on their identity).

[3] In interrogating privilege differentials and addressing bias, critical interviewing strives to be anti-racist. Ibram X. Kendi defines an anti-racist as "One who is supporting an antiracist policy through their actions or expressing an antiracist idea" and "One who is expressing the idea that racial groups are equals and none needs developing, and is supporting policy that reduces racial inequity." Ibram X. Kendi, HOW TO BE AN ANTIRACIST 13, 24 (2019).

[4] The videos are hosted on youtube, https://www.youtube.com/channel/UCFRiQyrhpHmdxgAE_DoMeRA/featured?view_as=subscriber

[5] *See, e.g.*, Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807, 1830 (1993) (acknowledging how challenging it can be to engage in these topics as student egos are challenged and feelings may be hurt).

[6] *See e.g.*, Wendy A. Bach & Sameer M. Ashar, *Critical Theory and Clinical Stance*, 26 CLINICAL L. REV. 81, 90 (2019) (citing Carrie Menkel-Medow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555, 569 (1980) ("As both a working professional and a scholar or expert on the legal system, the clinician can view the aggregate impact of the individual lawyer on the legal system and, conversely, the legal system on the lawyer. Indeed, the clinician is ideally situated in time and place to develop a legal sociology or anthropology.")).

[7] As Prof. Lolita Buckniss Inniss writes "critical" has been attached to numerous scholarly endevors, and signifies "querying mainstream, classical legal thought, especially of the variety that views law as a structured, coherent whole that is typically accessed via the application of long-established, logical, legal rules and norms." Lolita Buckniss Innisss, "Other Spaces in Legal Pedagogy, *Harvard Journal of Racial and Ethnic Justice*

[8] Critical lawyering involves incorporating critical theory into practice, and does not have a universally accepted definition. Louise G. Trubek, *Embedded Practices: Lawyers, Clients, and Social Change*, 31 HARV. C.R.-C.L. L. REV. 415, 416 (1996) ("Critical lawyering aims to provide subordinated people with greater access to legal representation and to promote more social change."); Minna J. Kotkin, *My Summer Vacation: Reflections on Becoming A Critical Lawyer and Teacher*, 4 CLINICAL L. REV. 235,

teaching critical interviewing. Lawyering which attempts to further social justice alongside impacted communities has been alternatively and sometimes interchangeably[9] been referred to as collaborative,[10] rebellious,[11] community,[12] progressive,[13] third-dimensional,[14] borderlands,[15] political,[16] poverty,[17] and movement lawyering.[18] No perfect consensus exists on the contours of these models of lawyering, and there are nuanced differences in priorities and strategies.[19] We choose to expansively use the term "critical lawyering" as a broad lawyering effort to redress social injustice by operationalizing critical legal theory principles within the practice of law.[20] A number of scholars have explored the gaps and intersections

238 (1997) (critical lawyering is a "methodology that attempts to empower clients traditionally subordinated by our legal system.").

[9] Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21 CLINICAL L. REV. 255, 260 (2014) ("Whether framed as 'third-dimensional' lawyering or 'rebellious lawyering' or community lawyering, community or client empowerment is a critical means, and end, of these practices."); Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 404 (2019) (Community Lawyering may include "rebellious lawyering, cause lawyering, political lawyering, social change lawyering, third-dimensional lawyering, collaborative lawyering, revolutionary lawyering and law and organizing"); Paul R. Tremblay, *Critical Legal Ethics Review of Lawyers Ethics and the Pursuit of Social Justice: A Critical Reader*, Edited by Susan D. Carle, Foreword by Robert W. Gordon (Fnr1), 20 GEO. J. LEGAL ETHICS 133, n. 6 (2007) ("In this review I use the terms 'progressive' and 'critical' interchangeably, recognizing that in some other contexts the terms might acquire differing meanings.").

[10] Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, 160 (1994).

[11] Symposium, *Rebellious Lawyering At 25*, 23 CLINICAL L. REV. 471, 471-815 (2017).

[12] Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403 (2019).

[13] Gowri J. Krishna, *Worker Cooperative Creation as Progressive Lawyering? Moving Beyond the One-Person, One-Vote Floor*, 34 BERKELEY J. EMP. & LAB. L. 65 (2013); Scott L. Cummings, *Law and Social Movements: Reimagining the Progressive Canon*, 2018 WISC. L. REV. 441 (2018).

[14] Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 760-66 (1988).

[15] Borderlands lawyering uses translation lessons from ethnography, language theory, feminist theory, and postmodernism to help represent clients with eye towards different cultural/lived experiences and perspectives. Melissa Harrison & Margaret E. Montoya, *Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387, 394 (1996).

[16] Erik K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 833-34 (1997) (political lawyering is employed by new civil rights efforts to change governments and private institutions, but there remain gaps between political lawyering and progressive race theory); Deborah N. Archer, *Political Lawyering for the 21sst Century*, 96 DENV. L. REV. 399 (2019).

[17] Stephen Wexler, Practicing Law for Poor People, Yale Law Journal.

[18] Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645 (2017).

[19] For a discussion against creating a heirachy in approaches, see Rebecca Sharpless, More than One Lane Wide: Against Heirarchies of Helping Progressive Legal Advocacy.

[20] Melanie B. Abbott, *Seeking Shelter Under a Deconstructed Roof: Homelessness and Critical Lawyering*, 64 TENN. L. REV. 269, 287 (1997).

between critical theories and clinical legal education.[21] Some have suggested there is a mismatch between the critical theory and the poverty lawyering practice which it critiques.[22] Yet there is a limited supply of literature on how to actually operationalize critical theory within experiential education.

We seek to encourage experiential faculty[23] to not only marry critical theories and lawyering theory, but ultimately to develop experiential pedagogies to teach the product of that marriage—critical lawyering.[24] Twenty-five years ago Lucie E. White

[21] Carolyn Grose & Margaret E. Johnson, *Braiding the Strands of Narrative and Critical Reflection with Critical Theory and Lawyering Practice*, 26 CLINICAL L. REV. 203 (2019); Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 1 (2015) [hereinafter *Disruptive Pedagogy*]; Margaret E Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL'Y & L. 161 (2005); Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991); Carol Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. ON POVERTY L. & POL'Y 337 (2011) [hereinafter *Redefining Human Rights Lawyering*]; Phyllis Goldfarb, *Beyond Cut Flowers: Developing A Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717, 722 (1992); Melanie B. Abbott, *Seeking Shelter Under a Deconstructed Roof: Homelessness and Critical Lawyering*, 64 TENN. L. REV. 269 (1997); Ruth Buchanan & Louise G. Trubek, *Resistance and Possibilities: A Critical and Practical Look at Public Interest Lawyering*, 19 N.Y.U. REV. L. SOC. CHANGE 687 (1991); Minna J. Kotkin, *My Summer Vacation: Reflections on Becoming a Critical Lawyer and Teacher*, 4 CLINICAL L. REV. 235 (1997); Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21 CLINICAL L. REV. 255, 256 (2014) (considering how transnational human rights lawyering can consider "critical models of lawyering").

[22] Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN'S RTS. L. REP. 297, 299 (1992) ("High talk about language, meaning, sign, process, and law can mask racist and sexist ugliness if we never stop to ask: 'Exactly what are you talking about and what is the implication of what you are saying for my sister who is carrying buckets of water up five flights of stairs in a welfare hotel?'"); Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. ON POVERTY L. & POL'Y 337, 361-62 (2011) ("critical theory and literature, including that regarding structural conditions that enable the persistence of poverty, has been divorced from the everyday practice of poverty law."). The movement to understand the interaction between theory and law practice has been termed "theoretics of practice." Naomi R. Cahn, *The Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice*, 77 CORNELL L. REV. 1398 (1992); *see also* Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); Robert D. Dinerstein, *A Mediation on the Theoretics of Practice*, 43 HASTINGS L.J. 971 (1992).

[23] Critical lawyering can be taught in a number of stages and settings, such as on the job training and continuing legal education sessions, and in any practice area. However, we are focused on teaching interviewing in law schools, so this Article is particularly intended for faculty teaching interviewing in clinics, simulation courses, and externship courses. This focus in no way undermines our strong belief that issues of racism, bias, misogyny, and other issues should absolutely be affirmatively raised and discussed in doctrinal law school courses and throughout the curriculum.

[24] While critical lawyering has long been discussed in the poverty law arena, we suggest that interrogating power differentials and considering how to address bias stemming from historical and structural oppression should be incorporated into all legal settings, as it is relevant to all legal

asked, "[w]hat kinds of clinical scholarship can help translate our inchoate visions of collaborative lawyering into a grounded knowledge that can inform overt lawyering and clinical teaching in the varied settings where we work?"[25] Answering this invitation by integrating critical and lawyering theories into practice and then adapting experiential pedagogy to better promote critical theory-informed practice is an ambitious undertaking. Our Article offers one effort in this larger project of integrating critical theory[26] into experiential pedagogy,[27] in the context of client interviewing. We introduce one illustration of the pedagogy of critical interviewing, *The Legal Interviewing and Language Access Film Project (LILA).*[28] The videos, easy to adapt for use in the remote teaching context, provide legal educators with an innovative tool to discuss challenges that arise within critical interviewing, including addressing bias and collaborating with law school clinic partners, interpreters, and clients. The films enliven and deepen the learning environment by modeling and reverse-modeling[29] critical interviewing techniques, as well as stimulating classroom discussion, reflection, and role play.

relationships. While some private law firm cultures might not value or encourage an intersectional and collaborative approach to interviewing, lawyers and clients and communities might benefit from such a lens. This approach might further attract and retain attorneys of color, women, LGBTQ+ individuals, and others and it may assist in better connecting to clients of various backgrounds, as well as encouraging more effective collaborations work with interpreters, paralegals and others who are part of the legal interviewing team. We also recognize that some of our colleagues are already doing this. Carolyn Grose, for example, teaches a seminar titled "Critical Lawyering in these Times." E-Mail from Carolyn Grose, Dir. of Skills Integration, Mitchell Hamline Sch. of Law, (Jan. 23, 2020) (on file with authors). Kimberly O'Leary and Mable Martin-Scott have developed a seminar called Multicultural Lawyering and developed a textbook to help "students explore many dimensions of culture, including race, gender, sexual orientation, disability, national identity and many other topics." E-Mail from Kimberly E. O'Leary, Professor of Law, Western Michigan University Cooley Law School (July 30, 2020).

[25] Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, 160 (1994).

[26] By critical theories, we refer to what has been termed "outsider jurisprudence," including but not limited to Critical Race, Black-Crit, LatCrit, Feminist, DisCrit, Queer/OutCrit, and other related legal theories. For some compilations of Critical Race Theory *see* Derrick A. Bell Race, Racism and American Law, Kimberle Crenshaw et al, *Critical Race Theory: the Key Writings that Formed the Movement*, Richard Delgado and Jean Stefancic "CRITICAL RACE THEORY (Third Edition)."

[27] *See Disruptive Pedagogy*, *supra* note 17, at 5 ("[T]he contributions of critical legal theory to clinical education are underexplored generally.").

[28] Laila L. Hlass & Lindsay M. Harris, *Legal Interviewing and Language Access Film Project*, TULANE UNIV. LAW SCH., https://law.tulane.edu/content/legal-interviewing-and-language-access-film-project (last visited Feb. 2, 2019) and *Law School Clinics Across the Country Adopt Prof. Harris' Client-Interviewing Training Module*, UNIV. OF THE DIST. OF COLUMBIA (Feb. 28, 2019), https://www.law.udc.edu/news/440172/Law-School-Clinics-Across-the-Country-Adopt-Prof.-Harris-Client-Interviewing-Training-Module.htm.

[29] By reverse modeling, we refer to demonstrating false assumptions and unsuccessful performance of skills in order to help students identify common mistakes and to consider how to best plan for a more successful experience. For example, Priya Baskaran et al., *Experiential Learning Through Popular Multimedia*, WEST VIRGINIA UNIVERSITY, https://popularmedia.law.wvu.edu/ (last visited Feb. 2,

In this Article we first set forth the contours of the canonical client-centered interviewing pedagogy and methodology. Second, we outline the tenets of critical lawyering—a lawyering practice animated by critical legal theories. Next, we advance the pedagogy of critical interviewing, building upon the rich client-centered lawyering texts. It also serves to unearth what has been under-emphasized in existing pedagogy—namely a central inquiry into power dynamics and an expansive view of collaboration in various legal relationships implicated in an interview.[30] We describe one methodology of teaching critical interviewing, using the Legal Interviewing and Language Access films to surface a multitude of issues that arise in critical interviewing. We contemplate areas ripe for further exploration within critical interviewing pedagogy. Ultimately, the Article calls for new pedagogical tools to teach critical lawyering skills.

I. PEDAGOGY OF CANONICAL CLIENT INTERVIEWING

Before examining the contours of critical interviewing, as an emerging pedagogy, we first explore existing pedagogies, here. We begin with the acknowledgment that teaching legal interviewing is difficult.[31] This Part I aims to acknowledge that difficulty and to provide a grounding in our goals in teaching interviewing skills. Even with some consensus on some "good interviewing" techniques, teaching those skills—using active listening and a client-centered orientation—offers challenges in choosing the most fitting text(s), designing the seminar, and developing appropriate exercises and assessment tools. Essential, and often underdeveloped, in teaching interviewing is a framework for what we term, "critical interviewing." By this we mean an explicit focus on seeking to understand power and privilege disparities, and the larger context of the client's lived experience related to the intersectional identities of the advocates and the client. All of this must be considered in figuring out a collaborative approach to lawyering and social justice goals. In the interviewing context, this collaborative approach may entail working not

2019) (explaining how multimedia of lawyers performing skills can provide a shared experience where students can comfortably critique skills "because some of the 'worst' lawyering is on display"); THE MEDIA METHOD: TEACHING LAW WITH POPULAR CULTURE (Christine A. Corcos ed. 2019).

[30] Little has been written about the nuts and bolts of how to engage in collaborative lawyering. *See* Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 159 (2000).

[31] As Laurie Shanks has explained, "'[h]ow to hear' is what I teach. It isn't easy." *See* Laurie Shanks, *Whose Story Is It, Anyway? -- Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLINICAL L. REV. 509, 509 (2008) [hereinafter *Shanks*].

only closely with a client, but also potentially with an interviewing partner, supervisor(s), and interpreter.

A. Contours of Client Interviewing Pedagogy

First, we explore the contours of client-centered interviewing pedagogy, before describing various methodologies to impart interviewing skills. This rich framework provides the foundation on which critical lawyering is built. Teaching interviewing skills has long been a focus within clinical education.[32] Client-centered interviewing is a dominant model of lawyering.[33] Without this orientation, "lawyer-client interviews can be interpreted as non-neutral encounters that reinforce and reproduce the institutions and asymmetrical relationships in which they are embedded."[34] Client-centered lawyers must consider and reflect in practice their client's values, feelings, and preferences.[35] Client-centered lawyering aims to adapt the legal approach based on the client, and their needs, desires, and values, and goals.[36] This may include addressing non-legal concerns and ensuring the client is actively engaged in making decisions.[37]

Client interviewing pedagogy illuminates various purposes of interviews– from an initial client meeting or intake interview, to fact-finding and investigation, client counseling, witness preparation, and some combination of the above. This Article focuses on the pedagogy of teaching law students how to prepare for an initial

[32] *See e.g.,* DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977) [hereinafter *Binder & Price*]; GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1978); ROBERT F. COCHRAN ET AL., THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING 4-6, 73 (3rd ed. 2014) [hereinafter *Cochran et al.*]; STEFAN H. KRIEGER & RICHARD K. NEUMANN, ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION, AND PERSUASIVE FACT ANALYSIS, (5th ed. 2015); THOMAS L. SHAFFER & JAMES R. ELKINS, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL (4th ed. 1997); STEPHEN ELLMAN ET AL., LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING 6 (2009) [hereinafter *Lawyers and Clients*].

[33] *Lawyers and Clients*, *supra* note 27, at 6 ("To be *client centered* is to emphasize the client as the prime decision-maker in the lawyer-client relationship and the person who decides the objectives of the representation.") (emphasis in original); *Cochran et al.*, *supra* note 27, at 4-6 (outlining the client-centered counseling model as a departure from traditional authoritarian interviewing, but proposing the collaborative decision-making model as the most desirable approach).

[34] Gay Gellhorn et. al., *Law and Language: An Interdisciplinary Study of Client Interviews*, 1 CLINICAL L. REV. 245, 249 (1994) (citations omitted) [hereinafter *Gellhorn et al.*].

[35] DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 5 (4th ed. 2019).

[36] DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 4 (4th ed. 2019).

[37] DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 4-5 (4th ed. 2019).

client interview, involving a good deal of fact-finding and some counseling. We place special emphasis on the pedagogy of a first client interview, as it sets the tone, ground rules for the attorney-client relationship, client goal setting, and includes some fact investigation. Often, in clinical settings, and in much lawyering, the "first interview" is not always the client's first interview or interaction with the clinic or law office, rather, in this context, we refer to the first time that a student or a team of students are interviewing the client(s) assigned to them.[38]

We suggest two broad teaching goals in an initial client interview: 1) to build and maintain an "effective working relationship with our clients," and 2) to acquire "complete and accurate information about their situation and desires."[39] With these two goals, students will break down further related sub-goals for the interview, including building rapport and trust, explaining key legal concepts, and perhaps most importantly, actively listening to understand the client's problems and story. Topics within clinic seminar include how to explain roles, how to listen, how to elicit client goals, how to ask questions, how to respond to sensitive and emotionally difficult moments, and how to begin and end an interview.

Using the traditional clinical pedagogy of "plan, perform, and reflect,"[40] we examine client-centered interviewing considerations for a "first" interview in turn: 1) Planning: interview preparation; 2) Performing: the substance of the interview itself; and 3) Reflecting: interview conclusion and post-interview work.

Planning, or interview preparation, is the first stage. Before an interview even begins, advocates must give some level of thought to when, where, and how the

[38] We should also note that students and lawyers often do have *some* information about the prospective client going into a first interview or meeting. There may be a referral from another agency or attorney, a phone intake or screening, or other documents that give the student or attorney some information about the client. As Alicia Alvarez and Paul Tremblay note, there is something about preparing for the unknown – an interview which has not yet occurred – that is both challenging and may seem counterintuitive. *See* ALICIA ALVAREZ & PAUL R. TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE 23 (1st ed. 2013) [hereinafter *Transactional Lawyering Practice*].

[39] Don Peters & Martha M. Peters, *Maybe That's Why I Do That: Psychological Type Theory, the Myers-Briggs Type Indicator, and Learning Legal Interviewing*, 35 N.Y.L. SCH. L. REV. 169, 171 (1990).

[40] SUSAN BRYANT ET AL., TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 24 (2014) ("Clinical teachers call this activity 'planning, doing, and reflection,' an ongoing process of preparation, action and learning that will inform future action."); Harold McDougall, *The Rebellious Law Professor: Combining Cause and Reflective Lawyering*, 65 J. LEGAL EDUC. 326, 332 (2015) (The "planning-doing-reflecting model . . . helps students 'learn how to learn from experience,' encouraging lifelong learning habits"). We prefer to use the term "perform" in place of "do" as it emphasizes in training students to be reflective lawyers that we don't just "do," but that every act as a lawyer should be, as far as possible, planned and intentional, and potentially rehearsed in the same way that one might rehearse for the performance of a play.

interview will be conducted, including space and set up.[41] This preparation should keep in mind a trauma-informed approach to lawyering.[42] When, for example, students have an inclination that a client may suffer from or has been diagnosed with Post-traumatic Stress Disorder and might be triggered by small spaces or a room without natural light, these considerations are particularly important.[43] Prior to the interview, students should give some thought to how they will organize the interview, in addition to roadmapping the interview and framing the issues and purpose of the interview for the client.[44] A common pitfall of client interviewing is failing to explain

[41] THOMAS L. SHAFFER & JAMES R. ELKINS, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL 233-37 (4th Ed. 1997) ("The physical setting in which interviewing and counseling take place is usually of the lawyer's choosing. Traditionally, if has been an atmosphere of tacit intimidation."); *Cochran et al.*, *supra* note 27, at 56 (explaining the importance of a comfortable physical setting and positioning of the lawyer and client);
Jean R. Sternlight & Jennifer Robbennolt, *Good Lawyers Should Be Good Psychologists: Insights for Interviewing and Counseling Clients*, 23 OHIO ST. J. ON DISP. RESOL. 437, 506 (2008) ("Psychological research has shown that the physical environment can be important in setting the tone for an interview."); *see also Transactional Lawyering Practice*, *supra* note 33, at 25 (considering where a meeting should take place and the set up of the room in the transactional lawyering context); David Chavkin, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 72-73 (2001) (discussing "proxemics," the impact of spatial relationships on communication).
[42] A whole host of considerations must be taken into consideration when working with traumatized populations. *See, e.g.*, Hannah C. Cartwright, Lindsay M. Harris, Liana Montecinos & Anam Rahman, *Vicarious Trauma and Ethical Obligations for Attorneys Representing Immigrant Clients: A Call to Build Resilience Among the Immigration Bar*, AM. IMMIGR. LAW. ASS'N L. J. (2020) [hereinafter *Vicarious Trauma and Ethical Obligations for Attorneys*]; Lynette M. Parker, *Increasing Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine & George Alexander Community Law Cente*r, 21 GEO. IMMIGR. L.J. 163, 177-80 (2007); Carol M. Suzuki, *Unpacking Pandora's Box: Innovative Techniques for Effectively Counseling Asylum Applicants Suffering from Post-Traumatic Stress Disorder*, 4 HASTINGS RACE & POVERTY L. J. 235 (2007); Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359 (2016); Julie Marzouk, *Ethical and Effective Representation of Unaccompanied Immigrant Minors in Domestic Violence-Based Asylum Cases*, 22 CLINICAL L. REV. 395 (2016).
[43] For example, one asylum-seeker described how being interviewed in a small room triggered a prior interrogation by government officials. See DAVID NGARURI KENNEY & PHILIP G. SCHRAG, ASYLUM DENIED: A REFUGEE'S STRUGGLE FOR SAFETY IN AMERICA (1st ed. 2008).
[44] *Binder & Price*, *supra* note 27, at 103-108 (explaining the benefits of a "preparatory explanation" at the conclusion of the "preliminary problem identification."); *Cochran et al.*, *supra* note 27, at 93 (advocating for the use of a "framing statement" after the client has shared her story to restate important parts of that story and explain the next steps); Cara Cunningham Warren, *Client Interview Training: A Reflection on the "Quantum Shift" in Legal Education*, 96-DEC MICH. B. J. 42, 43 (2017) (advising students to "empower the client to participate" through telling the client 1) what to expect, 2) what information is needed, and 3) confirming confidentiality); Sternlight & Robbennolt, *supra* note 36, at 495 (urging attorneys to set expectations at the beginning of an interview, encouraging clients to share detailed responses, not to edit responses, and to provide complete answers); Robert Dinerstein et al., *Connection, Capacity, and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLINICAL L. REV. 755, 763 (2004) ("Providing clients with explanations can alleviate that sense of disconnection from the questions of the lawyer and can build (or rebuild) sympathy and connection. Explanation is also a good way to convey your respect for the client's dignity and privacy.")

to the client the purpose or goals the lawyer has in collecting the client's information, including sensitive history and experiences.[45] Without this kind of framing clients are not treated "as equals in the construction of their own stories; they can only respond to what is asked of them."[46] During the pre-interview stage, students must also consider a variety of topics as they develop an interview plan. Topics may include how to: begin, build rapport, listen, show empathy, formulate questions, close the interview, interview collaboratively and work with an interpreter, if needed.

Client-centered lawyering texts generally[47] recommend considering "cross-cultural" considerations,[48] "multicultural lawyering"[49] or striving for "cross-cultural competency" as part of preparation.[50] This focus intends to address the impact of lawyers and law students' assumptions when relating to their client, in the context of both their and their clients' cultural identities and experiences.[51] Texts suggest cross-cultural lawyering involves appreciating perceived differences and similarities in

[hereinafter *Connection, Capacity, and Morality*]; *see also Transactional Lawyering Practice*, *supra* note 33, at 23, 50 (part of roadmapping also includes repeating back to the client what you have understood as the lawyer, allowing the client to add anything you may have missed, and share that you are ending one topic and moving on).

[45] Shanks, *supra* note 31, at 513 ("Rarely does the lawyer explain to the bewildered or apprehensive client why the questions are important or how the answer will be used."); *see also Gay Gellhorn et. al.*, *supra* note 29, at 249 ("Lawyers who are poor interviewers listen only selectively to their clients, do not provide an understandable framework for their questions, and often unintentionally prevent clients from relating pertinent information.").

[46] *Gay Gellhorn et. al.*, *supra* note 29, at 249.

[47] However, given the differences occurring across and within populations, some have cautioned against one model for interviewing. Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 376 (2002) ("If, though, the community in which you work is filled with a variety of interpersonal patterns, and a multiplicity of ways of understanding the world, then any 'model' faces a distinctly more onerous challenge."); *Connection, Capacity, and Morality*, *supra* note 39, at 756 ("[N]o framework can be followed blindly."); Naomi R. Cahn, *Theoretics of Practice: The Integration of Progressive Thought and Action: Styles of Lawyering*, 43 HASTINGS. L.J. 1039, 1040, 1059 (1992) (espousing the idea that there is no one right way to practice law effectively).

[48] DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 5-10 (4th ed. 2019).

[49] STEFAN H. KRIEGER & RICHARD K. NEUMANN, ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION, AND PERSUASIVE FACT ANALYSIS 65-76 (5th ed. 2015).

[50] CAROLYN GROSE & MARGARET E. JOHNSON, LAWYERS, CLIENTS & NARRATIVE: A FRAMEWORK FOR LAW STUDENTS AND PRACTITIONERS 49-62 (2017); *see also Transactional Lawyering Practice*, *supra* note 33, at 207-31 (discussing multicultural lawyering and cultural competence).

[51] As Sternlight and Robbennolt explain, "[c]ulture may also be related to differences on a variety of other dimensions that have implications for client interviewing and counseling." Sternlight & Robbennolt, *supra* note 36, at 510-11 ("For example, cultures differ in terms of the meaning that is attributed to silence in an interaction, the degree of formality expected, the appropriateness of interruptions, understandings of the meaning of eye contact, the contours of personal space, conceptions of time, conventions about the display of emotion, the appropriateness of self-disclosure, how agency is viewed, and attitudes towards authority.") (citations omitted).

cultures.[52] Examples of differences in culture include interpersonal space, body language, time considerations, individualism, collectivism, and formality.[53] In discussing cross-cultural considerations, one leading texts suggests starting from self-reflection on "sameness and difference" between the advocate and the client.[54] While understanding others' cultures, advocates must not resort to stereotypes.[55]

Self-reflection about one's own identity, as well as the information students may be able to glean even before a client meeting about a client's cultural identity, is a first, important step in the pre-interview stage, as well as throughout the interview.[56] However, this kind of individual comparison is just the starting point; critical interviewing principles deepen this reflection by considering historical and systemic biases.[57] Performing, or conducting the interview, is the second stage.

[52] *See* Krieger & Neumann, *supra* note 27, at 65-66 ("If you ignore the differences among cultures—or if you think of people in cultural stereotypes—you will alienate clients, witnesses, other lawyers, and judges and juries. You will also cut yourself off from a great deal of information . . . ").
[53] Krieger & Neumann, *supra* note 27, at 66-68; DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 7-10 (4th ed. 2019) (proxemics, kinesics, eye contact & facial expressions, time and priority considerations, uncertainty avoidance, power distance, individualism/collectivism, long-term/short-term, high-context/low-context); *But see Lawyers and Clients*, *supra* note 27, at 39 (discussing relationship building between an African American lawyer, who experienced being discriminated against in segregated Birmingham, with a white client, who garnered privilege from the Jim Crow social structure).
[54] DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 5 (4th ed. 2019); Similarly, *see* CAROLYN GROSE & MARGARET E. JOHNSON, LAWYERS, CLIENTS & NARRATIVE: A FRAMEWORK FOR LAW STUDENTS AND PRACTITIONERS [ ] (2017) ("Cross-cultural means that we are in a relationship or relating to someone across or among similar or different cultures."); In the influential *Five Habits of Cross-Cultural Lawyering*, Habit One includes mapping one's own identity and one's client's in terms of sameness and difference, or "separation" and "connection." *See* Sue Bryant & Jean Koh Peters, *Five Habits of Cross-Cultural Lawyering and More*, YALE UNIVERSITY, https://fivehabitsandmore.law.yale.edu/jean-and-sues-materials/habits/habit-1/ (last visited Feb. 2, 2020); See *Lawyers and Clients*, *supra* note 27, at [Chapter 2].
[55] Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 Clinical L. Rev. 373, 378 (2002) ("To ignore likely differences in culture is an invitation to malpractice in counseling; to presume you know what those differences will be once you know your client's race or sex or cultural background is an invitation to dehumanize or reify your client, and to assume generalizations that may not apply to him.").
[56] *See* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence In Lawyers*, 8 CLINICAL L. REV. 33 (2001) (describing approach developed with Jean Koh Peters); *see also* Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 406-407 (setting out self-examination and self-awareness as the first foundational principle of community lawyering); *see also Transactional Lawyering Practice*, *supra* note 33, at 66-71 (discussing self-examination of one's own cultural identity as an important step in addressing "cross-cultural issues.").
[57] We note and appreciate Ibram X. Kendi's thinking on "systemic," "institutional," or "structural" racism. He notes that these are "vaguer terms than 'racist policy' … 'Racist policy' is more tangible and exacting and more likely to be understood by people, including its victims, who may not have the benefit of extensive fluency in racial terms. 'Racist policy' says exactly what the problem is and where

Students must keep a great deal in mind as they conduct the actual interview itself. As they begin to interview, students should pay attention[58] to how they open the interview, recognizing that key information may be disclosed in the first few moments of the interaction.[59] Some key elements may involve introducing themselves, establishing roles, explaining confidentiality,[60] and determining what questions the client has. Clinic students will need to think through notetaking,[61] and students who must record an initial interview will need to seek permission for recording.

From the moment the interview begins, students should make efforts to establish rapport, recognizing that doing so may be accomplished in many different ways.[62] Rapport is "closely related to trust" and has three interrelated characteristics: "1) mutual attentiveness – where both participants attend to and are involved with each other; 2) 'positivity' – a reciprocal sense of consideration for each other; and 3) 'coordination' – a sense of responsiveness to each other or of being 'in sync.'"[63] Establishing rapport may also involve ascertaining the client's goals, without making assumptions about what those goals may be.[64] One question in rapport-building that students often confront is how much of their own lives, experiences, and feelings to share with clients.[65]

the problem is. Institutional racism and 'structural racism' and 'systemic racism' are redundant. Racism itself is institutional, structural, and systemic." Ibram X. Kendi, HOW TO BE AN ANTIRACIST (2019).

[58] *Gay Gellhorn et. al., supra* note 31, at 321.

[59] *Id.* at 325 (explaining that in the opening moments of an interview "[o]ften interviewers are focused on themselves or make the assumption that nothing substantive is happening in this phase."). In our own experience we have observed students who do not even press record in the opening moments of an interview (where recording is a clinic requirement) and thus we lose the opportunity to analyze those first few exchanges of words.

[60] *See, e.g., Transactional Lawyering Practice*, *supra* note 33, at 30-31 (advocating for students to explain confidentiality and also fees in the transactional lawyering context).

[61] *See Transactional Lawyering Practice*, *supra* note 33, at 68.

[62] Linda F. Smith, *Was It Good For You Too? Conversation Analysis of Two Interviews*, 96 KY. L. J. 579, 645-46 (2008) ("The question of how to best establish rapport is a more complicated one. It appears that people are different in conversations - - some like narrative and control, others are happy to be responsive and have the professional control the conference. . . . [I]t is probably much more feasible for law students (and for attorneys) to learn about their own conversation styles and tendencies than to arbitrarily adopt unnatural styles.") [hereinafter *Was It Good For You Too?*]; *see also Transactional Lawyering Practice*, *supra* note 33, at 29 (discussing building rapport through engaging in "ice breaking" with the goal of putting "the person at ease."); *see also* DAVID CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 67-8 (2001) (discussing ice-breaking and small talk).

[63] Sternlight & Robbennolt, *supra* note 36, at 502.

[64] Krieger & Neumann, *supra* note 27, at 105-07.

[65] *Connection, Capacity, and Morality*, *supra* note 39, at 766 ("[P]ersonal disclosure is a matter of personal choice . . . Your willingness to share can make the relationship feel less imbalanced as well as underscore your ability to empathize or sympathize with the client's situation.").

Next, advocates must encourage the client to describe her own situation.[66] One interviewing expert describes allowing the client to "give an uninterrupted narrative about her problem" as "[p]erhaps the single most important benefit of the client-centered format.[67] Krieger and Neumann advocate going beyond a simple narrative approach and engaging in "cognitive interviewing," using four techniques to help an interviewee remember as accurately as possible.[68]

Active listening is important,[69] but not in a way that actually stifles client disclosure.[70] Indeed, a client-centered interview should be "conversational, with the power and control more evenly balanced than in the 'traditional' interview."[71] As Krieger and Neuman explain, "[l]istening includes *figuring out the person who is speaking.* What matters to her as a person? How does she see the world?"[72] At the same time, while active listening is important, clinical supervisors often observe a

[66] *Was It Good For You Too?, supra* note 56, at 644 ("These two interviews both suggest that question form is not as important as is providing the client substantial opportunity to talk . . . Giving clients time to talk allows them to disclose even difficult facts about their situation.").
[67] Linda F. Smith, *Interviewing Clients: A Linguistic Comparison of the "Traditional" Interview and the "Client-Centered" Interview*, 1 CLINICAL L. REV. 541, 542-49, 583 (1995); *Cochran et al., supra* note 27, at 70-73 (describing opening framing statements to facilitate client narrative); *see also Transactional Lawyering Practice, supra* note 33, at 35, 39 (asking the client to identify the issues – "it is important that you give the client the opportunity to frame the questions in her own words…" and in allowing the client to frame the narrative she "has the floor").
[68] Krieger & Neumann, *supra* note 27, at 90-92.
[69] DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 75 (4th ed. 2019) ("[R]eflection of feelings should be an integral part of the lawyer-client dialogue."); *see also* Peters & Peters, *supra* note 34, at 190-91 ("Active listening confirms, clarifies, and solicits objective information because these statements are often heard as requests to share more detail about the topics paraphrased.") (citations omitted); Krieger & Neumann, *supra* note 27, at 54, 9 ("'[A]ctive listening:'" encouraging the other person to talk and occasionally asking the other person to clarify something that is confusing or to add details to something that would otherwise be sketchy."); *Lawyers and Clients, supra* note 27, at 17-21 (highlighting active listening techniques including reflecting and validation); *Cochran et al., supra* note 27, at 38-44 (describing reflective statements); Neil Hamilton, *Effectiveness Requires Listening: How to Assess and Improve Listening Skills*, 13 FLA. COASTAL L. REV. 145, 156 (2012) ("One definition of active listening involves identifying a client's vaguely or inarticulately stated observations and feelings and reflecting them back to the client to show understanding or to allow the client to correct a misunderstanding.") (citations omitted); *Connection, Capacity, and Morality, supra* note 39, at 758-62 (explaining the importance of active listening).
[70] *Gay Gellhorn et. al., supra* note 31, at 325 (1998) (noting the risk of some active-listening techniques cutting off the client's story in the opening moments of an interview); *see also Transactional Lawyering Practice, supra* note 33, at 58-61 (discussing the importance of listening and being truly present, but also recognizing passive listening as a tool and technique).
[71] Linda F. Smith, *Interviewing Clients: A Linguistic Comparison of the "Traditional" Interview and the "Client-Centered" Interview*, 1 CLINICAL L. REV. 541, 583 (1995).
[72] Krieger & Neumann, *supra* note 27, at 53 (emphasis in original); *see also Cochran et al., supra* note 27, at 27-32 (on listening and active listening).

failure of law students to allow for silence within an interview.[73] Texts on active listening emphasize the importance of body language[74] and non-verbal behaviors, including positioning,[75] eye contact, note taking,[76] posture and other nonverbal cues.[77]

Students should demonstrate empathy, critical for both rapport-building and active listening.[78] Empathy is particularly important when clients relay information

[73] Neil Hamilton, *Effectiveness Requires Listening: How to Assess and Improve Listening Skills*, 13 FLA. COASTAL L. REV. 145, 159 (2012) (momentary silence can be "an effective tool, allowing the client to collect his or her thoughts and then provide information in a more comfortable fashion.") (citations omitted); *see also* Stephen H. Krieger, *A Time to Keep Silent and a Time to Speak: The Functions of Silence in the Lawyering Process*, 80 OR. L. REV. 199 (2001); *see also Transactional Lawyering Practice*, *supra* note 33, at 47, 59 ("silence is fine" and can be an important passive listening technique).

[74] Sternlight & Robbennolt, *supra* note 36, at 493 ("[A]ttorneys need to be conscious of messages they may inadvertently convey to their clients that signal a lack of attention to clients' answers."); Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 392 (2002) (explaining kinesics as "the way in which bodily movements are used and interpreted.").

[75] Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 389 (2002) (explaining the concept of proxemics – the "perception and use of personal and interpersonal space") (citations omitted).

[76] Shanks, *supra* note 26, at 513 ("Typically, the lawyer's eyes are focused on the legal pad as he or she writes down the responses, with darting glances toward the client's face only as the next question is being asked. The lawyer is oblivious to a client's rolling of the eyes, slouching in the chair, and stiffening of the jaw and arm muscles. Downcast eyes, tearing, and hand wringing are easily missed.") (citations omitted); Shanks, *supra* note 26, at 533 ("Then, explain to the client why it is necessary to take notes and what the notes will be used for . . . ").

[77] Neil Hamilton, *Effectiveness Requires Listening: How to Assess and Improve Listening Skills*, 13 FLA. COASTAL L. REV. 145, 158 (2012) (highlighting the importance of body language including positioning, eye contact, note taking, nodding, facial expressions, and posture).

[78] Linda F. Smith, *Always Judged - Case Study of an Interview Using Conversation Analysis*, 16 CLINICAL L. REV. 423, 441 (2010) ("[L]awyers should develop rapport by expressing empathy through active listening, reflecting the facts and feelings the client has expressed.") (citations omitted); Krieger & Neumann, *supra* note 27, at 54-55 ("Empathy is invaluable in interviewing, counseling, and negotiating."); *Lawyers and Clients*, *supra* note 27, at [ ] ("By empathy we mean to suggest less of an emotional or psychological alignment with the client than sympathy captures but still a sense of your ability as a lawyer to share some of the feelings that the client expresses."); Neil Hamilton, *Effectiveness Requires Listening: How to Assess and Improve Listening Skills*, 13 FLA. COASTAL L. REV. 145, 151 (2012) (empathy is "commonly recognized as an ability to feel a response to a situation that is appropriate for the other person and to put aside personal biases."); Cara Cunningham Warren, *Client Interview Training: A Reflection on the "Quantum Shift" in Legal Education*, 96-DEC. MICH. B. J. 42, 43 (2017) (empathy can be conveyed through maintaining eye contact and acknowledging the client's feelings); *Connection, Capacity, and Morality*, *supra* note 39, at 758 ("Empathy and its cousins, including sympathy, approval and support, are key ingredients in the kind of respectful and helping lawyer-client relationship that we envision."), *but see* Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485, 491 (1998) ("Whether to respond to clients with

about past trauma or other sensitive topics, as well as when clients become demonstrably upset or withdrawn.[79] Further, interviewers should try to avoid interruptions, although some experts distinguish between competitive and collaborative interruptions.[80] In general, open-ended questioning should be used[81] to foster a "climate of openness and understanding" and give the client some control over the interview.[82] When a client has begun to disclose information, attorneys should then pose follow up questions,[83] or use the funnel method.[84]

Attorneys should avoid compound questions.[85] Some experts posit that interviewing need not be too driven by legal case theories.[86] Related to this, law students often unnecessarily use legalese, language that is often inaccessible to clients.[87] The final stage is reflecting, including concluding the interview and post-

empathetic connection or detached neutrality is a lawyering choice, one among many, about which attorneys will legitimately differ and, if they are to find satisfaction in their profession, should be permitted to differ."); *see also Transactional Lawyering Practice*, *supra* note 33, at 62 (on the importance of empathy).

[79] Many experiential educators use the short video by Dr. Brene Brown explaining the difference between sympathy and empathy, *see* https://www.youtube.com/watch?v=1Evwgu369Jw

[80] *Was It Good For You Too?*, *supra* note 56, at 592 ([C]ooperative interruptions occurring when one speaker repeats what the other has said or begins to provide an answer before the question is completed, often occurring at the end or beginning of utterances. Competitive interruptions occur when one speaker attempts to change the subject or insists on a response different than the one the other speaker is providing, often occurring mid-utterance and indicating a struggle for control."); *see also* Linda F. Smith, *Always Judged - Case Study of an Interview Using Conversation Analysis*, 16 CLINICAL L. REV. 423, 438 (2010) ("[S]imultaneous talk is not always a dysfunctional interruption indicating a fight for control of the conversation.").

[81] Linda F. Smith, *Always Judged - Case Study of an Interview Using Conversation Analysis*, 16 CLINICAL L. REV. 423, 436 (2010) ("The use of open questions may be particularly important with disempowered clients who may need additional encouragement to voice their concerns and goals."); Sternlight & Robbennolt, *supra* note 36, at 540-41.

[82] DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 41 (4th ed. 2019).

[83] *Gay Gellhorn et. al.*, *supra* note 29, at 249 ("[B]y not following up on information offered by clients, or by controlling the floor and topic, lawyers define the limits of the legal discourse and clients are silenced."); *see also* Linda F. Smith, *Interviewing Clients: A Linguistic Comparison of the "Traditional" Interview and the "Client-Centered" Interview*, 1 CLINICAL L. REV. 541, 584 (1995) ("confirming questions should be asked"); *Cochran et al.*, *supra* note 27, at 44-50 (describing the utility of various types of questions).

[84] DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 93-125 (4th ed. 2019); *see also Transactional Lawyering Practice*, *supra* note 33, at 46-47, 65-67 (describing the "T-Funnel" method and a combination of open and closed questions).

[85] Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLINICAL L. REV. 347, 385-86 (2000); *see also Transactional Lawyering Practice*, *supra* note 33, at 37.

[86] *Was It Good For You Too?*, *supra* note 56, at 644.

[87] Shanks, *supra* note 26, at 513 ("Complex legal terms, such as indictment, bail, information, discovery, and predicate offenses are used without explanation or an attempt to determine the client's

Interview work. Properly concluding the interview is critical.[88] Students should include clarifying next steps for both advocate(s) and client(s) and a timeline for completion.[89] If an interview has involved discussion of sensitive topics, students should think carefully through how to transition from an intense interview to the rest of the client's day.[90] Students should also ensure that their client has ample space to raise questions about the process, the law, or any other topics.

Part of post-interview work includes reflecting on how the interview actually went – were the goals achieved? This entails a discussion with a supervisor reflecting on partner dynamics and collaboration, assumptions and stereotypes that may have arisen during the interview, as well as how students handled the unexpected. Post-interview work also includes capturing the work achieved during the interview in the form of interview notes, a client declaration, or other work product.[91] Finally, post-interview work includes debriefing, especially in working with survivors of torture or trauma, to encourage students to process their own emotional responses to the

level of understanding."); DAVID CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 51, 118 (2001) (highlighting the importance of making information accessible to clients through careful choice of language that clients will understand); Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLINICAL L. REV. 347, 355 (2000) ("[U]se of ordinary English rather than legalese is more likely to produce accurate understanding."); Nidia Pecol, *Reflections on Interpreting: Help for the Criminal Practitioner*, 32-FALL CRIM. JUST. 28, 33 (2017) (advising attorneys to "[r]efrain from using legalese, acronyms, and pronouns" when working with an interpreter).

[88] Linda F. Smith, *Interviewing Clients: A Linguistic Comparison of the "Traditional" Interview and the "Client-Centered" Interview*, 1 CLINICAL L. REV. 541, 550 (1995) (citing DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 225 (4th ed. 2019) ("Finally, the attorney should adjourn the interview, without necessarily assessing the client's legal position fully."); *Cochran et al.*, *supra* note 27, at 95 (outlining steps to take at the end of every interview).

[89] Krieger & Neumann, *supra* note 27, at 108-10; *see also Lawyers and Clients*, *supra* note 27, at 20 (describing the need for a "graceful exit," including confirming contact information, detailing next steps, and setting up expectations and the next meeting or contact); *see also Transactional Lawyering Practice*, *supra* note 33, at 54-58 (advising that in concluding a transactional client interview, students should communicate information about the attorney-client relationship, fees, next steps, and documents or other information needed); *see also* DAVID CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 71-72 (2001) (outlining five tasks to be considered in concluding an interview).

[90] Ways we suggest students do this often includes asking the client to focus on something forward looking – how will you get home? What are you going to do after this meeting? This weekend? Next time we meet, we will cover x, y, and z. As appropriate students may try to ask questions about a client's family, social interactions, religious engagement – although recognizing that for some clients these topics will not be positive.

[91] *See, e.g.*, *Transactional Lawyering Practice*, *supra* note 33, at 58 (encouraging student to write a memo to the file while the meeting is still fresh in her mind).

interviewing in a way that build resilience and ensures the long-term sustainability of the students' work in the field.[92]

B. Methodology for Teaching Interviewing

Integral to client interviewing pedagogy is both the substance of interviewing theory as well as the methodology of how to impart this substance. Teaching interviewing requires experiential faculty to make pedagogical choices about how to present the material. These choices may vary depending on the size of the class,[93] the student profile,[94] the type of course, and, we find ourselves adding in 2020, the format of the class – remote, in person or hybrid.[95] Whether material may be considered sensitive with the potential to trigger trauma responses is an important consideration. As with best practices in experiential pedagogy more generally, backwards design is key: designing a teaching plan regarding good interviewing must start with articulating goals. [96]

The various modes of engaging students in learning about client interviewing include: texts, simulation, observation, and learning by doing. Each are discussed briefly below. Instructors may solely engage in one form of learning, or use a combination of these methods.[97] First, most experiential educators assign some

[92] *See, e.g., Vicarious Trauma and Ethical Obligations for Attorneys, supra* note 37 (making clear the imperative and ethical obligation for immigration attorneys to engage in vicarious trauma stewardship); *see also* LAURA VAN DERNOOT LIPSKY & CONNIE BURK, TRAUMA STEWARDSHIP: AN EVERYDAY GUIDE TO CARING FOR SELF WHILE CARING FOR OTHERS § 41-112 (2nd ed. 2009); Marjorie A. Silver et al., *Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship: A Panel Discussion,* 19 TOURO L. REV. 847, 860 (2004); *see e.g.,* Hannah C. Cartwright et al., *Self-Care in an Interprofessional Setting Providing Services to Detained Immigrants with Serious Mental Health Conditions,* 65 SOC. WORK 1 (2020); *see also* Lindsay M. Harris & Hillary Mellinger, *The National Asylum Attorney Burnout, Trauma, and Stress Survey* (draft on file with the author).

[93] For instance, in a very large class, an instructor might opt to conduct a fishbowl exercise, where the class observes. This is the "fishbowl" method of role play, which focuses all student attention on one pair or group of performers. Other students may be invited to take over one role or another, asked to offer critique, or both. Harriet N. Katz, *Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools,* 59 MERCER L. REV. 909, 932 n. 82 (2008).

[94] Students may have varying amounts of past training and experience in interviewing and often represent a variety of types of learners and will also likely present diversity in all other dimensions

[95] Interviewing is taught at times in simulation courses, clinical courses, and externship courses, which all offer different opportunities for performance of the skill.

[96] Wallace J. Mlyniec, *Developing a Teacher Training Program for New Clinical Teachers,* 19 CLINICAL L. REV. 327, 334 n. 23 (2012) (citing GRANT P. WIGGINS & JAY MCTIGHE, UNDERSTANDING BY DESIGN (2d ed. 2005) (explaining the concept of backwards design – designing a class or course with the end goals in mind).

[97] At the time of writing we are in the midst of a global pandemic with COVID-19 challenging legal educators, along with all other educators, to develop ways to best impart information and build skills for students using remote platforms. While this necessarily changes the modes in which we engage in

reading on interviewing. This may include one of the classic interviewing texts,[98] or a more recent addition.[99] This reading, in conjunction with activities and other engagement on the topic may help to ground students.

Second, some educators ask students to engage in simulation exercises to practice interviewing. The disadvantages of simulation are obvious – a somewhat static and non-dynamic set of facts – and students may not be as engaged because they are aware this is "just practice." Also, it is resource intensive to provide individual feedback to individual simulated interviews, but without that feedback learning will be more superficial. In addition to providing individual feedback, another capacity issue is providing "clients." Several educators have engaged the use of professional actors or partnered with theatre programs within their wider universities.[100] Others have brought in attorneys to conduct interviews of the law students – flipping the interview and giving the students an opportunity to experience being the interviewee.[101] Other educators use various exercises to drive home critical interviewing skills and insights.[102]

teaching interviewing--the basic models of using text, simulation, observation and learning by doing may still be accomplished.

[98] *See, e.g.,* Binder & Price, *supra* note 27, at [ ]; GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1978); *Cochran et al., supra* note 27, at 73; Krieger & Neumann, *supra* note 27, at [ ];THOMAS L. SHAFFER & JAMES R. ELKINS, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL (4th ed. 1997); DAVID CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 59-78 (2001).

[99] *See, e.g.,* CAROLYN GROSE & MARGARET E. JOHNSON, LAWYERS, CLIENTS & NARRATIVE: A FRAMEWORK FOR LAW STUDENTS AND PRACTITIONERS [ ] (2017).

[100] *Was It Good For You Too?, supra* note 56, [ ] (detailing the use of actors at the University of Utah); Melisa Shafer, *Shakespeare in Law: How the Theater Department Can Enhance Lawyering Skills Instruction*, 8 NO. 3 PERSP: TEACHING LEGAL RES. & WRITING 108 (Spring 2000); C. K. Gunsalus, J. Steven Beckett, *Playing Doctor, Playing Lawyer: Interdisciplinary Simulations*, 14 CLINICAL L. REV. 439, 450-54 (2008) (detailing the use of theatre students as skills coaches for law students at the University of Illinois); Linda F. Smith, *Interviewing Clients: A Linguistic Comparison of the "Traditional" Interview and the "Client-Centered" Interview*, 1 CLINICAL L. REV. 541, 550 (1995) (detailing the use of actors in simulated interviews at the University of Utah).

[101] Tenielle Fordyce-Ruff, *Teaching Active Listening: Flipping Roles in Client Interviewing Exercises*, 22 NO. 2 PERSP: TEACHING LEGAL RES. & WRITING 131 (Spring 2014).

[102] For example, Professor Laurie Shanks developed a creative exercise, students share with another student a moment that changed their lives, and then she requires the partner to re-tell the story to the class. Finally, she guides the group through a discussion and reflection on the exercise. Shanks, *supra* note 26, at 522-524; *see also* Neil Hamilton, *Effectiveness Requires Listening: How to Assess and Improve Listening Skills*, 13 FLA. COASTAL L. REV. 145, [ ] (2012) (proposing a series of exercises to develop law student listening skills).

Third, some experiential educators use observation or modeling as a tool to teach interviewing. This may mean observing other attorneys conducting client interviews[103] or observing video-taped simulated interviews.[104]

Finally, experiential courses usually involve some "learning by doing." Live client contact and actual interviewing is usually preceded by some of the above – text, simulation, and observation. Some educators remain in the room to observe student interviews and provide feedback at a later time. Often students are asked to record, by audio or visual means, their initial client interviews and will receive feedback on this interview from their professors, and from their peers. Students may also engage in self-reflection of that interview, interrogating what went well and what may be improved upon in the interview. Of course, most experiential educators use a combination of the approaches outlined above.[105]

II. CRITICAL LAWYERING

Before introducing the concept of critical interviewing pedagogy, we explore here the contours of the larger practice of critical lawyering, a practice animated by critical legal theories. Critical theory can make a significant contribution towards achieving the pedagogical goals of clinical education,[106] particularly in the context of client interviewing. Critical theory considers how subordination of certain communities is institutionalized systemically in formal and informal means, and

[103] Harriet N. Katz, *Reconsidering Collaboration and Modeling: Enriching Clinical Pedagogy*, 41 GONZ. L. REV. 315, 336 (2006); *see also* Serge A. Martinez, *Why Are We Doing This? Cognitive Science and Nondirective Supervision in Clinical Teaching*, 26 KAN. J. L. & PUB. POL'Y 24 (2016) (questioning clinical legal education's traditional reliance on nondirective supervision and highlighting the value, based on cognitive science and learning theory, of other approaches, including modeling); *see also* Lindsay M. Harris, *Learning in "Baby Jail": Lessons from Law Student Engagement in Family Detention Centers*, 25 Clinical L. Rev. 155, 205 (2018) (discussing modeling in the context of preparing students to engage in intensive crisis lawyering within an immigrant family detention center by observing their professor conducting a client interview by phone with a detained parent); Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485, 525-26 (1998) ("[O]bserving an assertive lawyer in action might spark a professor-student discussion of their respective visions of themselves in the lawyering world and what they want to do as lawyers.").

[104] For example, the ABA has created interview simulations, http://www.abanet.org/litigation/committees/childrights/video/1006-interviewing-child-client.html, as have clinical faculty in the Center for Applied Legal Studeies at Georgetown University Law Center have as well.

[105] *Gay Gellhorn et. al., supra* note 29, at 292 ("Teaching methods included the use of texts on legal interviewing, participation in simulated interviews, peer critique, supervisor observation of real client interviews followed by a meeting with the student to discuss the interview, and review of videotapes of simulated client interviews.").

[106] Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL'Y & L. 161, 162 (2005).

therefore serves to critique the law, legal institutions, and lawyering practices.[107] As Margaret Johnson writes, "[f]eminist legal theory, critical race theory, and poverty law theory serve as useful frameworks to enable students to deconstruct assumptions they, persons within institutions, and broader society make about the students' clients and their lives."[108]

First, we define foundational principles of critical lawyering which inform the concept of critical interviewing. Over time, a variety of distinct critical theories have developed, intentionally balking at a unified theory.[109] Therefore, critical, or "outsider"[110] theories comprise, but are not limited to, a collection of theories including critical race theory,[111] Black-Crit,[112] feminist legal theory,[113] LatCrit,[114] DisCrit,[115] and queer theory.[116] These theories developed within multiple and overlapping social movements focused on the ways in which law often perpetuates dominant perspectives with an aim toward transforming legal systems to further social justice and equality.[117]

Critical theories attempt "to mediate the power dynamics between poverty and civil rights lawyers and clients" and ground the work in "community alliances and grassroots networks."[118] By grounding law practice in critical theories, critical

[107] *Disruptive Pedagogy*, *supra* note 17, at 24.
[108] Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL'Y & L. 161, 162 (2005).
[109] *Disruptive Pedagogy*, *supra* note 17, at 25.
[110] On the origin of the term, see Mari J. Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 HARV. C.R.-C.L. L. REV. 323 (1987);
[111] For example, see Kimberle Crenshaw (Editor), Neil Gotanda (Editor), Gary Peller (Editor), Kendall Thomas (Editor), *Critical Race Theory: The Key Writings That Formed the Movement*
[112] See, Hope Lewis, Reflections On "Blackcrit Theory": Human Rights, 45 VILL. L. REV. 1075 (2000).
[113] For a history of feminist legal theory, see Robin West, *Women in the Legal Academy: A Brief History of Feminist Legal Theory*, 87 Fordham L. Rev. 977 (2018) For a critique of gender essentialism in feminist legal theory, *see* Angela P Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581
[114] For an introduction to LatCrit theory, see Montoya, Margaret, Introduction: LatCrit Theory: Mapping It's Intellectual and Political Foundations and Future Self-Critical Directions (1999). University of Miami Law Review
[115] For example, see Zanita E. Fenton, *Disability Does Not Discriminate : Toward a Theory of Multiple Identity Through Coalition DisCrit—Disability Studies and Critical Race Theory in Education* (2016)
[116] For one description of queer legal theory see Francisco Valdes, *Afterword & Prlogue: Queer Legal Theory*, 83 Cal. L. Rev. 344 (1995).
[117] Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. ON POVERTY L. & POL'Y 337, 350 (2011).
[118] Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. ON POVERTY L. & POL'Y 337, 361 (2011).

lawyering focuses on building power for clients—both individually and collectively—while contextualizing fundamental injustices built within legal systems.[119] It resists essentializing individuals and communities—describing identity as unchanging across social categories—but instead understanding identity as multiplicitous and intersectional.[120] Collaboration between lawyer(s) and clients and/or communities is a central tenet of critical lawyering;[121] this collaboration may also include working with an interpreter, an organizer and/or a community group leader.[122] Some other benefits of imbuing critical theory within clinical pedagogy are to promote creativity, higher order thinking, professional identity formation and contextualizing legal work in larger systems of (in)justice.[123]

Experiential educators should work towards operationalizing critical theory in the classroom to teach lawyering skills from interviewing to fact investigation and case theory generation.[124] Numerous scholars have theorized key principles and aspects of this type of lawyering practice:

> Critical thinkers have conceived alternative visions of lawyering practice, visions that embraced a greater respect for the power of community; deeper attention to the influences of race, gender, class and culture on the practice of law as well as the relationship between the professional and her client...[125]

[119] Melanie B. Abbott, *Seeking Shelter Under a Deconstructed Roof: Homelessness and Critical Lawyering*, 64 TENN. L. REV. 269, 287-288 (1997).
[120] Melissa Harrison & Margaret E. Montoya, *Voices / Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387, 402 (1996).
[121] Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL'Y & L. 161, 180 (2005).
[122] Muneer I. Ahmed, *Interpreting Communities: Lawyering Across Language Difference,* 54 UCLA L. REV. 999, 1010 (2007).
[123] *Disruptive Pedagogy*, *supra* note 17, at 23.
[124] See e.g., Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL'Y & L. 161, 162 (2005) ("Thus, critical theory informs students of the presence and importance of alternative voices that challenge the dominant discourse. When student attorneys ignore or are unaware of such voices, other voices, including the students' own voices, invisibly influence the lawyer-client relationship and lawyering activities, such as interviewing, case theory generation, fact investigation, strategic planning, counseling, and problem-solving")
[125] Paul R. Tremblay, *Critical Legal Ethics Review of Lawyers Ethics and the Pursuit of Social Justice: A Critical Reader*, 20 GEO. J. LEGAL ETHICS 133 (2007).

We use "critical lawyering" to include a variety of lawyering models, such as community,[126] collaborative,[127] rebellious,[128] progressive,[129] third-dimensional,[130] borderlands,[131] political,[132] and movement lawyering.[133] In 1991, Louise Trubek defined critical lawyers as those who seek to "empower oppressed groups and individuals" focused on a path to achieving a "more just society."[134] In doing so she argued that critical lawyers should prioritize collaboration and "apply feminist and anti-racist analyses."[135] While these modes of lawyering encompassed by critical lawyering may have distinct attributes, reflecting varying priorities and lawyering strategies, they have commonalities in their incorporation of critical theories, which results in a commitment to furthering social justice[136] by building power with and for clients and communities,[137] and intentionally incorporating an intersectional, collaborative, and anti-racist approach within law practice.

Critical lawyering serves as "an analytic tool to unpack, shed light on, problematize, disrupt, and analyze how systems of oppression, marginalization,

[126]Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice,* 43 N.Y.U. REV. L. & SOC. CHANGE 403, [43] (2019)**.**

[127] Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, [ ] (1994).

[128] *See* Symposium, *Rebellious Lawyering At 25*, 23 CLINICAL L. REV. 471, 471-815 (2017).

[129] Gowri J. Krishna, *Worker Cooperative Creation as Progressive Lawyering? Moving Beyond the One-Person, One-Vote Floor*, 34 BERKELEY J. EMP. & LAB. L. 65, [ ] (2013);
Scott L. Cummings, *Law and Social Movements: Reimagining the Progressive Canon*, 2018 WIS. L. REV. 441, [ ] (2018).

[130] Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power,* 1988 WIS. L. REV. 699, 760-66 (1988).

[131] Borderlands lawyering uses translation lessons from ethnography, language theory, feminist theory, and postmodernism to help represent clients with eye towards different cultural/lived experiences and perspectives. Melissa Harrison & Margaret E. Montoya, *Voices / Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces,* 6 COLUM. J. GENDER & L. 387, 394 (1996).

[132] Political lawyering is employed by new civil rights efforts to change governments and private institutions, but there remain gaps between political lawyering and progressive race theory. Erik K Yamamoto, *Critical Race Praxis: Race Theory And Political Lawyering Practice In Post-Civil Rights* America, 95 MICH. L. REV. 821, 833-34 (1997); Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 Denv. L. Rev. 399, [ ] (2019).

[133] Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645 (2017).

[134] Louise G. Trubek, *Critical Lawyering: Toward a New Public Interest Practice,* 1 B.U. Pub. Int. L.J. 49, 50 (1991)

[135] *Id.* at 50.

[136] Kevin R. Johnson & Amagda Perez, *Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory*, 51 SMU L. REV. 1423, 1453 n. 97 (1998); *see also* Minna J. Kotkin, *My Summer Vacation: Reflections on Becoming a Critical Lawyer and Teacher*, 4 CLINICAL L. REV. 235, 238 (1997) (critical lawyering as a "lawyering methodology that attempts to empower clients traditionally subordinated by our legal system.").

[137] Working with communities is a key component of critical lawyering. ("Alliances with community and client groups is essential for social justice lawyering.") Herrera & Trubek at 6.

racism, inequity, hegemony, and discrimination are pervasively present and ingrained in the fabric of polices, practices, institutions, and system."[138] This lawyering both challenges the traditional hierarchal view of lawyer-client and suggests collaboration with clients to ultimately engage in a joint undertaking. Through an anti-racist, intersectional approach, critical lawyering identifies and addresses assumptions and bias, while honoring client and community dignity.[139] Critical lawyering seeks to avoid perpetuating client victimization while also addressing broad social and political factors implicated in clients' pursuit for justice.[140] This is why critical lawyers often support organizing techniques, collaborating with communities, lawyers and organizers to amplify client and community voices; [141] ultimately, critical lawyers understand the law as one tool at their disposal to further justice.

How might experiential educators and practitioners translate the theoretical principles of building power for historically oppressed clients and communities and having an intersectional and collaborative approach in lawyering, be translated into a lawyering practice? Monika Batra Kashyap distills a compelling framework to engage in community lawyering,[142] which we argue are foundational principles to practice critical lawyering. First, as client-centered lawyering suggests, advocates must practice self-examination and self-awareness. This skill helps advocates understand their own privilege and biases, as they more fully appreciate the impact and implications of race, gender, class, sexual orientation, gender identity, ability,

[138] Herrera & Trubek at 3. Luz E. Herrera & Louise G. Trubek, *The Emerging Legal Architecture for Social Justice,* 44 NYU Rev. L & Soc. Change 355 (2020), available on SSRN. (Describing critical lawyers as lawyers who "care about social justice and who are establishing law practices that are transforming public interest practice….They regard law as just one tool for combating inequality and abuse of power. Today's critical lawyers are interested in advancing social justice by introducing new approaches to law practice. These practices represent a shift in generational thinking about how to be a progressive lawyer. We use the term 'critical lawyer' to distinguish the more traditional public interest law models and other social justice inspired models such as movement lawyering."); *see also* H. Richard Milner IV, *Analyzing Poverty, Learning, and Teaching Through a Critical Race Theory Lens,* 37 REV. RES. IN EDUC. 1, 1 (2013);

[139] Anthony V. Alfieri, *Race Trials*, 76 TEX. L. REV. 1293, 1294–95 (1998) ("[A] Critical Race Theory-inspired ethic of good lawyering . . . seeks to develop a color-conscious, pluralist approach to advocacy that honors the integrity of diverse individual and collective racial identities without sacrificing effective representation."); Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21 CLINICAL L. REV. 255, 261 (2014) (suggesting applying a feminist and anti-racist analysis).

[140] Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. ON POVERTY L. & POL'Y 337, 365 (2011).

[141] Herrera & Trubek at 4. ("To democratize law practice [critical lawyers] engage more directly with clients and communities, encourage diversity and inclusion, and utilize a broad spectrum of resources… These law practices seek to build a more just society by amplifying the voices of the communities they represent.")

[142] She refers to the practice as "community lawyering," but we will continue to use the term critical lawyering.

age, and culture on their legal relationships.[143] Second, lawyers should engage in collaboration with clients—to reframe lawyer's work as "acting *with* rather than *for* clients and communities."[144] To accomplish this lawyers do not just provide legal knowledge and expertise to clients, but they appreciate and build upon their clients' expertise—clients are experts in their own lives. Clients often understand more deeply than most lawyers how systems of oppression impact their lives and communities, so they are often best suited to lead problem-solving and strategizing.[145] Third, critical lawyers must educate themselves to perceive how power and privilege are distributed, and how that might be implicated in legal relationships and representation.[146] Ultimately, critical lawyers are guided by a theory of social change understanding both how lawyering can reinforce entrenched oppression and how real change can happen when those most affected are those leading.[147]

These principles are transferrable across the practice of critical lawyering. Critical lawyering may employ a number of strategies—including litigation, (direct representation as well as impact litigation), collaborating with organizers,[148] legislative reform, education, direct action and more.[149] Therefore this form of lawyering involves a number of discrete yet intertwined activities or "skills"—such as selecting cases, interviewing, counseling, negotiating, case or project theory development, writing, presenting or oral advocacy, working with media, facilitating meetings, developing or leading a know your rights session. Prof. Kashyap's framework can be used with every activity or skill-- asking critical lawyers to 1) engage in self-reflection, 2) reorient towards collaboration with clients and communities, 3) grapple with power dynamics, understand deep context of problems,

[143] Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 406-07 (2019); *see also* Herrera & Trubek at 19 ("The ability of critical lawyers to integrate their own identify in their work allows them to develop and pursue strategies, alongside clients, that are more organic and effective for the communities they represent.").
[144] Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 407 (2019).
[145] Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 408 (2019).
[146] Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 408-09 (2019); *see also* Jane H. Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 CLINICAL L. REV. 1, 18 (1997) ("As educators, we can help our students promote justice through unmasking privilege.").
[147] Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 409 (2019).
[148] However, "Power can gravitate to lawyers. If both lawyers and organizers are not hyper-vigilant about managing and passing along that power, lawyers can be destructive for community organizations or organizers." Purvi and Chuck: Community Lawyering (June 1, 2020), http://archive.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering
[149] Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399, 431 (2019).

and 4) ultimately assess how their lawyering may be perpetuating entrenched discrimination.[150]

III. THE PEDAGOGY OF CRITICAL INTERVIEWING

While critical theory should be operationalized in all lawyering skills, we focus specifically on its application to interviewing pedagogy. Indeed, before we even begin to consider critical interviewing, we first note that even the term "interviewing" evokes certain power dynamics. Implicitly, the interviewer is the one conducting the interview, while the interviewed is defined by experiencing the interview. [151] Nonetheless, we will use and introduce here the term critical interviewing. This Part articulates the importance of moving towards a critical interviewing model, while acknowledging inherent challenges to teaching critical interviewing. Next, we articulate the contours of critical interviewing pedagogy, including how to integrate a critical orientation to transform the three stages of planning, performing, and reflecting. Finally, we discuss methodology of teaching critical interviewing, providing illustrations through the LILA film project.

A. Moving Towards Critical Interviewing

Standard interviewing texts have evolved over the years—seeking to shift power to clients to better serve them. Client-centered lawyering texts provide important and rich lessons for students in the interviewing context, which should be building blocks of effective interviewing. However, larger critiques of legal education—its decontextualizing effect, its focus on individual rather than systemic justice, and its focus on individual rather than collaborative learning[152]—are relevant in critiquing and ultimately enriching the dominant interviewing literature. First, we describe the need to ground discussions of identities and bias in historical context and existing structural biases, with an intersectional lens that builds upon and then goes beyond what is understood as client-centered lawyering. Secondly, we discuss the

[150] Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. ON POVERTY L. & POL'Y 337, 380 (2011) (Critical theory can be reflected in clinics through 1) case/project selection reflects prioritizing challenging issues that are situated in social political historical contexts 2) designing and implementing ethical framework to evaluate challenges 3) ongoing self-awareness about power differentials and how that informs our work with respect to race, class, culture, gender, ethnicity, disability, sexual orientation and sexual identity).

[151] In light of this implied and actual power differential, some immigrants rights groups term initial contact with community members they are working with "charlas" or "chats," which does not have the same inherent power dynamics. *See, e.g.,* https://www.coalitionforourimmigrantneighbors.org/dilley-pro-bono-project-2019.html

[152] *See* Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness As Jurisprudential Method A Talk Presented at the Yale Law School Conference on Women of Color and the Law, April 16, 1988*, 14 WOMEN'S RTS. L. REP. 297 (1992).

need to teach collaborative interviewing, considering collaboration between representative(s), interpreters, clients and communities.

Early interviewing texts did not mention race or other cultural factors, essentially teaching colorblind lawyering.[153] However, cross-cultural lawyering, specifically taking into account one's own culture and a client's culture when engaging in lawyering, is now commonly included in texts.[154] Cultural competence is widely acknowledged as a lawyering skill, with the ABA suggesting it as possible skill in which law schools should ensure students develop competency.[155] Still, existing canons often treat cross-cultural lawyering as a discrete, ancillary topic instead of central to and integrated throughout lawyering practices.[156] Phyllis Goldfarb has argued that the "standard clinical vocabulary does not include explicitly political language to describe the interpersonal dynamics of law practice."[157] In this vein, "cross-cultural" and "multicultural" terms suffer from both a narrowness and perceived neutrality—these phrases do not draw out structural imbalances in privilege and power nor historical harms to certain communities. Further,

[153] Leslie G. Espinoza, *Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender*, 95 MICH. L. REV. 901, 910 (1997) ("Colorblind lawyering acts as a barrier to any acknowledgment and response to the reality of the impact of race in our clients' lives.").
[154] *See generally* Susan Bryant, *The Fiver Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001); Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 408 (2002) ("First, as a professional you need to explore and confront your own cultural influences and the extent of your unconscious (or conscious) biases, including your own racism, sexism, and homophobia."); *see also* Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219, 230 (2002) ("[A]cquiring multicultural competence requires facing discomforting truths about ourselves and our society, especially for those of us who enjoy the privileges of the dominant culture."); Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLINICAL L. REV. 347, 356-62 (2000) (discussing the importance of culture in communication and the potential for miscommunication and disrespect if culture is not taken into account).
[155] Interpretation 302-1,ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2019-2020 at 16, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf (listing "cultural competence" as an example of an "other" professional skill required to teach in law school)
[156] Melissa Harrison and Margaret E. Montoya explain "[t]he full implications of being constantly aware of difference is that we treat diversity as central, not incidental." Melissa Harrison & Margaret E. Montoya, *Voices / Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387, 398-99 (1996) [hereinafter *Harrison & Montoya*]. See also, Danielle Tully, THE CULTURAL (RE)TURN:
THE CASE FOR TEACHING CULTURALLY RESPONSIVE LAWYERING (calling for law schools and law faculty to center "culturally responsive" lawyering, instead of considering it an optional skill for students to learn.)
[157] Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599, 1670 (1990).

emphasizing "sameness" and "difference," minimizes and even ignores the social inequalities that emerge from discrimination based on cultural differences.[158] Cross-cultural analysis may serve to deprioritize the central role of race, whitewashing significant structural and historical bias.[159] The result is discounting and obscuring client identities and community experiences. Said another way, this individualized comparison between lawyer and client obfuscates core considerations, such as the historic and institutionalized systems of bias that certain communities face. As Anthony V. Alfieri writes, the existing interviewing canon does not richly describe "the systematic impoverishing effects or race, inequality, and disenfranchisement. That vision narrowly personalizes the trauma of poverty and decontextualizes the cultural, socioeconomic, and political detriments of collective fear, anger, humiliation, and sadness."[160]

This critique parallels the criticism of legal education's heavy reliance on the traditional appellate case method, which tends to disguise larger societal inequalities with a focus on limited facts. The traditional focus on individual legal rights and redress, rather than considering community problems or larger systems, leaves students ill-equipped to problem-solve within the context of legal problems created and complicated by deeply entrenched poverty, racism, and injustice.[161] Scholar Mari Matsuda argues the goal for lawyers' analysis is "not a random ability to see all points of view, but a deliberate choice to see the world from the standpoint of the oppressed."[162] Moving towards critical interviewing means contextualizing community struggles against unjust systems, acknowledging the multiple layers of

[158] In criticizing cross-cultural literature in health sciences context, Margaret Montoya writes "what is really being talked about - - the identities that are socially constructed based on physical differences and the social inequalities that emerge from discrimination based on those differences - - is rarely named or analyzed." Margaret Montoya, *Defending the Future Voices of Critical Race Feminism*, 39 U.C. DAVIS L. REV. 1305, 1317 (2006).

[159] Margaret Montoya, *Defending the Future Voices of Critical Race Feminism*, 39 U.C. DAVIS L. REV. 1305, 1317 (2006) (cross-cultural "analysis is done almost exclusively in terms of culture, and culture becomes coded to mean something different and more comfortable than 'race.'").

[160] *See generally* Anthony V. Alfieri, *The Poverty of the Clinical Canonic Texts*, 26 CLINICAL L. REV. 53, 64-65 (2019); *See also* Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 346 (1997) ("a major weakness of both [predominant client-centered lawyering text books] models is that they fail to address, in any significant way, the effects of race, class and, to a lesser extent, gender on the interaction between lawyer and client.") (citations omitted).

[161] Barbara Bezdek, *Digging into Democracy Reflections on CED and Social Change Lawyering After #OWS*, 77 MD. L. REV. ENDNOTES 16, 31 (2018) ("The formal law school canon neither illuminates nor prepares law students to see or to address entrenched systems that create the cumulative disadvantages" which clients are facing.").

[162] Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness As Jurisprudential Method A Talk Presented at the Yale Law School Conference on Women of Color and the Law, April 16, 1988*, 14 WOMEN'S RTS. L. REP. 297, [ ] (1992).

oppression many communities confront, and explicitly centering racism and understanding anti-Blackness in particular. [163]

While cross-cultural lawyering was a crucial shift from race-blind texts, interviewing pedagogy must continue to advance by integrating critical lawyering principles through operationalizing critical theory. Critical theory can serve to redress the lack of an explicit focus on these issues by contextualizing cultural identities and historic and lingering social inequities and by disrupting hierarchy through collaboration with clients and impacted communities. Critical theory also teaches non-essentialism, to resist the urge to make assumptions and conceive of identity as unchanging across race, class, sexual orientation, gender identity, and other social categories.[164] Although some scholars have suggested incorporating critical theories into the clinical classroom,[165] these ideas have not universally migrated into leading text books.[166]

A second, yet interrelated, topic that the major texts do not fully grapple with is collaboration within interviews, including law students or attorneys working together, as well as how attorneys collaborate with clients,[167] communities,

[163] *See*, Kihana miraya ross, *Call It What It Is: Anti-Blackness*, New York Times (June 4, 2020) https://www.nytimes.com/2020/06/04/opinion/george-floyd-anti-blackness.html (Noting ""racism" fails to fully capture what black people in this country are facing.").
[164] Melissa Harrison & Margaret E. Montoya, *Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387, 400, 410 (1996).
[165] *See, e.g.*, Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 419-20 (2019) (suggesting ways to incorporate discussion of critical theories into the clinic classroom).
[166] *But see*, CAROLYN GROSE & MARGARET E. JOHNSON, LAWYERS, CLIENTS & NARRATIVE: A FRAMEWORK FOR LAW STUDENTS AND PRACTITIONERS (2017) (one chapter focuses on the necessary skill of critical reflection: "More than just telling a wrong or incomplete narrative about the client, the lawyer's attempts to portray the marginalized client's voice without critical reflection further marginalizes the client by keeping his voice outside the dominant legal discourse."). Grose and Johnson also explore collaboration, although not specifically in the context of interviewing. *See Id.* at [Chapter Four]; Alicia Alvarez & Paul Tremblay also broach these topics more directly in their INTRODUCTION TO TRANSACTIONAL LAWYERING text. They explain, for example, in their chapter on multicultural lawyering and cultural competence that "[w]hile we define culture broadly, (including socioeconomic status, sexual orientation, and gender identity, and ability/disability), we acknowledge that race, prejudice, racial discrimination, and systemic racial oppression play an important role in U.S. history and society." *Transactional Lawyering Practice*, *supra* note 33, at 212. They include a specific discussion of bias and implicit bias (*Id.* at 216-221) and a section on the "societal aspects of prejudice – understanding power and oppression" and discusses racism as a "system of power." *Id.* at 222.
[167] As one scholar has argued, "principled negotiation of all the terms of the lawyer-client relationship, including the ultimate goals of the relationship, is the best way to create a relationship of equality and effective collaboration." Alex J. Hurder, *Negotiating the Lawyer-Client Relationship: A Search for Equality and Collaboration*, 44 Buff. L. Rev. 71, 76 (1996).

interpreters or organizers.[168] Although lawyers rarely practice as lone wolves and generally scholars agree that collaboration is critical to good lawyering,[169] in legal writing specifically,[170] within doctrinal classrooms,[171] and within legal education generally,[172] and interviewing literature specifically, focuses almost exclusively on individualized learning.[173] Collaboration is a key technique to shift power back to

[168] Previous articles have explored interdisciplinary collaboration – between lawyers and doctors, for example. C. K. Gunsalus & J. Steven Beckett, *Playing Doctor, Playing Lawyer: Interdisciplinary Simulations*, 14 CLINICAL L. REV. 439, 439 (2008) (exploring collaboration between lawyers and other differently-trained professionals); Sabrineh Ardalan, *Constructive or Counterproductive? Benefits and Challenges of Integrating Mental Health Professionals into Asylum Representation*, 30 Geo. Immigr. L.J. 1 (2015); Jacqueline St. Joan, *Building bridges, building walls: Collaboration between lawyers and social workers in a domestic violence clinic and issues of client confidentiality*. 7 Clinical Law Review, 403 (2001).

[169] A. Rachel Camp, *Creating Space for Silence in Law School Collaborations*, 65 J. LEGAL EDUC. 897, 902-07 (2016) (providing a summary of the shift from individualistic culture of learning within law schools to a more collaborative learning environment); *see also* Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459, 485 (1993) ("If the goal of law school is to teach students to be lawyers, then collaborative skills belong in the law school curriculum."); Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 1, 17 (2015) ("[I]n a business law clinic, the classroom is a space of collaborative problem-solving and sharing, where both the clinician and students are working together.").

[170] *See* Elizabeth L. Inglehart et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 185, [ ] (2003) (summarizing the academic theory supporting collaborative learning, pedagogical benefits, and describing implemental of collaborative writing with Northwestern's Legal Writing program); Roberta K. Thyfault & Kathryn Fehrman, *Interactive Group Learning in the Legal Writing Classroom: An International Primer on Student Collaboration and Cooperation in Large Classrooms*, 3 J. MARSHALL L.J. 135, [ ] (2009) (examining the theory behind and benefits of collaborative learning and suggesting how to incorporate collaborative and cooperative learning exercises and techniques into legal writing classrooms).

[171] *See, e.g.*, Elizabeth A. Reilly, *Deposing the "Tyranny of Extroverts": Collaborative Learning in the Traditional Classroom Format*, 50 J. LEGAL EDUC. 593, [ ] (2000) (discussing student collaboration in a constitutional law course); Jay Gary Finkelstein, *Practice in the Academy: Creating "Practice Aware" Law Graduates*, 64 J. LEGAL EDUC. 622, [ ] (2015) (explaining the concepts of vertical and horizontal collaboration to enhance learning in doctrinal courses); Sophie M. Sparrow & Margaret Sova McCabe, *Team-Based Learning in Law*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 153, [ ] (2012) (discussing how team-based learning improves student learning and addresses some of the longstanding criticisms with legal education

[172] Dykstra, Jason, *Beyond the 'Practice Ready' Buzz: Sifting Through the Disruption of the Legal Industry to Divine the Skills Needed by New Attorneys* 11 Drexel Law Review 149, n. 137 (2018) ("Law school often seems to be a solitary journey of individual achievement. But practicing attorneys must work collaboratively both within firms and externally with clients, insurance adjusters, experts, other attorneys, and judges.").

[173] *See* Krieger & Neumann, *supra* note 27, at [ ] (no mention of collaboration between two interviewers); *but see* DEBORAH EPSTEIN, THE CLINICAL SEMINAR 263-286 (1st ed. 2014); CAROLYN GROSE & MARGARET E. JOHNSON, LAWYERS, CLIENTS & NARRATIVE 62-67 (2017); In the externship context, *see* LEAH WORTHAM ET AL., LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS 425-47 (3rd ed. 2016). Alicia Alvarez and Paul Tremblay's

clients and impacted communities. When addressed in existing texts, collaboration is treated as a more general skill in law practice,[174] and not specifically integrated into interviewing texts.[175] And, as Professor Susan Bryant says "[s]uccessful collaboration… does not come easily."[176] Furthermore, collaborating with an

TRANSACTIONAL LAWYERING PRACTICE includes a short section on considerations in interviewing with a partner (raising issues to consider including who takes notes, how to communicate within interview, determining who will take the lead in a certain line of questions, and how to pose those questions in a partnership, move on from a topic, etc) and a further general chapter on working in a group. *See Transactional Lawyering Practice*, *supra* note 33, at 26, 255-75.

[174] Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession,* 17 VT. L. REV. 459, 460 (1993) (defining collaboration); Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485, 487 (1998) ("collaboration in law school clinics typically does not go far enough to teach students how to be true to themselves as independent professionals in the face of the power differentials and pressures to conform that exist in practice . . . [C]linical educators [should] introduce students to the concept of working within hierarchical collaborations and to encourage them to maintain their autonomy within such collaborations."); Clifford S. Zimmerman, *"Thinking Beyond My Own Interpretation:" Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 1015-20 (1999) (lauding the benefits of teaching law students collaboration and providing an example in the first year legal writing and analysis curriculum); A. Rachel A. Camp, *Creating Space for Silence in Law School Collaborations*, 65 J. LEGAL EDUC. 897, 901 (2016) (Suggesting that in embracing collaboration into the law school curriculum, educators should be mindful to include students who have more introverted tendencies and outlining a number of exercises to do so); Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 1, 11 (2013) (Millennial law students "expect a collaborative learning environment. Millennial students are accustomed to a model of education that is a 'co-partnership' with supervisors and teachers.") (citations omitted); David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLINICAL L. REV. 199, 201–02 (1994) (discussing whether and how to set up student collaborations in clinic case work); Janet Weinstein et. al., *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36, 38 (2013) (emphasizing the importance of training law students to work in interdisciplinary teams and sharing the results of one such effort).

[175] However, some lawyering texts do include a focus on teaching collaboration more generally. *See* DEBORAH EPSTEIN ET AL., THE CLINIC SEMINAR 263-87 (1st ed. 2014); CAROLYN GROSE & MARGARET E. JOHNSON, LAWYERS, CLIENTS & NARRATIVE: A FRAMEWORK FOR LAW STUDENTS AND PRACTITIONERS 62-67 (2017); In the externship context, *see* LEAH WORTHAM ET AL., LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS 425-47 (3rd ed. 2016). Alicia Alvarez and Paul Tremblay's TRANSACTIONAL LAWYERING PRACTICE does include a small section on considerations in interviewing with a partner, (raising issues to consider including who takes notes, how to communicate within interview, determining who will take the lead in a certain line of questions, and how to pose those questions in a partnership, move on from a topic, etc) and a further general chapter on working in a group. *See Transactional Lawyering Practice*, *supra* note 33, at 26, 255-75.

[176] Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession,* 17 VT. L. REV. 459, 461 (1993); *see also* Donna Erez Navot, *Tools for the Clinical Professor: Applying Group Development Theory to Collaborative Learning in Law School Mediation Clinics*, 69 DISP. RESOL. J. 65 (2014) (examining the theory of group development and collaborative

interpreter is not deeply considered.[177] Proper interpretation is, of course, vital to ensuring that a client's voice is heard and that the client maintains her dignity.[178] Yet, literature on collaborating with an interpreter in an interview, and teaching this collaboration, is sparse.[179] Textbooks generally do not cover how to prepare to collaborate with an interpreter,[180] and Muneer Ahmed's *Interpreting Communities: Lawyering Across Language Difference* is one of the only resources on language access in the context of interviewing.[181] Furthermore, most major interviewing texts do not discuss collaboration with organizers and community groups.[182]

B. Contours of Critical Interviewing Pedagogy

Having a race-conscious and intersectional approach is the starting point for critical interviewing. This approach is used in representing clients and communities, and in understanding legal relationships between partners—as well as with legal supervisors. Without this intentional approach, differences in gender, race, sexual identity and orientation, class, and more can lead to exclusion or the development of unwelcome hierarchy within a student and student/supervisor team.[183] The intersectional identities of lawyers and clients, including their race, gender, class, sexual orientation, and knowledge, particularly of the law and legal systems impact

learning in the context of a law school mediation clinic and sharing guidance for clinical professors in navigating group dynamics and development).

[177] In fact, one scholar has suggested client-centered interviewing is an inadequate model to address language difference. *See* Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1002 (2007) ("And yet, the principal model for poverty lawyering—client-centeredness—is inadequate to the challenges of language difference.").

[178] Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference,* 54 UCLA L. REV. 999, 1023-24 (2007) (discussing how a lack of proper interpretation can result in a client losing their dignity or voice).

[179] Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference,* 54 UCLA L. REV. 999, 1010 (2007) ("[R]esources, methodologies, and theories for lawyering across language difference outside the courtroom remain scarce and underdeveloped.").

[180] *But see Transactional Lawyering Practice*, *supra* note 33, at 71-73 (urging students to consider whether or not use an interpreter, to explore the role of the interpreter with both the client and the interpreter and the communication and preparation in advance of a client interview using an interpreter that should take place).

[181] *See also* Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLINICAL L. REV. 347 (2000); *see also* Beatriz Valera-Schutz & Margarita Gonzalez, *Cultural Fluency*, *in* MARILYN R. FRANKENTHALER, SKILLS FOR BILINGUAL LEGAL PERSONNEL (2007).

[182] *But see*, Alicia Alvarez and Paul Tremblay's TRANSACTIONAL LAWYERING PRACTICE, Chapter 9.

[183] Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485, 522 (1998) (citing Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459, 487-88 (1993).

relationship-building—at times making it easier to connect but also serving as the basis for disparities in rapport-building and understanding.[184]

Critical interviewing, just as other skills within critical lawyering requires advocates to 1) engage in self-reflection, 2) reorient towards collaboration with clients and communities, 3) grapple with power dynamics, understand deep context of problems, and 4) ultimately assess how their lawyering may be perpetuating entrenched discrimination.[185] These principles should animate each stage of the "planning, doing, [and] reflecting" cycle.[186]

First, during the preparation and planning stage of interviewing, experiential educators should strive to ensure students have a foundation to begin to understand communities they are working with, particularly "the multifaceted dynamics of accumulated disadvantaged" clients may encounter related to their immigration status, age, race, and other factors.[187] This relates to a key principle of critical lawyering—education to better perceive how power and privilege are distributed.

One goal of the clinic seminar, as well as supervision meetings, should be to help students more deeply understand systemic bias and historical inequities which continue to bear down on clients and communities. In advance of the first interview, and throughout the semester, we suggest introducing readings, podcasts, and videos from the outset to engage students on these issues so they understand and can name structural biases. It is essential for students to develop and understand a shared vocabulary, as well as methods for recognizing and responding to when cultural factors, particularly ones where systemic bias are implicated, arise in building effective relationships clients and other stakeholders.[188] We must "encourage conscious, material engagement with overt and covert (coded or covered) identity issues in collaboration with clients and their communities"[189] Students will not be all operating from the same perspective. Some will not share many traits with their clients, although, many students may identify with communities they are serving and

[184] *Lawyers and Clients*, *supra* note 27, at [ ] ("[W]e view the negotiation of difference and connection within the lawyer-client relationship as fundamental to all lawyer client interactions.").
[185] *See infra* Section III(A).
[186] SUSAN BRYANT ET AL., TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 24 (1st ed. 2014)("Clinical teachers call this activity 'planning, doing, and reflection,' an ongoing process of preparation, action and learning that will inform future action."); The "planning-doing-reflecting model…helps students 'learn how to learn from experience,' encouraging lifelong learning habits." Harold McDougall, *The Rebellious Law Professor: Combining Cause and Reflective Lawyering*, 65 J. LEGAL EDUC. 326, 332 (2015).
[187] *See Alfieri*, *supra* note 145, at 74-75.
[188] Margaret Montoya, *Defending the Future Voices of Critical Race Feminism*, 39 U.C. DAVIS L. REV. 1305, 1318-19 (2006).
[189] *See Alfieri*, *supra* note 145, at 62.

possibly be more attuned to appreciating the clients' perspective and untangling unsaid messages.[190] In other instances, some students may over-identify with clients and make assumptions based on their own perspective instead of closely listening to their client's voice.

We integrate and normalize conversations about race, gender, class, sexual orientation and other significant aspects of people's identity and experience early and often in our seminars. In our first class, we assign *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*,[191] which asks the question (among many), "What does a consciousness of the experience of life under patriarchy and racial hierarchy bring to jurisprudence?"[192] We have also used Chimamanda Adichie's Ted Talk *The Danger of a Single Story* to provide an accessible example of essentialism and open up a conversation about what it means to understand intersectionality,[193] as part of a class that focuses specifically on critical lawyering skills. In this class, students read about bias in the legal field,[194] strategies to disrupt bias and racism, take an implicit bias test,[195] and write a reflection paper in advance of class considering how bias has been implicated in their legal relationship and clients' life thus far, as well as strategies they hope to employ to practice critical lawyering and disrupt bias. We also provide a reading that attempts to provide some context to historical and structural bias—such as excerpts from the 1619 Project,[196] or from a personal narrative, such as Ta-Nehesi Coates' *Between the World and Me.*[197] Given the increasing national awakening around issues of racism and racial justice, the resources on these topics are more accessible and carefully curated than ever. The Deans Antiracist Clearinghouse has a key list of resources from books to music and art,[198] and the National Museum of African American History and Culture's portal,

[190] Melissa Harrison & Margaret E. Montoya, *Voices/Voices in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387, 433-34 (1996) ("Many students, especially the Outsiders- -students of color, gays, lesbians, dis/abled, the different, and the alienated- - are attuned to the encoding of messages.").
[191] We adopted this reading after participating in "*Teaching Justice in the Context of Immigrants' Rights*" Webinar by Annie Lai and Sameer Ashar. *Teaching Justice Webinar Series*, CLEA, https://www.cleaweb.org/Teaching-Justice-Webinar-Series (last visited Feb. 12, 2020).
[192] Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness As Jurisprudential Method A Talk Presented at the Yale Law School Conference on Women of Color and the Law, April 16, 1988*, 14 WOMEN'S RTS. L. REP. 297, [ ] (1992).
[193] Chimamanda Ngozi Adichie, *The Danger of a Single Story*, TED (July 2009), https://www.ted.com/talks/chimamanda_ngozi_adichie_the_danger_of_a_single_story?language=en.
[194] Some readings we have used include excerpts from Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012), Addressing Implicit Bias in the Courts, http://aja.ncsc.dni.us/publications/courtrv/cr49-1/CR49-1Casey.pdf
[195] *See, e.g.*, implicit.harvard.edu
[196] *See, e.g.*,The New York Times, The 1619 Project, https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html
[197] TA-NEHISI COATES, BETWEEN THE WORLD AND ME (1st ed. 2015).
[198] https://www.aals.org/antiracist-clearinghouse/

Talking About Race, provides helpful framing for thinking through racism and how it affects our everyday reality.[199] Other helpful resources include podcasts like Seeing White[200] or NPR's Code Switch.[201] Derek Moore Jr. has developed the 21-day Racial Equity Habit Building Challenge, offering bite size resources to understand racism and privilege which provide a wealth of material for all educators for ourselves and our students.[202] Finally, in the context of teaching storytelling and narrative we have drawn on Margaret Johnson and Carolyn Grose's book and an exercise using a four-minute podcast introduction to a series exploring the murder of Philando Castile.[203] Through normalizing discussions about race, gender, power and related topics, students can learn to be receptive to the idea that effective interviewing—as well as other tasks—will be improved by recognizing how cultural differences are intertwined into team members' expectations, norms and assumptions. [204]

After ensuring all students have a starting point for understanding structural bias, a next step in interview preparation is to ready students to identify potential related issues that may arise during collaborations with a partner, client and interpreter in the interview. As students learn more about their client and understand systems of bias their client exists within, students must also have self-awareness about their own cultural identity, and be open to owning their own biases. Teachers should have students reflect on how their cultural background has influenced their perspective, how they have experienced privilege, and how that might surface in legal relationships they build.[205] Identifying cultural identities includes identifying whiteness as a social category and understanding the impact of white supremacy and privilege.[206] This race-conscious, intersectional perceptiveness raising teaches

[199] https://nmaahc.si.edu/learn/talking-about-raceGiven
[200] https://www.sceneonradio.org/seeing-white/
[201] https://www.npr.org/sections/codeswitch/
[202] https://www.eddiemoorejr.com/21daychallenge
[203] *See, e.g., 74 Seconds*, PODBEAN (May 16, 2017), https://www.podbean.com/media/share/dir-pu26i-453df7c. Professors Grose and Johnson led an exercise using this four-minute clip at the AALS Clinical Conference in Denver in 2017. In this exercise we require students to listen for and articulate the six narrative elements of storytelling that Grose and Johnson use (characters, events, causation, normalization, masterplot, and closure). Using that clip a number of the elements can surface issues and encourage discussion of race, racial profiling, privilege, assumption, bias, and more.
[204] Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081, 2093-94 (2005).
[205] Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 410 (2002); *see also* Jane H. Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 CLINICAL L. REV. 1, 22 (1997) (discussing the imperative that teachers have to help unmask privilege and remove blinders so that ultimately "Once the blinders are off, they will necessarily assume responsibility for the perpetuation of privilege because they will no longer be able to exercise it unknowingly.").
[206] John O. Calmore, *Close Encounters of the Racial Kind: Pedagogical Reflections and Seminar Conversations*, 31 U.S.F. L. REV. 903, 919 (1997). Popular texts to consider whiteness include Robyn D'Angelo, WHITE FRAGILITY: WHY IT'S SO HARD FOR WHITE PEOPLE TO TALK ABOUT RACISM

students, particularly for those with the most privilege, that they cannot pretend to operate from a "bleached position;" in fact, there is no neutral or default position—we all act from our own perspective with implications in how we will interact when working in collaboration (or in opposition, for opposing counsel).[207]

One of the first assignments we provide students is a self-assessment that will help them understand their own learning style and collaboration style. It also asks them to reflect on times when they have experienced or perpetuated a stereotype in the context of a professional relationship. First, we ask them about their own learning goals, outlying the specific skills they want to develop, as well as any other goals—from developing their own sense of professional identity, or feeling more confident speaking in class. When asking about students' preferred supervisory relationship, we set the expectation that students will lead supervision meetings, as well as lead class and casework, while we also ask them to reflect on aspects of past supervisory relationships that have worked well and that have been less successful. Similarly, we ask them about if they feel they learn best from reading, observation, performing, some combination, and their work style around deadlines. We ask them to talk about successful and stressful learning experiences, as well as successful partnerships, and with each description they should draw out lessons learned. We ask them to reflect on difficulties in past collaboration and how they have attempted to resolve conflict. Last, we preview that class discussion will involve talking about racism and other forms of bias and privilege; we then ask what reservations they have about having these conversations, as well as to share takeaways from fruitful conversations about critical topics. We also ask them to consider a professional experience where they have felt disrespected or offended, as well as when they may have given offense, and ask what lessons they can bring from those experiences to their relationship building in clinic. We encourage students in the first supervision meeting to raise topics related to collaboration drawing from their self-assessments to normalize conversations about these topics and improve collaboration.

Within the first few weeks of the course, students engage in another crucial interviewing assignment: drafting a formal interview plan for their initial client interview. In our clinics, students represent individual clients, yet it is important to note that critical lawyering often may involve representing or working to support community groups; therefore the interview may be with a community leader,

(2018); Layla F. Saad, ME AND WHITE SUPREMACY: COMBAT RACISM, CHANGE THE WORLD, AND BECOME A GOOD ANCESTOR (2020).

[207] It is important to avoid teaching students colorblind lawyering as they cannot "operate from a bleached position independent or outside of identity even when executing racial maneuvers at trial or in a transaction." *Alfieri*, *supra* note 145, at 62. Jane Aiken explains that "[s]triving to promote justice, fairness, and morality may require us to face the discomfort of not remaining silent." Jane H. Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLINICAL L. REV 1, 21 (1997).

organizer or other stakeholder. In Tulane's practicum, clients have been community leaders and members of either the New Orleans Congress of Day Laborers or the Seafood Worker's Alliance. While students are not representing these community groups, students understand how supporting their client's claims help further a larger justice goal and students also do collaborate with organizers at various points in the client representation.[208]

Although we assign a more formal interview plan for the initial client interview, the client plan framework can be used for follow up interviews as well as interviews with organizers and other community members. In the plan, students must identify their 1) goals for the interview 2) logistical issues and special concerns 3) pre-interview preparation and outline of existing documents and information and 4) collaboration. Under the second part, logistical issues and special concerns, we ask students to address how they will prepare to collaborate with an interpreter. We also ask them to "consider special concerns raised by your client's particular experiences, circumstances or identity, and address how you will approach being attuned to client's perspective and how the client may perceive you."[209] As mentioned previously, clinics often have some information, or in some instances, a great deal of information, about a client before students first engage with the client, providing ample opportunity for students to think through special concerns in the lawyer-client relationship. Specifically, we want to encourage students to think through the specific aspects of their own identities and of the differences between them as partners that may affect how they interact with their clients and the assumptions and biases both the students and their client may bring to the new relationship. Under the collaboration portion of the interview plan, we ask students to **"**identify how you and your partner will divide responsibilities during the interview, how you plan to approach working with the interpreter, and what you might do to ensure your client is a collaborator in the interview."[210] These questions are meant to prompt a discussion where students will start to identify issues that might arise and their approach to being aware and adaptable to address those issues.[211]

[208] Similarly, UC Irvine Law's Immigrant Rights Clinic uses "individual cases in traditional channels of legal advocacy to build toward larger challenges to systematic subordination. Forexample, representing individual workers in their wage and hour cases in coordination with community organizations built their trust in those groups and motivated individuals to participate in political campaigns." Sameer Asher and Annie Lai, *Access to Power*

[209] Laila Hlass et al., Tulane Law School Immigrants' Rights Practicum Syllabus (on file with author).

[210] Id.

[211] In these supervision conversations, we draw out how clients are experts in their lives and stories and they understand the harm, or "legal problem," much better than students. Meanwhile, students have skills that allow them to conduct legal investigation to answer legal questions and sometimes a better understanding of the adjudicator or other decision-maker's world view.

The next stage is the "performing" the interview. One of the key lessons in interviewing pedagogy is how to employ the skill of active listening. Active listening must involve "close and careful listening, coupled with scrutinized and repeated readings of the client's story, [to] assist one in better understanding the nuances of another's experience."[212] We encourage students to employ slow-motion listening, including an awareness of tone, body language and other cues—they may not pick up most or much of the signals, but because we have students record their first interview, we will later re-watch in slower motion for further encoding.[213] As critical interviewers, students' listening should be animated by an intersectional perspective.[214] This includes being open to understanding the personal identities and power implications of various players in the case. Students should try to avoid making assumptions,[215] be aware of how their own cultural baggage might impact how they hear, what they hear and who they believe.[216] Assumptions can lead to working against client goals, undermining client-attorney rapport and trust, reifying existing power structures, further entrenching structural oppression.[217] In addition to being aware of how students approach listening in the interview, they should consider power implications as they form questions, explain legal concepts, and make space for their clients to ask questions. Students should also try to identify where they can help build power for clients in the interviewing, uplifting client strengths, and not necessarily starting with topics that might undermine client dignity.[218] Furthermore, they should consider during the interview when there are points where they can uplift their client's perspective using empathy, as well as how to make sure defining roles and setting expectations that the client is a partner and collaborator in the legal case.

[212] Melissa Harrison & Margaret E. Montoya, *Voices/Voices in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387, 417 (1996).
[213] *Harrison & Montoya*, *supra* note 142, at 433-34.
[214] *Harrison & Montoya*, *supra* note 142, at 416.
[215] Bill Ong Hing, Raising *Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807, 1809-10 (1993).
[216] *Harrison & Montoya*, *supra* note 142, at 426.
[217] Beth Caldwell, *Addressing Intersectionality in the Lives of Women in Poverty: Incorporating Core Components of A Social Work Program into Legal Education*, 20 AM. U. J. GENDER SOC. POL'Y & L. 823, 829 (2012).
[218] Topics such as criminal history might be very significant for the case, but with power differentials in mind, it is often better to hold these topics for later in the interview or a different interview altogether. Giving clients power and control over when certain topics are addressed is also central to trauma-informed interviewing and working with survivors of domestic violence, torture, and other trauma.

Last, in the lawyering process is reflection,[219] which should lead to deeper learning.[220] We require students to video-record their first interview—and sometimes audio or video record a second interview—to help better aid reflection on all aspects of interviewing. We devote a class to rounds where students present on their first interview and focus on a particularly difficult challenge. This reflection again must involve students situating themselves within context—recognizing their own privilege. This type of reflection "helps 'surface default goggles' and 'makes room for other intentional choices about perspectives and other worldviews."[221] In reflection we encourage students to have great humility about assuming their perception of events is right—instead they should try to listen and reorient to better understand the client's perspective.[222] In rounds, students will show a video clip to the class of where there was a challenge, to receive feedback to diagnose the problem and consider a variety of options for moving forward.[223] We also spend at least one supervision meeting devoted to students reflecting on their performance, and providing our own evaluation of the students' initial interview. In conducting these feedback sessions, we work to ask questions and surface some of the conversations that are most difficult for students and for us to engage in. This may include pointedly asking questions of the students, including, "how do you think your client reacted to having a male representative, like you?" or, "how does your own gender identity play a role in your relationship with your client?"

[219] *See* Laurie A. Morin & Susan L. Waysdorf, *Teaching the Reflective Approach Within the Service-Learning Model*, 62 J. LEGAL EDUC. 600, 611 (2013) (defining reflection as the "deliberate contemplation and self-examination of one's actions, goals and personal transformation").
[220] The ABA has not provided a definition of "self-evaluation," but the AALS Section on Clinical Legal Education suggests that it is: includes "two-inter-related aspects," 1): "the capacity to assess a specific lawyering performance and make appropriate changes; and [2)] the capacity to reflect on experience more generally so as to improve insight, broaden understanding, and develop decision-making ability." AALS SECTION ON CLINICAL LEGAL EDUCATION, GLOSSARY ON EXPERIENTIAL EDUCATION 10, https://memberaccess.aals.org/eweb/dynamicpage.aspx?webcode=ChpDetail&chp_cst_key=2546c8e7-1cda-46eb-b9f3-174fc509169b; s*ee also* Gary Bellow, *On Teaching the Teachers; Some Preliminary Reflections on Clinical Education as Methodology*, *in* COUNSEL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC., CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 375, 379 (1973) (emphasizing the importance of reflection in the clinical classroom);Carolyn Grose & Margaret E. Johnson, *Braiding the Strands of Narrative and Critical Reflection with Critical Theory and Lawyering Practice*, 26 CLINICAL L. REV 203, 217 (2019) ("Critical reflection and narrative theory work together to guide us to ask questions and broaden our perspectives in gathering information and constructing cases and projects.").
[221] Carolyn Grose & Margaret E. Johnson, *Braiding the Strands of Narrative and Critical Reflection with Critical Theory and Lawyering Practice*, 26 CLINICAL L. REV 203, 210 (2019).
[222] Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 412 (2002).
[223] *See, e.g.*, Susan Bryant & Eliot S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195 (2007).

C. Methodology for Teaching Critical Interviewing

We proceed from the understanding that race-neutral[224] and race-lite[225] client counseling texts, lacking an antiracist and intersectional lens, do not provide a clear framework to empower clients to tell their stories because they do not value clients' lived experiences; in fact, they may serve to further silence clients' voices, as well as the experiences of law students and attorneys of color[226] and other marginalized communities.[227] At the same time, we acknowledge that law students, professors, and lawyers often feel uncomfortable or threatened talking directly about race, gender, class, and power.[228] Indeed, the terms white fragility,[229] or white transparency,[230]

[224] Legal education has been critiqued broadly for attempting a color-blind approach that privileges white students. *See* Judith G. Greenberg, *Erasing Race from Legal Education*, 28 U. MICH. J.L. REFORM 51, 55 (1994) ("[D]espite their claims to be color-blind, law schools provide inherent preferences for students who can act, think, and write white.").

[225] "Lite is an informal variance of light, . . . meaning 'containing less of an ingredient,' or 'being less complex.'" *Lite vs. Light–What's the Difference?*, GRAMMARLY, https://www.grammarly.com/blog/light-lite/ (last visited Feb. 10, 2020).

[226] We use the imperfect terms "attorneys of color" and also "people of color" and "students of color," in the spirit of inclusiveness to draw out common experiences communities of color experience may face. As Ibram X. Kendi writes, "I see myself historically and politically as a person of color, as a member of the global south, as a close ally of Latinx, East Asian, Middle Eastern, and Native peoples and all the world's degraded peoples, from the Roma and Jews of Europe to the aboriginals of Australia to the White people battered for their religion, class, gender, transgender identity, ethnicity, sexuality, body size, age, and disability." At 37. At the same time, we acknowledge how "people of color" may be used as a blanket term which serves to erase identities or wrongly be substituted in the context of specific harm the Black community has expereinced. See https://www.latimes.com/opinion/op-ed/la-oe-widatalla-poc-intersectionality-race-20190428-story.html. We also note that the erasure of Black people within the legal profession more broadly is problematic and that Black attorneys face unique challenges. *See, e.g*, David Wilkins, *Identity and Roles: Race, Recognition, and Professional Responsibility*, 57 Md. L. Rev. 1506, n.20 (1998) (discussing the identity and ethical obligations of Black lawyers and specifically recognizing that there are "important differences" between Black attorneys and other minority attorneys).

[227] Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 401, 346–47 (1997).

[228] Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 408 (2002); *see also* Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering, and Race*, 3 FLA. COASTAL L.J. 219, 235 (2002) ("Most of us avoid discussions about race because such discussions are uncomfortable, feelings get hurt, and people get angry.").

[229] Robin DiAngelo, *White Fragility*, 3 INT'L J. CRITICAL PEDAGOGY 54, 57 (2011) (defining white fragility as "a state in which even a minimum amount of racial stress becomes intolerable, triggering a range of defensive moves[,] . . . includ[ing] the outward display of emotions such as anger, fear, and guilt, and behaviors such as argumentation, silence, and leaving the stress-inducing situation.").

[230] Trina Jones & Kimberly Jane Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 IOWA L. R. 2017, 2052 (2017) (defining white transparency as the "tendency of [w]hites to be unaware of their whiteness.") (citing Barbara J. Flagg, "*Was Blind*,

have gained increasing currency over the years to name the discomfort of many within white communities feel when engaging in conversations about race. Students of color and students who have faced systemic and interlocking systems of bias often find conversations about these topics painful and exhausting. As recent law graduate Hannah Taylor writes, "Black students like me are tired of taking on the emotional labor to educate white peers."[231] For some students, the conversation may trigger longstanding racial or other trauma they have experienced over their lifetimes that they attempt to suppress in professional situations. At the same time, they may feel pressured or forced to speak up, or speak on behalf of others in their community.[232]

When teaching critical interviewing, it is important to recognize students are coming from diverse backgrounds and experiences and have different stakes and may be impacted by bias in different ways.[233] Indeed, increasingly students from traditionally underrepresented backgrounds are enrolling in law school.[234] Ultimately though, all students should understand some of the deep impact of "racism, ethnocentrism, sexism, homophobia" and other structural biases on individuals and communities.[235] Recognizing and addressing privilege and bias and building relationships across privilege differentials is a skill that must be honed.[236] As Margaret Montoya insists, we must ask:

But Now I See": White Race Consciousness and the Requirement of Discriminatory Intent, 91 MICH. L. REV. 953, 969-73 (1993).

[231] https://slate.com/news-and-politics/2020/06/grutter-v-bollinger-michigan-law-diversity-racism.html (Ms. Taylor also writes, "[a]s one of the only 'diverse' voices, I had to do the unpaid work of *educating* classmates, professors, and administrators countless times over.")

[232] *Harrison & Montoya, supra* note 142, at 438 ("Multicultural experiences are often accompanied by feelings of discomfort, of being at risk.").

[233] Melissa Harrison & Margaret E. Montoya, *Voices/Voices in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387, 391 (1996).

[234] See Admitted Applicants by Race/Ethnicity & Sex, LSAC, https://www.lsac.org/data-research/data/admittedapplicants-raceethnicity-sex; Law School Enrollment by Race & Ethnicity (2018), ENJURIS, https://www.enjuris.com/students/law-school-race-2018.html; Law Schools Honored for Commitment to Increasing Diversity in Law, LSAC (July 12, 2019), https://www.lsac.org/blog/law-schools-honored-commitment-increasing-diversity-law

[235] Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373 (2002).

[236] Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807, 1810 (1993); *see also*, MARTHA MINNOW, MAKING ALL THE DIFFERENCE: INCLUDING, EXCLUSION AND AMERICAN LAW 68 (1st 1990) ("It may be impossible to take the perspective of another completely, but the effort to do so can help us recognize that our own perspective is partial."); *see also* Jane H. Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 CLINICAL L. REV. 1 (1997).

> How law has created and sustained white supremacy/How law creates and maintains race-based power imbalances/ How law intersects with the collective racial histories of the respective racialized groups in the U.S/ Why social burdens or benefits accrue because of race?[237]

Critical interviewing necessitates that students engage in the rigorous self-examination and analysis of how structures of oppression and power dynamics can influence the lawyer-client relationship and the potential to achieve justice or other desired outcomes. Having conversations about race, gender, class and power can be particularly uncomfortable in group settings where people have different assumptions and perspectives. Teaching methodology is particularly important when considering teaching critical interviewing. Using videos and modeling coupled with reverse-modeling, where students make mistakes, can help open up these conversations. [238] This is particularly true when the video methodology is situated within relevant readings, seminar discussion, and other exercises.

While law professors may be eager to embrace pedagogical tools employing critical theory in experiential education to teach critical lawyering skills, few examples are widely available. Before describing the LILA films, we draw out three notable efforts related to the project of developing critical lawyering pedagogical tools.

First, the Guerilla Guides are a series of webpages describing how law teachers can center their teaching around a fundamental understanding of how the law privileges and punishes different communities, as well as creative and collaborative solutions to structural injustice.[239] The guides are informed by critical lawyering principles of collaboration and building solidarity, as well as deep reflection and discourse about power disparities.[240] The Guerilla Guides for Clinical Education outline key principles in infusing critical theory in case/project selection, as well as seminar design, case rounds and simulation.[241] The Guerrilla Guide to

[237] Margaret Montoya, *Defending the Future Voices of Critical Race Feminism*, 39 U.C. DAVIS L. REV. 1305, 1318 (2006).
[238] Priya Baskaran et al., *Experiential Learning Through Popular Multimedia*, *in* THE MEDIA METHOD: TEACHING LAW WITH POPULAR CULTURE 417 (Christine Corcos ed., Carolina Academic Press 2017) ("multimedia can also create a safe and accessible space to unpack and discuss larger socio-economic, political, racial and structural schema").
[239] *Guerrilla Guides to Law Teaching*, Guerilla Guides, https://guerrillaguides.wordpress.com/about/
[240] *Guerrilla Guides to Law Teaching*, GUERILLA GUIDES, https://guerrillaguides.wordpress.com/about/ (last visited Feb. 12, 2020) ("We describe our vision in Guide No. 1, in which we detail our four principles: building solidarities, advancing resistance, broadening & deepening discourse, and pursuing radical interventions.").
[241] *No. 3: Clinical Law*, GUERILLA GUIDES, https://guerrillaguides.wordpress.com/2016/08/29/clinlaw/ (last visited Feb. 12, 2020) (offering various suggestions for teaching within clinic and clinic seminar).

Clinical Law serves as a broad and rich starting place for those seeking to imbue critical lawyering in their experiential course; as such, it does not provide concrete lesson plans and exercises for the seminar.[242]

A second effort is the "Teaching Justice" webinar series, as part of Clinical Legal Education Association's Best Practices in Pedagogy committee.[243] The series "highlights new experiential approaches to teaching justice in the classroom, drawing on the wisdom of the current resistance movement and examining its intersections within a number of areas of law," such as immigration, family defense and the foster system, environmental justice, criminal justice and racial justice. These webinars often explicitly invoke critical theory and provide examples of readings and exercises that experiential faculty can adapt for their own classrooms.[244] Finally, since about 2008, there has been a critical theory working group within the AALS clinical section, where clinical faculty have engaged in discussions around critical theory in pedagogy.[245]

In 2018, we designed, screen-wrote, filmed,[246] produced[247] and released *The Legal Interviewing and Language Access Film Project (LILA).*[248] The project

[242] Following Monika Batra Kashyap's lead, we have incorporated into our clinics a reflection exercise followed by a classroom discussion, inviting students to comment on the Guerilla Guides' characteristics of community lawyers and think through which characteristics students aspire to themselves as attorneys. *See* Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 416-17 (2019).
[243] *Teaching Justice Webinar Series*, CLEA, https://www.cleaweb.org/Teaching-Justice-Webinar-Series (last visited Feb. 12, 2010). The committee is led by one of the authors, Laila L. Hlass, along with Dean Allison Korn from the University of California Los Angeles School of Law.
[244] *Teaching Justice Webinar Series*, CLEA, https://www.cleaweb.org/Teaching-Justice-Webinar-Series (last visited Feb. 12, 2010).
[245] The group, although often not formally recognized as part of AALS, has met at the AALS Clinical conference and also sporadically at the NYU Clinical Writers' Workshop. Members have included Claudia Angelos, Annie Camet, Phyllis Goldfarb, Carolyn Grose, Margaret Johnson, Margaret Montoya, and Jean Koh Peters, and Ann Shalleck. Email from Margaret E. Johnson, Feb 17, 2020 (on file with authors).
[246] Filming took place over the course of just one day at Tulane University and in general the scenes required multiple takes.
[247] The videos use subtitles when Spanish language is used and are divided into accessible chapters. In reflecting on the videos, we failed to ensure that the videos were accessible to deaf and hard of hearing communities. We should have included closed captioning throughout the entire course of the video and not only when one of the actors was speaking Spanish.
[248] This was with financial support from a Carol Lavin Bernick faculty development grant from Tulane University. We secured the services of a film company, who assisted in the recruiting and hiring of actors, and we paid a stipend for their time. Before drafting the interview scripts, we solicited feedback of experiential and non-experiential immigration professors regarding what issues we would want to raise in these videos. The input we received was varied and rich and we took that into account in crafting the scripts to raise as many of the issues as we could within the videos. The series of email responses to our call for input are on file with the authors.

includes a set of two films focused on law students interviewing clients, inspired by videos made some time ago by Georgetown's Center for Applied Legal Studies.[249] We prepared a teacher's guide, to help instructors use the videos in a classroom setting. We also suggest exercises to "flip the classroom," meaning that the students engage in watching the videos at home and then come to class prepared to engage in exercises or discussions based on the material viewed outside of class. While the videos are easily accessible to the public via YouTube online,[250] we have also made the teacher's guide available for free to anyone upon request.

Since the videos were launched, law school clinics and experiential learning programs globally have contacted us to request the teacher's guide to consider integrating the videos into their courses. At the time of writing, more than 130 educators at nearly 100 law schools have requested use of the teacher's guide for these videos. The videos were made in the context of immigration clinics, which are particularly well-situated to engage critical theory.[251] Therefore, of the 120 educators, this includes more than 60 immigration clinicians. However, educators teaching in a

[249] One, made in 1995, depicts a simulated initial client interview of a Serbian asylum seeker conducted by a clinic student in English. The student makes a comedy of cringe-worthy errors at every turn with her client, often shocking students into laughter and provoking deep conversation about all aspects of interview planning from what to wear to form of question and how to approach sensitive topics including sexual orientation. The second video, made in 2011, demonstrates an interview conducted in the Spanish-language by an informal interpreter, who similarly makes all the mistakes we see regularly in practice, with almost no intervention by the law student. There is also a third video based on a real removal hearing that teaches students about strategic thinking on your feet in a courtroom setting. Email from Philip Schrag, Delaney Family Professor of Public Interest Law; Director, Center for Applied Legal Studies, Georgetown University Law Center (Nov. 20, 2019) (on file with author). By demonstrating some of students' and lawyers worst tendencies, the videos raise questions regarding best practices in client interviewing, including using an interpreter. These videos provided rich material in the classroom, but in both videos the "law student" was operating solo, so the videos do not raise issues around collaboration.

[250] *See* Lindsay M. Harris & Laila L. Hlass, *Learning Legal Interviewing Video Project*, YOUTUBE, https://www.youtube.com/channel/UCFRiQyrhpHmdxgAE_DoMeRA/featured?view_as=subscriber (last visited Feb. 12, 2020). The videos include a 1 and a half minute long introduction video, followed by the first video, and the second video, surfacing issues that arise in using interpreters. Both videos are divided into chapters that allow for easy navigation and pauses when using in the classroom.

[251] Jennifer M. Chacón, *Citizenship Matters: Conceptualizing Belonging in an Era of Fragile Inclusions*, 52 U.C. DAVIS L. REV. 1, 55 (2018) (discrimination and oppression can be exacerbated due to intersectional vulnerabilities that immigrants experience, based on race, limited English proficiency, socioeconomic status, legal status and gender intersect with legal status); Kevin R. Johnson & Amagda Perez, *Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory*, 51 SMU L. REV. 1423, 1458. We also note that it is likely more important than ever for immigration clinics in the current moment where odds are increasingly stacked up against them due to the administrative changes in policy and practice to train students to engage in critical lawyering. In this environment, the way in which students interact with and collaborate with clients and communities, who are feeling very targeted and at times terrorized, is critical to ensuring that clients and communities are truly heard and empowered.

variety of other clinics, purely doctrinal courses, as well as courses focused on client counseling and interviewing skills have considered adopting the videos. Many non-immigration clinics have also expressed interest in using this tool, ranging in practice area from tax, general practice, family law, human rights, childrens' rights, community economic development, native American law, veterans, housing, elder law, bankruptcy, workers' rights, consumer, post-conviction, pre-trial litigation, disability rights, detainee rights, and domestic violence. [252]

The two videos feature the same set of law student clinic partners – Lisa and Max who interview two different clients, Victor a bilingual Honduran youth, and Josefina a monolingual Spanish-speaker. Lisa is Black female student, who speaks Spanish fluently. Max is a White male, who is a monolingual English speaker. Although their age is not clear, Max may appear to be older than Lisa. In the *Interviewing Victor: The Initial Meeting* video, Lisa and Max meet their client, Victor for the first time. This interview is conducted completely in English. Although the facts supporting Victor's potential asylum claim are not fully explored, essentially Victor is fleeing gang recruitment along with violence at the hands of a gang leader named Antonio, who is somehow connected with Victor's mother.

In the *Josefina: Using an Interpreter* video, Lisa and Max meet their second client, a Salvadoran woman named Josefina, who is a monolingual Spanish speaker. As they will discover, Josefina is a lesbian woman who is the survivor of domestic violence at the hands of her husband in El Salvador. She fled that violence and came to the United States, at some point entering into a relationship with a woman named Carla. The video reveals some sort of incident involving a police report and violence with Carla, which may be a qualifying crime to render Josefina eligible for a U-visa, a form of immigration relief.

The LILA videos focus on helping students to engage in the necessary discussion and thinking to build their critical interviewing skills, specifically considering collaboration in interviewing, between partners, client and interpreter and intersectional and race-conscious interviewing, informed by an understanding of historical and structural biases. In learning how to critique others and providing specific examples, both of "good" and "bad" interviewing, these videos encourage students to become more reflective about their own interviewing skills, habits, and tendencies.[253] Further, using videos is one method of modeling listening techniques – both positive and negative – which can be an effective way to engage law students in

[252] At the time of writing we have also received several requests from legal service providers across the country and even internationally to use the teacher's guide for the videos.
[253] *Gay Gellhorn et. al., supra* note 29, at 295 (explaining that professors review videos of real student interviewing within the clinic seminar and "[u]sing concrete examples, teachers can effect more lasting changes in students' interviewing skills.").

skills learning.[254] Indeed, although experts agree that active listening is fundamental to a strong lawyer-client relationship, "it is generally not seen by the novice as a very natural or comfortable way to respond."[255] In Pedagogy of Oppressed, Freire suggests that we "restore students' dignity by practicing problem-posing education where student and teacher engage in teaching and are taught by each other."[256] Thus, examining models of active listening is an important first step in orienting law students to the skill of active listening. Film allows students to engage in critical thinking and joint problem-solving *with* professor(s). Finally, these videos can incorporate a few of the existing methods to teaching legal interviewing—utilizing observation and modeling, as well as encouraging role playing. While teachers utilizing the videos are inherently having their students observe the simulated interviews, faculty may also encourage role play by stopping the video at various points and acting students to suggest an alternative method, in role.

While the videos raise numerous questions, we focus specifically on eight moments in the videos that center issues of critical lawyering—involving three types of collaboration, informed by an intersectional approach: (1) with the client, (2) between students, and (3) with the interpreter. These moments raise a number of questions – these are questions to which we do not provide explicit answers. There is no easy or single answer to addressing these thorny issues. Therefore, our purpose in teaching critical interviewing, is to raise these hard questions, create space to discuss these dynamics, and encourage students and supervisors in each specific situation to chart a thoughtful way forward.

1. Collaboration with the Client

In considering collaboration with the client, the videos raise a multitude of issues, but we highlight here five particular moments that provide opportunities for exploration of this relationship from a critical interviewing perspective, considering client's perceptions of student representatives, students' lack of intersectional approach to client, expressing empathy, building client rapport, and interviewers with different language abilities.

[254] Neil Hamilton, *Effectiveness Requires Listening: How to Assess and Improve Listening Skills*, 13 FLA. COASTAL L. REV. 145, 161 (2012) ("Modeling of listening techniques make effective practices visible to students.") (citations omitted); Cara Cunningham Warren, *Client Interview Training: A Reflection on the "Quantum Shift" in Legal Education*, 96-DEC MICH. B. J. 42, 42 (2017) (recounting an exercise in a first-year legal writing class where students observe an upper-class student interview a professor "often with a healthy mix of promising work, awkward moments, and outright snafus.").
[255] *Connection, Capacity, and Morality*, *supra* note 39, at 762.
[256] *Disruptive Pedagogy*, *supra* note 17, at 19.

Client's Perceptions of Student Representatives

There is no telling how race, gender, and other characteristics of a representative may be perceived and responded to by an individual client or others within the legal system. A client may gravitate towards the law student of her same gender or race, for example, for any number of reasons. Another client may present a totally different dynamic where he or she feels more comfortable or assumes a representative with different gender and race traits has more authority than a representative who shares traits with the client. We presented just one scenario in these videos, where the young male, Central American client establishes a connection with the White male law student and does not demonstrate the same level of respect for the Black female law student. This tension is brought to light in the following situation.

After sharing the agenda for their first meeting, Max then asks whether there is anything worrying Victor, the client. At this point Victor discloses his concern about finances and his need to work to support his younger sisters in Honduras. This poses an ethical problem that students should dig into. Lisa and Max exchange glances but then Max gives a somewhat quick answer – confirming that Victor is 18 years old and quickly saying that asylum seekers are allowed to work. Lisa puts on the brakes and recalls the rule where an asylum seeker can apply for a work permit a certain number of days after their application is filed. Victor asks about the consequences of working before he has secured a work permit, and Max says "Honestly, dude, everyone works without permission." Lisa interjects and explains that they will consult with their professors and get back to Victor on this question. Victor presses Max, who he refers to as "the lawyer" on what he would do in this situation.

This is intended to raise some clear questions about gender, race, power and privilege. In this scenario, Max could have easily jumped in to clarify roles. He does not appear to notice how his race or his gender may be implicated in the interaction. Instead, he leans back in his chair and seems quite comfortable sharing his opinion with the client as the "lawyer." Max appears oblivious to the privilege he is experiencing, and how his whiteness and maleness is benefiting him. As Russell G. Pearce writes "white lawyers have a tendency to treat whiteness as a neutral norm or baseline, and not a racial identity, and tend to view racial issues as belonging primary to people of color."[257] In addition to drawing out how a client may perceive law student representatives relating to gender, race, age and other characteristics, this is a moment to reflect on how students can sometimes direct, rather than collaborate with clients. Max does not clarify that he is *not* in fact, "the lawyer," or that he needs to

[257] Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081 (2005).

provide key and accurate information to Victor, so that Victor can make the decision ultimately. This is particularly fraught when the student is white and the client is a person of color as the relationship can reinforce entrenched racism.[258]

This example can help to facilitate a discussion in which white students need to reflect on their role in perpetuating racism. This small example, an assumption that the client makes that the white male is the "lawyer" can open up ways to openly identify whiteness as a social category and understanding the impact of white supremacy and white privilege.[259] Lisa steps in and asserts herself, when Max starts to say "well, I would work" and clarifies that she and Max are both students, not lawyers, and should consult with their professors on the issue of work authorization.[260] The question for instructors to pose to students in the classroom is – what responsibility did Max have in this situation to address the client's misperception?[261] How might he have handled this situation differently and avoided putting the onus on Lisa to correct the client's mistaken assumption? How might Max have used this situation to re-frame the lawyer-client relationship and recognize the client's own agency and power in decision-making?[262]

Lack of Students' Intersectional Approach

The videos also surface issues around students' own privilege as well as blind spots in approaching a conversation intending to draw out Josefina's sexual orientation. The students have an inkling that Josefina is the victim of a crime involving her former roommate, Carla, and their questions reveal that they suspect that Josefina and Carla were romantically involved. At this point, the students have reflected neither on the lack of confidentiality in the interview by using Josefina's brother as an interpreter, nor how having a family member present during a

[258] Kevin R. Johnson & Amagda Perez, *Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory*, 51 SMU L. REV. 1423, 1459 (1998).
[259] John O. Calmore, *Close Encounters of the Racial Kind: Pedagogical Reflections and Seminar Conversations*, 31 U.S.F. L. REV. 903, 919 (1997) ("Whites must realize that their racial identity, like that of people of color, is also socially and culturally constructed, subject to contestation and change. They must come to realize that while not authoring racism, they may nonetheless be implicated in racism.").
[260] This issue can also surface an important discussion with students about how to respond to a client question where they are not sure of the answer, but also ethical questions about advising an undocumented person to work without authorization, and also potentially even rendering advice as law students and touching on unauthorized practice of law.
[261] *See* Jane H. Aiken, *Striving To Teach "Justice, Fairness, And Morality"*, 4 CLINICAL L. REV. 1, 21 (1997) (Some circumstances offer "those of us who have privilege an opportunity to act, using our privilege and credibility to identity the injustice").
[262] *See* Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 407 (2019) (emphasizing the need to act *with* rather than *for* clients and communities).

discussion around a potentially very sensitive subject should not be a default decision. This provides a clear example of a failure of law students to educate themselves in advance of meeting with their client about power and privilege and how that may be implicated in legal relationships and representation.[263] Further, Lisa and Max do not pause in their interview after learning of Josefina's relationship with her brother and observing his more dominant role than his sister in the interview. They do not seem to consider how a woman of color who may identify as LGBTQ, who is monolingual Spanish speaking and appears to be dependent in some ways on her bilingual brother, might be particularly vulnerable to harm.[264] The students rather clumsily pursue a line of questioning to try to understand Josefina and Carla's relationship, despite the fact that members of the LGBTQ community often face stigma and even violence in their homes—as well as from society more generally. Furthermore, violence against LGBTQ community is common in both the US (where Josefina and her brother live) as well as in El Salvador, where Josefina has come from (and we do not know whether her brother has grown up exclusively in the US or when/if he migrated). In making this move, Lisa and Max display privilege that they have in not even considering the dangers they have raised by potentially outing their client to a male family member on whom she appears to depend.

Expressing Empathy

The *Victor* video provides a couple of different examples of students responding to client emotion. At one point, the client, Victor, shares that he cannot return to his native Honduras. Avoiding the emotion, at that stage, the student, Max responds quickly, "Absolutely not, so, that's what we're going to work on with you. Your asylum claim. This form is just the first step. We're going to try to fill it out with you and submit at your court date in two weeks." While Max is trying to provide reassurance, his quick reassurance and pivoting to another topic fails to allow room for the client to express his emotions and potentially to address the most important topic in his case – the reason he cannot return to Honduras, which is at the heart of his asylum claim. Max displays some discomfort with client emotion and tears. Later in the interaction, however, it is Max who pauses and allows a moment of silence and time while Victor is crying. Defying traditional gender norms around tears and displays of emotion, while Lisa awkwardly hands the client some tissues and it is Max who actually says, "It's OK, man, this is hard stuff to talk about. It's OK to cry."

These scenes provide room for students to engage in thought and discussion around how do we display empathy as attorneys, how do we truly engage with our

[263] *See* Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 408-09 (2019).
[264] It is unclear from the videos how Max and Lisa identify in terms of gender and sexual orientation themselves.

clients, including how identities—race, gender and other aspects may be implicated—in particularly tense interactions.[265] Although we cannot make assumptions about how race, gender, and other aspects of our identities and clients' identity might manifest, this scene encourages discussion around how clients express emotion and how we as attorneys and law students respond. In some situations, clients may be more comfortable and open crying in front of a woman, but for other individuals, it may be the opposite. In some instances attorneys and law students may project their own discomfort with emotion on to their clients, sometimes offering the client an "out" with changing the topic of reassurance to avoid discomfort on both sides. These scenes from the videos often lead to frank discussions in the classroom around emotions in lawyering.

Building Client Rapport

In the beginning of the first video, Max leaves the room alone to meet the client, Victor, "downstairs." Viewers may note that Max gives his partner Lisa a fist bump on the shoulder as he leaves. This can raise questions about how students feel about partners touching one another, particularly in a professional context. While we do not suggest a "right," answer—moments like this can raise conversations about what to consider and how to plan for different scenarios.

When Max leaves to meet their client, Lisa waits for her partner and client to arrive. The screen shows that seven minutes have passed. This too may be a moment for comment – should both partners have gone to meet the client downstairs? How might one partner greeting the client for the first time, even if just to show the client to the interview room, have unintended consequences? Max enters the room laughing and talking about soccer with the client, Victor, clearly having built some rapport. Lisa has to awkwardly interject in order to introduce herself and Max does not facilitate that introduction.[266] Later in the video, Lisa works hard to catch up in the rapport-building and to establish that she too is a soccer player and a soccer fan.

2. Collaboration Between Students

The videos also raise issues around critical interviewing involving the collaboration between student partners. So often clinics assign students to work in teams of two or more and in working together and engaging in critical lawyering

[265] *See* Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship,* 6 Clin. L. Rev. 259, 264 (1999)

[266] This scenario is similar to that raised by Professor Susan Bryant in her article where she recounts a male student and client "bonding" and excluding the contributions of the female law student. *See* Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession,* 17 VT. L. REV. 459, 487-88 (1993).

requires conscious examination and articulation of the ways in which systemic bias and oppression comes into play in that collaboration. Three moments in the LILA videos provide windows to raise these challenging partnership dynamics and are discussed below.

Gender and Race Dynamics within the Student Partnership

Issues of gender and racial privilege are surfaced again when Victor produces original documents and the team needs to make copies. Max actually asks Lisa to make the copies, but Lisa pushes back and asserts herself and asks Max to make the copies. This is a good example of modeling and stepping in early when a partner dynamic is heading down the wrong track.[267] In our own experience and that of our colleagues, we have often seen female law students take on the role, whether conscious or subconscious, requested or not, of scribe and note-taker, and sometimes seen male partners expect and rely on the female law student to play a quasi (or full!) secretarial role. Indeed, we tried to surface this issue in the videos where, at one point, Max's computer makes a dinging noise. He apologizes and says he will not use his laptop anymore, but it should not be a problem because Lisa is taking notes. This again raises the question of gender roles and an assumption that a female student, and in this case a woman of color, will take an administerial although critical role, while the white, male student engages in the more authoritative, lawyering role.[268]

In the videos, we chose to model Lisa, the Black female student, pushing back against her White[269] male colleague when he assumed she would make copies, take notes, and where the client assumed he was the "lawyer" in the room. In doing so, we did not address a common scenario where a student who is othered stays silent in the

[267] Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485, 505 (1998) ("Even in non-hierarchical teams of co-equal peer attorneys, successfully working collaboratively is difficult, often because communication in the team breaks down.").

[268] Also notable, Max doesn't type from here on, but leaves up the physical barrier of his computer screen, without closing his laptop. Professor Susan Bryant examines the issue of gender difference in collaboration. *See* Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459, 484 (1993) ("These [gender] differences provided the material for insightful discussions about the role of the lawyer, the strengths and problems of the different [client] boundaries, and the role that gender may play when boundaries are set without prior critical reflection.").

[269] We capitalize "W" here as there is a growing call to do. Historian Nell Irvin Painter argues "in terms of racial identity, white Americans have had the choice of being something vague, something unraced and separate from race. A capitalized "White" challenges that freedom, by unmasking "Whiteness" as an American racial identity as historically important as "Blackness" — which it certainly is." https://www.washingtonpost.com/opinions/2020/07/22/why-white-should-be-capitalized/

face of microaggressions[270] and other forms of explicit and implicit bias. We hope that in modeling a student asserting her own interests, this can be a topic for live discussion with students – instructors can pose questions, such as "What should Max do after he has realized how he is undermining Lisa?" "What would you have done in Lisa's situation? Is there anything that might prevent you from acting in the way she did to assert herself and change the dynamic?

Building in a small interaction like this to the videos, we hope, opens up a discussion within the classroom of racial and gender privilege. Some students may benefit from white, male, cisgender, or other forms of privilege such that clients or other institutional actors identify them as more legitimate legal actors than classmates who are people of color, women, or belong to other cultural groups facing oppression. It can also raise questions about the obligation of the partner who is benefiting from privilege to proactively confront these biases in support of their partner.

Dividing the Interview When Collaborating with a Partner

In general, through the videos we hoped to encourage law student viewers to consider how they might approach a client interview, structurally, when working with one or more partners. Should they divide up interview topics? In the interview, Lisa and Max go back and forth asking questions, with one often interjecting while the other is pursuing a line of questioning. There may be advantages to this approach, as two brains are surely better than one, but the downside may be that the client finds the questioning intense and disorienting.

As the story develops, Victor shares that things got worse after his friend Felipe Manuel was killed and a gang leader named Antonio showed up at his house. Max is doing a generally good job asking good follow up questions. Lisa, though, at one point jumps in and proposes an answer in the form of a leading question: "Ok, so now you're saying that M-18 wanted to recruit you too?" In doing so, Lisa interrupts the client's narrative and framing of his case and his feelings, suggesting an answer to Victor which could shape the information that is disclosed. This kind of interruption, particularly during a first client interview, may undermine the client's power and agency and serve to reinforce a hierarchical lawyer-client relationship.

[270] While "racial microaggressions" was first proposed as a concept by psychiatrist Chester M. Pierce, MD, in the 1970s, academics in a number of fields have significantly amplified the concept in recent years, which have been defined as "brief and commonplace daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults toward people of color." Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 AM. PSYCHOL. 271, 271 (2007).

Max jumps in after Lisa's interruption and opens up the conversation again, following the client's line of thought, but this is an opportunity for students to discuss what to do when your partner takes an approach with which you do not agree. Should Max, as the white male in the student partnership, holding the most power and privilege, take extra care not to interrupt his partner, undermining her authority? What if Max feels that Lisa is acting in a way that is detrimental to the clients' interest? Are there ways in which Max could course correct, if indeed Lisa has taken the interview off track, without undermining Lisa?

Interviewers with Different Language Abilities

The *Josefina* video demonstrates how partners' different linguistic identities might be implicated in collaborating with their client. Prior to the client, Josefina's arrival for the second video, Max thanks Lisa for arranging the interview, which he comments would have been hard for him because he speaks no Spanish. This is an opportunity to discuss with students the dynamics and assumptions within a team where one clinic partner speaks the client's language and the other does not. Does this mean the foreign language speaker is responsible for all client communications? Is that fair? Does it make sense in terms of building client rapport? What might the consequences of this division of labor be in how the client perceives the students—perhaps the client will connect more to the Spanish speaker and/or perhaps the client will assume the Spanish speaker is merely the interpreter while the other student is the attorney? How might the labor in other pieces of the case be divided to ensure equality? How might the non-Spanish language speaker communicate with their client?

Later on in the video, Lisa starts speaking in Spanish, without any interpretation being provided to Max. This provides the opportunity to discuss whether there are points, in an asymmetrical language partnership, where one partner may be able to communicate information more efficiently to the client. This may be discussed ahead of time and has pros and cons that students will need to consider.

3. Collaboration With Interpreter

The final mode of collaboration the LILA videos explores is collaboration with the interpreter. The *Josefina* interview video presents a situation where the client brings her own interpreter, who is her brother. A client appearing with a family member or friend to interpret is not, of course, an uncommon situation. In the video, this plays out in rather dramatic fashion. Not only is the brother, Miguel, not a competent interpreter, but he also hampers his sister's telling of her story as he seems not to know, and seems highly offended by the suggestion that she may be a lesbian.

The video also presents an opportunity to discuss the physical set up of the room. The interpreter, Miguel, sits closest to the law students and to the Spanish speaking law student. Josefina is quite far away from the law students and the non-Spanish speaking law student, Max, is sort of on the outside.

The video raises the question of when and how to prepare an interpreter to provide interpretation services. Part way into the interview with Josefina, Max pauses and gives some guidance to the interpreter, Miguel. This is, however, already within the interview and also none of his English instructions are interpreted to the client.

The videos present some fairly common interpreter errors – such as the use of the third person, or failing to interpret what the interpreter deems perhaps not essential information (such as, for example, a moment where Lisa expresses sympathy that the client had endured domestic violence). At another point, Miguel interjects and answers for his sister, the client. He also includes his own point of view about police in El Salvador. Some attorneys may find this inappropriate, but others may see this as a helpful addition.[271] On the flip side, the videos also present common errors for legal interviewers working with interpreters– including failing to break down sentences or pause for interpretation frequently enough.

Ultimately, after conferring outside the presence of both the interpreter and the client, Lisa and Max decide to use another volunteer interpreter, by phone. This decision can engender much discussion with law students viewing the videos about whether they would make the same decision at this point, along with the pros and cons of telephonic interpretation.

With the new interpreter, law students Lisa and Max model asking the client if she understands the interpreter. This allows for a discussion in the classroom of how and when exactly to gauge client comfort with an interpreter and whether or not the interpreter is doing a good job.

The performance of the second interpreter is much better, although several issues are still raised. The students, Lisa and Max, model how to address a situation where an interpreter does not understand a word – in this case, the significance of "*la bestia*" – the beast – which refers to the train migrants take through Mexico. Rather than allowing the interpreter to follow up, they first ask him to interpret what he did understand. Instructors can raise questions about the role of the interpreter in

[271] *See* Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Difference,* 54 UCLA L. REV. 999, 1076 (2007).

viewing this video – are there ways in which there can be more multidimensional collaboration in the lawyer-client-interpreter relationship?[272]

Ultimately, the LILA Film Project is a first step in creating a pedagogy for teaching critical interviewing skills. Much more remains to be explored broadly within critical lawyering, and specifically within critical interviewing and the following section identifies some of these areas for exploration.

V. CRITICAL GAPS FOR FURTHER RESEARCH AND EXPERIMENTATION

"*In the hands of clinical educators, experience can generate theory which can circle back to inform experience, which in turn can alter, refine, and improve theory"*[273]

In reflecting on the LILA videos since their creation and launch in 2018, there are a number of areas important to critical interviewing ripe for further exploration. These include: 1) modeling pre-interviewing preparation and 2) demonstrating meaningful collaboration with a client and/or community groups, and with one another; 3) addressing and raising a variety of privilege issues between students, client and/or interpreter; 4) touching on power dynamics at play within supervision; 5) modeling or opening a window to discuss post-interview debriefing, reflection, and trauma stewardship. Each of these areas are ripe for further exploration and potentially could be addressed in future video or other teaching tools.

Preparing to Collaborate with an Interpreter

While the choices in the *LILA* videos that the students make often generate conversation in the classroom about how they might have prepared better and how might students in the class prepare going forward—there is no modeling of the pre-interview in the videos. This is particularly true in the instance of collaboration with interpreters the *Josefina* video fails to model how students should think about engaging with interpreters before the interview. The students determine during their first client interview that they cannot work with Josefina's brother, Miguel, and change course. In opting to work with a new interpreter, the students do model some of the best practices in terms of preparing to work with an interpreter, but not everything.

[272] *See* Muneer I. Ahmed, *Interpreting Communities: Lawyering Across Language Difference,* 54 UCLA L. REV. 999, 1076 (2007) ("We might then reconstitute a more porous form of the lawyer-client relationship, one in which the lawyer retains a central role, but is far more open to multidimensional collaboration.").

[273] Phyllis Goldfarb, *Beyond Cut Flowers: Developing A Clinical Perspective On Critical Legal Theory*, 43 HASTINGS L. J. 717, 721 (1992).

After determining that an interpreter is needed, students must identify an appropriate interpreter.[274] After doing so, students must consider how to prepare for the collaboration. Ideally, the law students should not be meeting or interacting with the chosen interpreter for the first time at the time of the interview. Rather, expectations and roles should be discussed and shared, along with key topics such as confidentiality, before the interview. Students should anticipate a longer interview time, [275] or to make less progress within a set interview time, when using an interpreter. As demonstrated by students Lisa and Max consulting with their new telephonic interpreter prior to introducing him to Josefina, prior to the interview, the students should meet or communicate with the interpreter to review confidentiality and potentially the professional code of ethics for interpreters.[276] The best practices for working with an interpreter in an interview are many. First, communicating in the first person, speaking directly to the client and maintaining eye contact with the client is generally advised.[277] Next, using short sentences, asking questions to confirm client understanding, and avoiding interrupting the interpreter or the client, are all important habits.[278]

Central to critical interviewing, students must also consider how gender, race, age, region, and country of origin of the interpreter may impact their clients comfort level, as well as ensure the interpreter is a disinterested party. As language is complex and at times the interpreter may not know a technical term or certain slang, the students and interviewer should prepare for gaps in interpretation.[279] In addition to ensuring interpreters have a dictionary, interpreters should feel empowered to state they do not understand a certain word or term, so that students can ask further questions to ensure they understand the nuance, or they can change their terminology to ensure what is being interpreted for the client is accurate. For untrained interpreters, student and professors should consider training regarding use of short-hand and providing paper and pencil.

Related to pre-interview preparation, is the teaching collaboration—with the interpreter, as well as with the client and clinic partner. Professor Ahmad has thoughtfully considered the role of the interpreter, and proposes that interpreters

[274] Angela MCCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLINICAL L. REV. 347, 373-76 (2000).
[275] Id. at 384.
[276] Id. at 384-85.
[277] Id. at 384-85. Nidia Pecol, *Reflections on Interpreting: Help for the Criminal Practitioner*, 32-FALL CRIM. JUST. 28, 32 (2017) (discussing the use of first versus third person).
[278] Angela MCCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLINICAL L. REV. 347, 385 (2000).
[279] Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1031-34 (2007) (emphasizes the complexity of language and communication and the importance of context).

could play one of three roles: "interpreter as guardian, the interpreter as advocate, and the interpreter as linguistic and cultural authority."[280] Ahmad's proposed model of community interpreting, while not ideal for all situations,[281] has the potential to encourage lawyers to engage not only "in the cases of clients, but in the struggles of communities" in a far more collaborative manner.[282] Ahmad argues, "By accepting the interpreter as a partner rather than rejecting her as an interloper, by resolving the dynamic of dependence and distrust in favor of collaboration, lawyers can enhance [limited English proficient] client voice and autonomy while increasing their engagement in the communities from which their clients hail."[283] We do not learn, in the LILA video, where the phone interpreter David comes from or how he may be able to play a role in the team in enhancing collaboration and client empowerment.

Collaboration Between Attorneys, Clients, and Community Groups

The videos raise a number of issues around collaboration, but there remain broad areas within collaboration ripe for exploration, including effectively modeling collaboration between lawyers, lawyer-client collaboration, and collaboration with impacted communities such as interviewing organizers and community leaders, representing larger groups.[284] In terms of lawyer collaboration, the videos skip over discussion of what the students have done, ahead of time, to ensure smooth collaboration between the two of them. Students should plan broadly for how they will work together—not only how to plan to divide key portions of the interview, but how they plan to create space for their partner to contribute as needed, and how they

[280] Ahmad, *supra* note 247 at 1053-54. *But see* Nidia Pecol, *Reflections on Interpreting: Help for the Criminal Practitioner*, 32-FALL CRIM. JUST. 28, 33 (2017) (advising to keep interactions with interpreters to a minimum).

[281] Ahmad, *supra* note 247 at 1070-71 (discussing instances where a client may seek to "gain distance from, rather than closeness to, her community," including, for example, a battered woman trying to escape an abusive relationship).

[282] Id. at 1086.

[283] Id. at 1003.

[284] In THE CLINIC SEMINAR, Epstein, Aiken, and Mylniec devote an entire chapter to collaboration but do not focus explicitly on collaboration in interviewing. *See generally*, DEBORAH EPSTEIN, JANE H. AIKEN, & WALLACE J. MLYNIEC, THE CLINIC SEMINAR 409-434 (2014). This exercise encourages students to self-identify preferences and habits and then work with a partner to flesh out how the differences and similarities between partners may present strengths and weaknesses in their collaboration. *Id.* at 427-34. *See also* A. Rachel Camp, *Creating Space for Silence in Law School Collaborations*, 65 J. LEGAL EDUC. 897, 932-34 (2016) (detailing how Camp and her co-teacher, Deborah Epstein, engage students in a discussion and exercise around collaboration within the clinic seminar). Likewise, in *Connection, Capacity, and Morality*, there is no explicit focus on collaboration in interviewing. *See Connection, Capacity, and Morality*, *supra* note 39, at 779-87 (sharing an example of two law students interviewing a client but without any analysis of the collaboration specifically); *see also* DAVID CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 85-91 (2001) (devoting a short chapter to the merits and challenges of collaboration but without discussion of collaborative interviewing).

may approach a need to reorganize and adapt. Students should be encouraged to self-reflect and think through the dimensions of themselves they bring to the interview and how the power dynamics between themselves as partners, their supervisor, and their client may play out and affect the interview. In engaging in this self-examination, students become more mindful of their own assumptions and biases and can better engage in truly collaborative interviewing.

As critical educators, we must also find ways to demonstrate and raise issues relating to lawyer-client collaboration. For example, in introducing the client to the legal process, students could explain how the client will be the key contributor to their own case, and establish how client and students can work best together. Asking a client if they have worked with a lawyer in the past, and what was good or bad about that experience can be one approach to learning how to develop a successful collaboration with a client. Students can also acknowledge the client's power, dignity, and value by communicating sentiments such as, "You are the expert in your own life," or by offering different modes of engagement.[285]

For example, in Victor's asylum case, the students could have explained that while often students or lawyers interview the client to then write the client's declaration, the client may decide he or she would rather write a first draft themselves or play a very active role in editing the declaration back and forth after each meeting. The students also could have explained evidence gathering in a way that would have encouraged and allowed for collaboration – "we are going to work with you to gather evidence from your family and friends to support your case." Students could also have explained, especially in an asylum case, that they will need the client's help developing an understanding and expertise on dynamics at play in the client's country of origin. Students could invite the client to send relevant articles or news sources that he or she may have come across. Of course, collaboration is going to look very different depending on the client. Some clients may be more or less politically mobilized, more or less literate or formally educated; some students and clients may have disabilities that require particular accommodation for effective communication. Ultimately, we believe that there are ways in which meaningful client collaboration can and should be modeled and discussed with students embarking on critical interviewing.

[285] *See, e.g.*, Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 407 (2019) (explaining the second principle of community lawyering as solidarity in a collaborative lawyer-client relationship where the lawyers "acknowledge the leadership capacity, expertise, resilience, and determination of their clients.") (citing GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992).

While the videos raised some collaboration issues around race, gender and language ability, future work must address other elements of identity and privilege that are neglected in interviewing texts, such as hetero-normativism, gender identity and cisgender privilege, as well as ableism. Although the *Josefina* video focuses on a seemingly cisgender client who had engaged in a romantic relationship with a woman, we did not draw out how *Josefina* identifies (given the scant information shared she presents as potentially either lesbian or bisexual), gender identity as a difference between the law students and the client does not surface. While there is clear tension manifested with the client's brother, Miguel, who makes some overtly homophobic remarks, we did not dive deeply into gender identity and the dynamics of privilege between the law students and client and how that impacts collaboration lawyer-client collaboration.

The videos, through a focus on interviewing in the context of direct representation, did not focus on a key aspect of many modes of critical lawyering, which is collaboration with communities.[286] As Herrera and Trubek explain, "[t]ackling problems through multiple perspectives is a core part of critical lawyering."[287] and critical lawyers view law as a tool while equally valuing "the experience of clients and communities in their quest to democratize law."[288] Increasingly scholars and advocates emphasize the importance of engaging beyond individual representation.[289] While some clinics work with organizers and community groups "to develop the capacity of marginalized people to obtain and exercise power,"[290] there is a gap in interviewing pedagogy considering interviewing in the context of working with organizers and community groups.

Collaboration with Supervisors

Another key topic in clinical education which must come into play when considering critical interviewing is the role that the supervising attorney(s), instructor(s), and/or professor(s) have as part of a collaborative interviewing process.

[286] Herrera & Trubek at 19 ("Critical lawyers today aim to collaborate with clients and communities. Collaborations permit clients and communities to articulate their priorities that often reflect their cultural and ideological preferences. They view the engagement with clients, communities and other stakeholders, including non-legal professionals, as instrumental for seeking justice.").
[287] *Id.* at 19. *See also* Herrera & Trubek at 22 ("Social justice lawyering moves away from the lawyer as the central protagonist to the lawyer as collaborator with the client and community.").
[288] *Id.* at 14.
[289] *See, e.g.*, Deborah Archer, *Political Lawering for the 21st Century*, 96 Demv. L. Rev. 399, 401-03 (2019). (defining political lawyering as teaching law through a "systemic reform lens in case selection, advocacy strategy, and lawyering process, with a focus on legal work done in service to both individual and collective goals."); *see also* Jennifer Gordon, *The Lawyer is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 Calif. L. Rev. 2133, 2140-41 (2007); Gerald P. Lopez, *Rebellious Lawyering: One Chicano's Version of Progressive Law Practice* 63-64 (1992)
[290] Access to Power, Sameer Asher and Annie Lai

Although clinical supervisors are often not in the room when students interview clients, the supervisors collaborate with students in planning and reflection as part of the interviewing process. Supervisors' own identities--status within their institution, race, gender, age, and other characteristics–undoubtedly have an effect and interplay in student supervision and client representation, including students' approach to client interviewing. Integral to clinical supervision—particularly in the context of overseeing student-client relationship-building and interviewing—is observation and reflection about the diverse "generations, races, genders, political affiliations, learning styles, and personalities" involved in the work.[291] Excellent clinical instructors regularly and thoughtfully observe situations that arise in clinical work, and adapt teaching approaches to best fit these situations.[292]

Post-Interview Reflection

Critical lawyering necessarily entails critical reflection. Future work should engage the imperative that students engage, as part of interview debriefing in a process of self-examination and reflection and connecting their own lawyering with larger themes and theories of social change.[293] As discussed above, students must engage in the process of self-examination to gain self-awareness in preparing for the interview, but also in reflecting on their performance, they must be able to engage in critical reflection as to how their assumptions, biases, and privileges and the other power dynamics played out in the course of the interview. Also critical is debriefing to ensure that students are taking trauma stewardship seriously – the notion that they are responsible for preventing and managing any vicarious trauma as a result of their work with clients as a part of their ethical obligations as an aspiring attorney.[294]

CONCLUSION

When considering critical theory in interviewing pedagogy, a number of practical questions arise: How can we train students on best practices in communicating with others, with an eye towards disrupting existing power disparities, leveraging their clients' strengths, and using a collaborative approach with their clinic partner, clients and communities, and often an interpreter? Furthermore, how do we impart to students that integral to client communication and representation must be an attempt to understand and respond to the intersectional

[291] Colleen F. Shanahan & Emily A. Benfer, *Adaptive Clinical Teaching*, 19 CLINICAL L. REV. 517, 517-518 (2013).
[292] Colleen F. Shanahan & Emily A. Benfer, *Adaptive Clinical Teaching*, 19 CLINICAL L. REV. 517, 518 (2013).
[293] Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 409 (2019).
[294] *See* Section X above discussing vicarious trauma and trauma stewardship.

systems of oppression that may impact their clients' lives, communities and legal cases, such as racism, misogyny, classism, homophobia, transphobia, and ableism?[295] How should law students working collaboratively in a client interview identify and address the ways in which bias and structural oppression may be implicated within their legal relationships and the larger legal system? In the context of a legal interview, what will those implications mean in how they collaborate with one another, their client, an interpreter or other individuals?

There is no singular answer to these questions, which are context-specific. This Article and the LILA Film Project are just one effort—the videos should be critiqued, revised and improved. New methodologies should be envisioned, designed and implemented. We challenge ourselves, our colleagues, and those beyond the field of experiential legal education, to engage in open dialogue on how to center collaboration and intersectionality within interviewing, but ultimately to explore how to infuse all lawyering skills with critical lawyering theory.

[295] As Jane Aiken says, "[i]n the educational context, as teachers, we have the ability to share our own power and privilege in the classroom. We do this through [ ] curricular choices and the comments we choose to ignore and those that we develop and examine in class. As members of an institution, we share our privilege through our willingness to encourage diversity among the faculty and the student body. We, like our students, can recognize our choice not to speak may reinforce privilege and contribute to others' pain." Jane H. Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 CLINICAL L. REV. 1, 22 (1997).

MOVEMENT LAW

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Abstract

In this Article we make the case for "movement law," an approach to legal scholarship grounded in solidarity, accountability, and engagement with grassroots organizing and left social movements. In contrast to law and social movements—a field of study that unpacks the relationship between lawyers, legal process, and social change—movement law is a methodology for scholars across substantive areas of expertise to draw on and work alongside social movements. We identify seeds for this method in the work of a growing number of scholars that are organically developing methods for movement law. We make the case that it is essential in this moment of crisis to cogenerate ideas alongside grassroots organizing that aims to transform our political, economic, social landscape.

In articulating movement law as a methodology for undertaking and shifting the scholarly enterprise, we identify four methodological moves. First, movement law scholars attend to modes of resistance by social movements and local organizing. Attending to resistance is in itself significant for it meaningfully diversifies the voices and sources within legal scholarship. Second, movement law scholars work to understand the strategies, tactics, and experiments of resistance and contestation. By studying the range of strategies, tactics, and experiments—including but not limited to law reform campaigns—movement law scholars engage new pathways to and possibilities for justice. Third, movement law scholars shift their epistemes, away from courts and siloed legal expertise, and toward the stories, strategies, and histories of

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social movements. Adopting the episteme of social movement horizons denaturalizes the status quo and allows more radical possibilities to emerge—beyond the status quo, and toward political, economic, social transformation. Fourth, movement law scholars embody an ethos of solidarity, collectivity, and accountability with left social movements, rather than a hierarchical or oppositional relationship. Writing in solidarity with the grassroots displaces the legal scholar as an individual expert and centers collective processes of ideation and struggles for social change.

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Introduction

Following the 2020 uprisings responding to the Minneapolis Police Department's killing of George Floyd, it has never been more clear how ideas birthed in and by social movements are fundamental forces in law and politics in the United States.[1] On the left[2]—our core field of focus—in the last decade, Occupy coined "the

[1] In this article, we define social movements as social scientists do: "a collective effort to change the social structure that uses extrainstitutional methods at least some of the time. Social movement organizations (SMOs) are formal organizations that attempt to implement movement goals." Debra C. Minkoff, *The Sequencing of Social Movements*, 62 AMER. SOC. REV. 779, 780 n.3 (1997) (citations omitted).

[2] This is not to say that social movements are only active or successful on the left. On the right, the Tea Party and more recent right-wing formations have revived nativist politics. *See generally* DANIEL MARTINEZ HOSANG & JOSEPH E. LOWNDES, PRODUCERS, PARASITES, PATRIOTS: RACE AND THE NEW RIGHT-WING POLITICS OF PRECARITY 3-4 (2020); Ilya Somin, *The Tea Party Movement and Popular Constitutionalism*, 105 NW. U.L. REV. COLLOQUY 300,

99%," mobilized people disenchanted with growing economic inequality and corporate power, and laid a foundation for the deepening of anti-capitalist critique and democratic socialist politics.[3] The Ferguson and Baltimore rebellions, combined with organizing by the Movement for Black Lives and a growing constellation of abolitionist organizations, have made anti-Blackness, white supremacy, and police violence core issues on the U.S. left.[4] Young people are organizing for a "Green New Deal," an ambitious response to the environmental crisis that is remaking climate change politics.[5] Indigenous resistance from Hawaii to the Dakotas is connecting environmental justice to the revival of anti-colonialist and land politics.[6] Through powerful strikes and direct action, labor militancy by nurses, teachers, and "rideshare" drivers has reawakened the centrality of worker power to social movements and transformation.[7] This renewed social movement activity marks a profound shift after

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301 (2011) (discussing the Tea Party Movement's use of "popular constitutionalism" to advance its cause).

[3] *See* Michael Levitin, *The Triumph of Occupy Wall Street*, THE ATLANTIC (June 10, 2015), https://www.theatlantic.com/politics/archive/2015/06/the-triumph-of-occupy-wall-street/395408/ (describing "how the debate over inequality sparked by Occupy has radically remade the Democratic Party.").

[4] The Movement for Black Lives (M4BL) is a coalition of over 50 organizations representing thousands of Black people that came together to author *A Vision for Black Lives*. THE MOVEMENT FOR BLACK LIVES, A VISION FOR BLACK LIVES: POLICY DEMANDS FOR BLACK POWER, FREEDOM & JUSTICE (2016), https://neweconomy.net/resources/vision-black-lives-policy-demands-black-power-freedom-and-justice; Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 407-10, 412-13, 415-16 (2018) [hereinafter Akbar, *Toward a Radical Imagination*] (describing the M4BL, its vision, and its impact). On the vision for transformative reforms emerging from the Movement for Black Lives, see Marbre Stahly-Butts & Amna A. Akbar, *Transformative Reforms, Abolitionist Demands*, Stanford Civil Rights Civil Liberties Law Journal (forthcoming 2020-2021).

[5] The Green New Deal is a wide-ranging set of proposals aimed at transforming our social, economic, and political order through programs that touch on health, labor, race, and economic inequality. *See generally* KATE ARONOFF, ALYSSA BATTISTONI, DANIEL ALDANA COHEN, & THEA RIOFRANCOS, A PLANET TO WIN: WHY WE NEED A GREEN NEW DEAL 3-7 (2019); RHIANA GUNN-WRIGHT & ROBERT HOCKETT, THE GREEN NEW DEAL (2019), https://s3.us-east-2.amazonaws.com/ncsite/new_conesnsus_gnd_14_pager.pdf; Emily Witt, *The Optimistic Activists for a Green New Deal: Inside the Youth-led Singing Sunrise Movement*, THE NEW YORKER (Dec. 23, 2018), https://www.newyorker.com/news/news-desk/the-optimistic-activists-for-a-green-new-deal-inside-the-youth-led-singing-sunrise-movement; H.R. Res. 109, 116th Congress (1st Sess. 2019).

[6] *See generally* THE RED NATION, PREAMBLE TO THE RED NATION'S PRINCIPLES OF UNITY RATIFIED BY THE FIRST GENERAL ASSEMBLY OF FREEDOM COUNCILS IN ALBUQUERQUE (Aug. 10, 2018), https://therednation.org/manifesto/principles-of-unity/.

[7] *See* ERIC BLANC, RED STATE REVOLT: THE TEACHERS' STRIKE WAVE AND WORKING-CLASS POLITICS 1-14, 18-19 (2019); Jane McAlevey, *Teachers Are Leading the Revolt Against Austerity*, THE NATION (May 9, 2018), https://www.thenation.com/article/teachers-are-leading-the-revolt-against-austerity/; Veena Dubal, *Why the Uber Strike Was a Triumph*, SLATE (May 10, 2019, 1:33 PM), https://slate.com/technology/2019/05/uber-strike-victory-drivers-network.html.

decades of relative quiet. Through a series of interconnected organic and organized interventions, today's social movements are meeting the existential crises of our time with vision, scale, and infrastructure. They reflect the growing sense that neoliberal law and politics has failed the majority of Americans. And they help point the way toward transformation.

In this Article, we argue that legal scholars should take seriously the epistemological universe of today's left social movements, their imaginations, experiments, tactics, and strategies for legal and social change. In particular, we identify and defend a growing methodology in legal scholarship, one that cogenerates legal meaning and frameworks for critique alongside social movements and nascent formations of people organizing together against the status quo and for a more equal, just, and sustainable future for us all. This particular moment of political, economic, and social crisis demands that more of us adopt such an approach—a methodology we call "movement law."

Movement law is not the study *of* social movements; rather it is investigation and analysis *with* social movements. Social movements are the partners of movement law scholars rather than their subject. For at least three decades, legal scholars have studied social movements, creating a "law and social movements" subdiscipline.[8] We are inspired by this work, but we aim to articulate something distinct, a methodology for legal scholars across areas of law.

Movement law approaches scholarly thinking and writing about law, justice, and social change as work done in solidarity with social movements, local organizing, and other forms of collective struggle. As it begins in solidarity, it often begins outside of the law in a traditional sense. Movement law scholars join prefigurative efforts toward justice, freedom, and other ideals that the law claims, yet has failed to achieve. In this way, movement law builds on the work of jurisprudential schools of thought such as critical legal studies (CLS), critical race theory (CRT), LatCrit, feminist legal theory, critical lawyering, and democratic constitutionalism. Scholars in these critical traditions have long complicated conventional accounts of law, what it does and for

[8] *See generally* Scott L. Cummings, *The Puzzle of Social Movements in American Legal Theory*, 64 UCLA L. REV. 1554, 1556 (2017) [hereinafter Cummings, *The Puzzle of Social Movements*]; Scott L. Cummings, *The Social Movement Turn in Law,* 43 L. & SOC. INQUIRY 360, 360-63 (2018) [hereinafter Cummings, *The Social Movement Turn in Law*]. *But see* Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PENN. L. REV. 1, 48 (2001) (arguing that in legal scholarship, "[v]ery little is said about the existence of social movements; their formation, operation, continuation, and decline . . . there is virtually no discussion of their internal management, their use of protest, or even the development of their litigation and law reform efforts."). The extant literature offers second order explanations for the invocation of social movements in both public interest lawyering and in legal scholarship, more generally. In this article, we seek to explore the implications and possibilities of social movement ideation across a broad range of fields of legal scholarship, perhaps best understood as an understudied first order manifestation of the influence of movements.

whom, and how it can and should change, with an eye toward collective struggle and ideation.[9] As Chuck Lawrence has recently underscored, CRT teaches us that "[a]ll race reform, all racial justice, is achieved through the work of people who join together in justice movements to disrupt systems and institutions of plunder and to contest the racialized narratives that justify that plunder."[10] Movement law centers itself within this history of critical thought and this understanding of the place of legal scholarship in the scheme of legal and social change.

We are interested in social movements for their potential to democratize and transform our politics, and embolden our visions for change. Social movements exist on all sides of the political spectrum. Indeed, scholars across the ideological and political spectrum might use movement law. But for us, because our own solidarity is borne of a shared commitment to a certain understanding of social, political, and economic justice, our focus is on left movements today: those that aim to redistribute life chances and resources; those that aim to end our reliance on prisons and police to solve political, economic, and social problems; those that confront systems of white supremacy, anti-Blackness, capitalism, ableism, cisnormativity, and heteropatriarchy; and those that struggle to fundamentally transform state and society. Those that posit wholesale transformation rather than simple reform as their end goal. Those that challenge elite rule and aim to build democracy from the ground up. Those focused on collective rather than individual well-being.[11] Collectivity—across race, class, gender, sexuality, disability, and social location—leads to solidarity, and that is what both threatens the status quo and promises to profoundly shift our modes of living into ones that are more sustainable vis-a-vis the planet, and more equitable vis-a-vis each other.

Today's movements are raising deep questions about the propriety of capitalism and the histories of enslavement and colonialism that continue to define our social compact. The United States has always operated in a democratic deficit, a country beholden to the powerful few and dedicated to property rights tied to conceptions of individualized freedom.[12] In working first to protect the market, the

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[9] *See infra* Part I.

[10] Charles R. Lawrence III, *The Fire This Time: Black Lives Matter, Abolitionist Pedagogy and the Law*, 65 J. LEGAL EDUC. 381, 387 (2015).

[11] *Cf.* Daniel Farbman, *Resistance Lawyering*, 107 CALIF. L. REV. 1877, 1937-39 (2019) (defending a focus on left practices of legal resistance by connecting larger critical viewpoints born on the left to the political power of resistance lawyering itself).

[12] *See*, *e.g.*, Michael J. Klarman, *The Supreme Court 2019 Term—Foreword: The Degradation of American Democracy—and the Court*, 134 HARV. L. REV. 1, 9-10, 135-46 (2020); AZIZ RANA, THE TWO FACES OF AMERICAN FREEDOM 189-93 (2010). There is a growing and dynamic body of work in legal scholarship investigating these histories and their ongoing presence in the law. *See, e.g.*, K-Sue Park, *Self-Deportation Nation*, 132 HARV. L. REV. 1878, 1880-87 (2019) (explaining the concept of self-deportation as a state tool for subjugation); Maggie Blackhawk, *Federal Indian Law as Paradigm Within Public Law*, 132 HARV. L. REV. 1787, 1796, 1791-1800

state allows elites to hoard capital and exploit labor through and against law, concentrating resources and life chances at the top.[13] But Occupy, Black Lives Matter, and the Standing Rock Water Protectors have reminded us of the circular rather than linear nature of history, the ongoing centrality of indigenous genocide and anti-Black violence—and the ongoing power of people's resistance to shaping the country.[14]

In calling for movement law, we argue that legal scholars invested in democracy; political, economic, and social justice, including racial and gender justice; large-scale redistribution of resources; and substantive equality should be generating ideas alongside social movements. That is because grassroots social movements have marshaled some of the most profound changes in how we relate to one another and what we can expect of the state.[15] In times of crisis like ours, radical visions—where the scale of the vision matches the scale of the problems we face—can capture our imagination and change what we think is possible, both within and outside of the law. Social movements and other forms of collective struggle break the molds of political discourse, project new possible futures, and create new terrains of engagement. The visions of movement actors and organizations point us toward new forms of reconstruction, remaking the world in more fundamentally just ways. Social movements galvanize hope and collective action rather than cynicism and alienation in a way that can guide people to face the historically rooted material crises of our time.

(2019) (arguing for the centrality of federal Indian law to the shaping of U.S. public law more broadly); Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 5-9 (2019) (describing continuities between historical abolition movements and the prison abolition movement of today); *see also* Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 655 (2020) (describing the relationship between policing and the reproduction of residential segregation).

[13] *See* RUTH WILSON GILMORE, GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA 28 (2007) ("Racism, specifically, is the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death."); DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 2 (2005) (the primary role of the state is to "set up those military, defence, police, and legal structures" required for the stability of private property, free trade, and markets); David Singh Grewal & Jedidiah Purdy, *Introduction: Law and Neoliberalism*, 77 L. & CONTEMP. PROBS. 1, 6-8 (2014) (neoliberalism's key precepts include "strong property rights and private contracting rights are the best means to increase overall welfare").

[14] *E.g.*, NICK ESTES, OUR HISTORY IS THE FUTURE: STANDING ROCK VERSUS THE DAKOTA ACCESS PIPELINE, AND THE LONG TRADITION OF INDIGENOUS RESISTANCE 169-99 (2019) (connecting the movement at Standing Rock to the long arc of Indigenous resistance in the Americas).

[15] *See generally* CHARLES M. PAYNE, I'VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE 1-4 (2nd ed. 2007) (documenting the power of on-the-ground organizing in Mississippi during the civil rights movement); TOMIKO BROWN-NAGIN, COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT 1-5 (2011); MANISHA SINHA, THE SLAVE'S CAUSE: A HISTORY OF ABOLITION 1-5 (2016).

Social movements do not simply inspire; they also embody dynamic theories and practices of social and legal change.

Legal scholarship—adjacent to the normative and coercive power of the state—will contribute to shaping the road ahead. Scholars are writing and studying with renewed curiosity the history of enslavement and colonialism; capitalism and white supremacy; race, class, and political economy.[16] Contemporary and historical social movements are an important part of left intellectual traditions and commitments.[17] Building off of this, we argue for scholarly experimentation, ideation, and collaboration that recognizes the extent of the crises that face the nation and the world, and the powerful contributions of social movements to represent those who are often locked out of formal political process. From where we stand, legal scholars should bring social movement ideas, strategies, and tactics into legal scholarship to ground our debates and clarify the stakes. We should bring the grassroots into scholarship in the hopes of challenging systemic exclusion, altering relations of power,

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[16] *See, e.g.*, Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski, & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis,* 129 YALE L.J. 1784, 1786-94 (2020) (arguing that political economy should be central to legal scholarship); Park, *supra* note 12, at 1879-96 (bringing histories of settler colonialism to bear on the current concept of "self-deportation"); Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 131-32, 138-39, 158, 163-64 (2017) (describing the evolution of Fourth Amendment jurisprudence as a way of facilitating police violence against Black people); Jennifer M. Chacón, *Unsettling History*, 131 HARV. L. REV. 1078, 1078-84 (2018) (reviewing KELLY LYTLE HERNÁNDEZ, CITY OF INMATES: CONQUEST, REBELLION, AND THE RISE OF HUMAN CAGING IN LOS ANGELES (2017)) (arguing that attending to the narratives of those directly affected by the system—the "rebel archive"—can help uncover "the interconnected nature of governmental oppression"); Katie R. Eyer, *The New Jim Crow is the Old Jim Crow*, 128 YALE L.J. 1002, 1005-06 (2019) (reviewing ELIZABETH GILLESPIE MCRAE, MOTHERS OF MASSIVE RESISTANCE: WHITE WOMEN AND THE POLITICS OF WHITE SUPREMACY (2018), JEANNE THEOHARIS, A MORE BEAUTIFUL AND TERRIBLE HISTORY: THE USES AND MISUSES OF CIVIL RIGHTS HISTORY (2018)) (citing a "growing body of work by historians of the South and of the civil rights movement" that "demonstrates that there is far less discontinuity between the past and the present than we might like to believe").

[17] *See, e.g.*, W.E.B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA: AN ESSAY TOWARD A HISTORY OF THE PART WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT DEMOCRACY IN AMERICA, 1860-1880, 87-93, 109-23, 126-28 (Russell & Russell 1962) (1935); ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 22-30, 37-39 (2003); CIVIL RIGHTS CONGRESS, WE CHARGE GENOCIDE: THE HISTORIC PETITION TO THE UNITED NATIONS FOR RELIEF FROM A CRIME OF THE UNITED STATES GOVERNMENT AGAINST THE NEGRO PEOPLE 25-28 (William L. Patterson ed., Int'l Publishers 1970) (1951); FRANTZ FANON, BLACK SKIN, WHITE MASKS vii-ix, 110-11 (Charles Lam Markman trans., Pluto Press 1986) (1952); Ida B. Wells, *Lynch Law in America, in* WORDS OF FIRE: AN ANTHOLOGY OF AFRICAN-AMERICAN FEMINIST THOUGHT 70-76 (Beverly Guy-Sheftal ed., 1995).

avoiding cooptation, and collaborating with our students and colleagues seeking to understand how to change in the world.

When we speak of producing scholarship in solidarity and conversation with movements, we do not mean to limit our solidarity to currently existing, full-fledged social movements. Instead, we focus more broadly: on collectives of people struggling together to generate new ideas and ways of living together, whether they are current or historical, and whether they are social movements, social movement organizations, fledgling formations of community members in struggle, local organizing groups, or labor organizations old and new, formal and informal. Although these formations may not yet meet Charles Tilly's definition of a social movement that provides a "sustained challenge to power holders," they possess the promise to get there.[18] We use the term "movement" because of the collective strength and potential for transformative change that it implies, and because we see these visions, experiments, campaigns, tactics, as in fact interrelated and part of a larger movement ecosystem

The scholarly methodology of movement law is related to but distinct from the practice of movement lawyering, an approach to lawyering in solidarity with social movements.[19] Movement lawyering aims to reorient public interest practice away from traditional subject matter siloes and uni-modal advocacy approaches toward the frames and strategies generated by grassroots movements.[20] In contrast, with movement law,

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[18] *Compare* Charles Tilly, *From Interactions to Outcomes in Social Movements*, *in* HOW SOCIAL MOVEMENTS MATTER 253, 257 (Marco Giugni, Doug McAdam & Charles Tilly eds., 1999) (defining a social movement as "a sustained challenge to power holders in the name of a population living under the jurisdiction of those power holders by means of repeated public displays of that population's worthiness, unity, numbers, and commitment"), *with* Minkoff, *supra* note 1, at 780 n.3 (defining social movements as simply "a collective effort to change the social structure that uses extra-institutional methods at least some of the time").

[19] For works on law and organizing and movement lawyering, see, e.g., Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 1, 26-33 (forthcoming 2020); Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 447-50 (2001); Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 446 (1995); Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 161-66 (2016); Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J. L. & SOC. CHANGE 25, 26-28, 33-59 (2011); Betty Hung, *Law and Organizing From the Perspective of Organizers: Finding a Shared Theory of Social Change*, 1 L.A. PUB. INT. L.J. 4, 7-23 (2009); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N. U. L. REV. 455, 464-79 (1994); Joseph Phelan, *Purvi & Chuck: Community Lawyering*, ORGANIZING UPGRADE (JUNE 1, 2010, 7:20 AM), http://www.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering.

[20] *See* Scott L. Cummings, *Movement Lawyering*, 2017 U. ILLINOIS L. REV. 1645, 1689-1716 (2017) ("[M]ovement lawyering is the mobilization of law through deliberately planned and

our focus is on creating space within legal scholarship to think alongside social movements. To be sure, these practices are mutually reinforcing and many movement law scholars engage in movement lawyering, as well. But in this Article, we give sustained attention to scholarly method.

This Article proceeds as follows. In Part I, we ground the methodology of movement law in both the urgency of our current moment and past innovations in legal scholarship. In Part II, we turn to our own methodology and sketch out four moves that together form what we see as a distinct and emergent strand of movement law scholarship. The moves are (a) locating resistance; (b) thinking alongside strategies, tactics, and experiments for justice; (c) shifting epistemes; and (d) adopting a solidaristic stance. These four moves may not exist in every piece of movement law scholarship. But the moves build on and deepen each other, resulting in scholarship that we believe has the potential to contribute to political, economic, and social transformation. In Part III, we examine the place of movement law within conceptions of normative legal scholarship, recognizing that movement law may carry certain dangers, for example of losing objectivity or lacking rigor. Moreover, there are risks of fetishizing or feeling beholden to particular social movements such that one is no longer able to access scholarly detachment. While these risks are real, we believe we can overcome them with vigilance and reflexivity, and that Movement Law is a necessary form of legal epistemology in our current crisis. We conclude in Part IV by identifying movement law as a potential bulwark against the traditionally conservative pull of elite discourse, a means of incrementally advancing legal thought toward the support of radical alternatives.

I. Responding to the Crisis of Our Times

We are living in a moment of possibility—where the failures of the state to provide for people are plain and where grassroots contestation of the status quo is stronger than it has been in decades. As scholars, we have an opportunity to respond to today's crises in ways that move us toward more justice and more liberation for more people. In this Part, we identify this as an important moment of opportunity, name earlier currents in legal scholarship working alongside movements, and make a normative case for such work within today's overlapping crises and possibilities.

The global COVID-19 pandemic has underlined the failures of the neoliberal social contract, particularly its emphasis on the individual, property, profit, and the market economy. While these failures have resonated in different ways around the globe, they have reverberated in a particular way in the United States, the most

interconnected advocacy strategies, inside and outside of formal law-making spaces, by lawyers who are accountable to politically marginalized constituencies to build the power of those constituencies to produce and sustain democratic social change goals that they define." *Id.* at 1690).

powerful country on earth. Tens of millions of Americans are without work—and as a result many lack health care, experience food insecurity, and face eviction.[21] Nearly 1.5 million people are behind bars, where the virus spreads even more quickly.[22] Local, state, and federal governments have failed to respond to a crisis that requires coordination, collaboration, and an orientation toward meeting human need. All of this disproportionately devastates Black and brown communities, as well as poor white people.[23]

In April 2020, writer Arundhati Roy described the COVID-19 pandemic as a "portal:" "a gateway between one world and the next."[24] Through the portal, Roy evoked the possibility of meeting the various crises exacerbated by the pandemic by building new modes of response. In fact, the pandemic has heightened people's resistance and practices of survival. Uprisings, organizing, protests, campaigns, policy platforms, bail funds, and mutual aid networks have taken hold all over the country—speaking directly to the failures of prevailing political, economic, legal, and social arrangements, and offering alternative imaginations of what the world might look like and the strategies, tactics, and prefigurations that might get us there.[25]

Just weeks after Roy invoked the concept of the portal in relation to the pandemic, uprisings in response to the police killing of George Floyd expanded that portal and its possibilities: through their placards and their demands, people on the streets brought attention to the structural dimension of police violence and linked the state's failures to provide health care for all to the state's investments in policing.[26] Social movement organizations called to defund the police and invest in Black

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[21] *See* Yun Li, *Nearly Half the U.S. Population is Without a Job, Showing How Far the Labor Recovery Has to Go*, CNBC (June 30, 2020, 9:48 AM EDT), https://www.cnbc.com/2020/06/29/nearly-half-the-us-population-is-without-a-job-showing-how-far-the-labor-recovery-has-to-go.html.

[22] *See* Emily Widra & Dylan Hayre, *Failing Grades: States' Responses to COVID-19 in Jails & Prisons*, PRISON POLICY INITIATIVE (June 25, 2020) https://www.prisonpolicy.org/reports/failing_grades.html.

[23] *See, e.g.*, Keeanga-Yamahtta Taylor, *The Black Plague*, NEW YORKER (Apr. 16, 2020), https://www.newyorker.com/news/our-columnists/the-black-plague.

[24] Arundhati Roy, *The Pandemic is a Portal*, FINANCIAL TIMES (Apr. 3, 2020), https://www.ft.com/content/10d8f5e8-74eb-11ea-95fe-fcd274e920ca ("We can choose to walk through it, dragging the carcasses of our prejudice and hatred, our avarice, our data banks and dead ideas, our dead rivers and smoky skies behind us. Or we can walk through lightly, with little luggage, ready to imagine another world. And ready to fight for it.").

[25] *E.g.*, Jia Tolentino, *What Mutual Aid Can Do During a Pandemic*, NEW YORKER (May 11, 2020), https://www.newyorker.com/magazine/2020/05/18/what-mutual-aid-can-do-during-a-pandemic.

[26] *See* Intercepted with Jeremy Scahill, *The Rebellion Against Racial Capitalism*, THE INTERCEPT (June 24, 2020, 3:01 AM), https://theintercept.com/2020/06/24/the-rebellion-against-racial-capitalism/ (interviewing Robin D.G. Kelley, who underscores that the "portal" emerged from a growing realization that the violence of racialized policing is intertwined with structural neglect and racialized capitalism).

communities.[27] And the public responded, with unprecedented numbers of people taking to the streets, and a massive spike in contributions to community bail funds.[28]

We are amidst a moment then of great suffering and great possibility—what comes next is uncertain.[29] A vaccine will likely arrive to quell the spread of COVID-19, but the devastation of the pandemic will stay with us, as will the incredible rise in movement energy and public receptiveness to structural understandings of the collective problems we face. To the extent that we are writing and producing scholarship, we should speak to the crises of our time with boldness and honesty, and in solidarity with grassroots movements, working class people, and directly impacted communities. We should labor in service of that other world, the one we can only build if we work together. There is some tradition of such scholarship in law, to which we turn next.

A. Critical Race Theory as Cornerstone

We are not the first to try to meet the demands of contemporary crises through legal scholarship. We are inspired by scholars who have cogenerated ideas with social movements in the past, germinating the methodology that we call movement law. Here, we name some of those scholars, with a focus on an oft-unrecognized connection between Critical Race Theory and social movements.[30] This is not a

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[27] *See* Amna A. Akbar, *How Defund and Disband Became the Demands,* N.Y. REV. OF BOOKS (June 15, 2020, 7:00 AM), https://www.nybooks.com/daily/2020/06/15/how-defund-and-disband-became-the-demands/; Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html.

[28] Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html; Jia Tolentino, *Where Bail Funds Go From Here*, NEW YORKER (June 23, 2020), https://www.newyorker.com/news/annals-of-activism/where-bail-funds-go-from-here; Nicholas Kulish, *Bail Funds, Flush with Cash, Learn to 'Grind Through this Horrible Process'*, N.Y. TIMES (June 25, 2020), https://www.nytimes.com/2020/06/25/business/bail-funds.html; Mary Hooks & Jocelyn Simonson, *The Power of Community Bail Funds*, N.Y. TIMES (Aug. 23, 2020), https://www.nytimes.com/2020/08/23/opinion/bail-funds.html.

[29] "When a conjuncture unrolls, there is no 'going back'. History shifts gears. The terrain changes. You are in a new moment. You have to attend, 'violently', with all the 'pessimism of the intellect' at your command, to the 'discipline of the conjuncture.'" Stuart Hall, *Gramsci and Us*, VERSO BLOG (Feb. 10, 2017) (discussing ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS (1971)), https://www.versobooks.com/blogs/2448-stuart-hall-gramsci-and-us) (internal quotations omitted).

[30] Almost 20 years ago, Sumi Cho and Robert Westley contested the prevailing mode of locating CRT primarily within debates of the legal academy, and located additional origins in "actual resistance movements." *See* Sumi Cho & Robert Westley, *Critical Race Coalitions: Key Movements that Performed the Theory*, 33 U.C. DAVIS L. REV. 1377, 1378-80, 1408-13 (2000)

comprehensive account of the scholarly roots of movement law—naming the sprawling antecedents that go back a century at least would be its own project.[31] We would include Legal Realism,[32] Critical Legal Studies,[33] the various formations of

("ground[ing] CRT in actual resistance movements" and arguing that CRT's core commitments include "community formation and social transformation."); *see also* Sumi K. Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433, 434-36 (1997).

[31] Scott Cummings has charted an original and interdisciplinary intellectual history of the role of social movements in legal theory in two articles that gravitate around the law/politics divide in progressive legal thought and the rise and fall of legal liberalism over the course of the twentieth century. *See generally* Cummings, *The Puzzle of Social Movements*, *supra* note 8; Cummings, *The Social Movement Turn in Law*, *supra* note 8.

[32] Although the story of legal realism is contested and complex, *see* Brian Z. Tamanaha, *Understanding Legal Realism*, 87 TEX. L. REV. 731, 733-35 (2009), at base it was an intellectual movement that sought to make adjudication and legal scholarship less rule-bound and more permeable to the influence of evolving social facts and norms. *See generally* AMERICAN LEGAL REALISM (William W. Fisher III, Morton J. Horwitz & Thomas A. Reed eds., 1993).

[33] Critical Legal Studies theorists, such as Duncan Kennedy, Roberto Unger, and Karl Klare, advanced a sharp critique of doctrine and adjudication as a particularly constraining exercise of politics that ultimately defeated and demoralized movements for change. *See*, *e.g.*, Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1775 (1976) ("[L]itigants who have mastered the language of form can dominate and oppress others, or perhaps simply prosper because of it; academics without number hitch their wagonloads of words to the star of technicality."); Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561, 579 (1983) ("Modern legal doctrine . . . exists in a cultural context in which . . . society is understood to be made and imagined rather than merely given. To incorporate the final level of legal analysis in this new setting would be to transform legal doctrine into one more arena for continuing the fight over the right and possible forms of social life."); Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265, 266-67, 270-85 (1978) (using the Wagner Act to describe how law ultimately preserved hierarchies and distributions of power); *see also* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 3-4 (David Kairys ed., 1982).

"outsider jurisprudence"[34] (including LatCrit[35] and feminist legal theory[36]), popular and democratic constitutionalism,[37] law and society scholarship,[38] critical legal history,[39]

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[34] *See generally* Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2322 (1989) ("[O]utsider jurisprudence—jurisprudence derived from considering stories from the bottom—will help resolve the seemingly irresolvable conflicts of value and doctrine that characterize liberal thought."); Francisco Valdes, Commentary, *Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy*, 71 UMKC L. REV. 377, 382 (2002) (describing the "continuing evolution of outsider jurisprudence").

[35] *See generally* Margaret E. Montoya, *Introduction: LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 U. MIA. L. REV. 1119 (1999); Francisco Valdes, *Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997); Kevin R. Johnson & George A. Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999); Keith Aoki & Kevin R. Johnson, *An Assessment of LatCrit Theory Ten Years After*, 83 IND. L.J. 1151 (2008); Ediberto Roman, *Reparations and the Colonial Dilemma: The Insurmountable Hurdles and Yet Transformative Benefits*, 13 BERKELEY LA RAZA L.J. 369 (2002); Pedro A. Malavet, *Reparations Theory and Postcolonial Puerto Rico: Some Preliminary Thoughts*, 13 BERKELEY LA RAZA L.J. 387 (2002); Robert S. Chang, *"Forget the Alamo": Race Courses as a Struggle over History and Collective Memory*, 13 BERKELEY LA RAZA L.J. 113 (2002); Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. & B.C. THIRD WORLD L. REV. 477 (1998); John Hayakawa Török, *The Story of "Towards Asian American Jurisprudence" and Its Implications for Latinas/os in American Law Schools*, 13 BERKELEY LA RAZA L.J. 271 (2002).

[36] *See generally* CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE (1989); MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY (1999). Of course queries of race and gender are interrelated, and there are many works exploring and theorizing their intersections in critique and struggle. *See, e.g.*, Richard Delgado, *Foreword to the Second Edition*, of CRITICAL RACE FEMINISM: A READER, xiii, xiv (Adrien Katherine Wing ed., 2d ed., 2003); Kristin Kalsem & Verna L. Williams, *Social Justice Feminism*, 18 UCLA WOMEN'S L.J. 131, 139 (2010) (theorizing "social justice feminism" as drawing from feminist legal theory and critical race feminism, but "emerg[ing] from practice"); Martha Chamallas, *Social Justice Feminism: A New Take on Intersectionality*, FREEDOM CTR. J., Fall 2014, at 11, 11 (identifying "social justice feminism" as a "new take on intersectionality theory and intersectional feminism"); Sumi Cho, *Intersectionality and the Third Reconstruction*, FREEDOM J. CTR. J., Fall 2014, at 21, 21 (locating "the origins of both the early and modern women's movements in Black freedom struggles").

[37] One premise of democratic constitutionalism is that social movement contestation over legal meaning is not simply integral to stories of constitutional change, but rather essential to the legitimacy of the Constitution itself. *See* Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de facto ERA*, 94 CALIF. L. REV. 1323, 1418 (2006). Reva Siegel made the connection clear when she wrote that "[s]ocial movement conflict, enabled and constrained by constitutional culture, can create new forms of constitutional understanding." *Id.* at 1323. *See generally* 1. BRUCE ACKERMAN, WE THE PEOPLE: FOUNDATIONS (1991); Jack M. Balkin & Reva B. Siegel, Essay, *Principles, Practices, and Social Movements*, 154 U. PA. L. REV. 927 (2006); William N. Eskridge, Jr., *Channeling: Identity-Based Social Movements and Public Law*, 150 U. PA. L. REV. 419 (2001); William N. Eskridge, Jr., *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100

MICH. L. REV. 2062 (2002); LARRY D. KRAMER, THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW (2004); Douglas NeJaime, *Constitutional Change, Courts, and Social Movements*, 111 MICH. L. REV. 877 (2013); Reva B. Siegel, *Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles over* Brown, 117 HARV. L. REV. 1470 (2004); MARK TUSHNET, TAKING THE CONSTITUTION AWAY FROM THE COURTS (1999); Rebecca E. Zietlow, *Democratic Constitutionalism and the Affordable Care Act*, 72 OHIO ST. L.J. 1367 (2011).

[38] The Law and Society tradition accentuates the importance of law in action (rather than simply law on the books). *See* Brian Z. Tamanaha, *Sociological Jurisprudence Past and Present*, 45 L. & SOC. INQUIRY 493, 505-11 (2020) (tracing research on "law in action" from sociological jurisprudence at the turn of the twentieth century to Legal Realism during the New Deal Era and Law and Society in the 1960s). It also highlights everyday legalism (rather than court-centered litigation). *See* Patricia Ewick & Susan S. Silbey, *Conformity, Contestation, and Resistance: An Account of Legal Consciousness*, 26 NEW ENG. L. REV. 731, 736-43 (1992) (describing the law as it shapes and appears in the daily lives of ordinary citizens including interactions with family and neighbors); Patricia Ewick & Susan Silbey, *Narrating Social Structure: Stories of Resistance to Legal Authority*, 108 AM. J. SOC. 1328, 1339-40, 1355-58 (2003) (finding that people rarely seek remedies for their legal problems through the formal legal system and instead "disrupt" and "resist" outside of the legal system in order to resolve their issues); Austin Sarat, ". . . *The Law Is All Over": Power, Resistance, and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMAN. 343, 344 (1990) (focusing on the welfare poor, for whom the law is "repeatedly encountered in the most ordinary transactions and events"); Susan S. Silbey & Austin Sarat, Commentary, *Critical Traditions in Law and Society Research*, 21 L. & SOC'Y REV. 165, 165-66, 172-73 (1987) (highlighting the lack of distinction between "law" and "society" in daily life, especially for those in rural and/or working class communities who "construct their own local universe of legal values and behavior"). Law and society scholars such as Stuart Scheingold, Joel Handler, and Michael McCann have more directly wrestled with the relationship between law and social movements. STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE 13-21 (2d ed. 2004) (arguing that the "myth of rights" legitimated the social arrangements that yielded social and economic inequality); JOEL F. HANDLER, SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE 1-14 (1978) (surveying the influence of social movements on the development of law and legal reform in four areas: environmentalism, consumer protection, civil rights, and social welfare); MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION 12 (1994) (arguing that "the legal mobilization framework . . . encourages us to focus on how, when, and to what degree legal practices tend to be both [a resource and a constraint] at the same time"). *See generally* CAUSE LAWYERS AND SOCIAL MOVEMENTS (Austin Sarat & Stuart A. Scheingold eds., 2006). Finally, litigation skeptics such as Gerald Rosenberg have provoked responses from, amongst others, law and society scholars regarding the efficacy of legal claims in the advancement of progressive causes. *Compare* GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 1-3, 157 (2d ed. 2008) (advancing the backlash thesis in his analysis of the impact of *Brown v. Board of Education* and *Roe v. Wade* on social movements), *with* Scott L. Cummings & Douglas NeJaime, *Lawyering for Marriage Equality*, 57 UCLA L. REV. 1235, 1237-40 (2010) (disputing the backlash thesis in the context of the same-sex marriage movement in California), Douglas NeJaime, *Winning Through Losing*, 96 IOWA L. REV. 941, 945-47 (2011) (proposing that litigation loss may

labor scholarship,[40] and more.[41] Instead, our goal here is to identify themes in past works by a small group of critical scholars who have emphasized collective struggle, organizing, movements, or the experiences of marginalized people in their work. In many ways, these are our forebears. The work of these Critical Race Theorists demonstrates the value of legal scholarship when it shifts epistemologies through stances of solidarities with the experiences of outsiders, and it paves the way for our argument in Part I(B) that legal scholarship should engage movement visions. That the scholars we highlight center questions of race, racialization, and racial justice is also

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produce positive change for social movements and "lead to more effective reform strategies"), *and* Laura Beth Nielsen, *Social Movements, Social Process: A Response to Gerald Rosenberg*, 42 J. MARSHALL L. REV. 671, 672 (2009) (arguing that Rosenberg "overstates the limits of litigation strategies for social change").

[39] Legal historian Tomiko Brown-Nagin has documented how National Lawyers' Guild attorney Len Holt and others worked with grassroots social movement organizations over the course of the long civil rights struggle, beyond the high-profile NAACP-LDF school desegregation campaign, with mixed success. TOMIKO BROWN-NAGIN, COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT 175-211 (2011); *see also* KENNETH W. MACK, REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER 1-11 (2012) (though explicitly not a work about movements, Mack documents "a multiple biography of a group of African American lawyers" in order to "illustrate[] a larger narrative arc of American race relations"); SUSAN D. CARLE, DEFINING THE STRUGGLE: NATIONAL ORGANIZING FOR RACIAL JUSTICE, 1880–1915, at 1-12 (2013) (recounting a history of legal civil rights activism and "situat[ing] this story within the broader scope of social movement theory and legal civil rights history").

[40] *See generally* Marion Crain & Ken Matheny, *Beyond Unions, Notwithstanding Labor Law*, 4 U.C. IRVINE L. REV. 561 (2014); Catherine L. Fisk & Diane S. Reddy, *Protection by Law, Repression by Law: Bringing Labor Back into the Study of Law and Social Movements*, 70 EMORY L.J. 63 (2020); Catherine L. Fisk & Michael M. Oswalt, *Preemption and Civic Democracy in the Battle Over Wal-Mart*, 92 MINN. L. REV. 1502 (2008); WILLIAM E. FORBATH, LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT (1991); Karl Klare, *Countervailing Workers' Power as a Regulatory Strategy*, *in* LEGAL REGULATION OF THE EMPLOYMENT RELATION 63 (Hugh Collins, Paul Davies & Roger Rideout eds., 2000); James Gray Pope, *Labor-Community Coalitions and Boycotts: The Old Labor Law, the New Unionism, and the Living Constitution*, 69 TEX. L. REV. 889 (1991); Benjamin I. Sachs, *Employment Law as Labor Law*, 29 CARDOZO L. REV. 2685 (2008).

[41] Our understanding of co-generated legal meaning draws on the work of Robert Cover, as well. Cover set the jurisgenerative potential of interpretive communities against the jurispathic nature of courts. *See* Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 40 (1982). In addition, Ed Sparer offered an early analysis of the type of work we seek to do in this article: "the practical relationship of Critical legal theory to social movement and struggle in the United States today is, at best, very limited. . . [T]he absence of *praxis* in current Critical legal work seems to be one of its most marked features." Ed Sparer, *Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement*, 36 STAN. L. REV. 509, 553 (1984). Sparer goes on to argue, "Acting means struggling for and living a different way, even if only 'experimentally,' and this requires praxis, theory which guides and is in turn influenced by action." *Id.* at 558.

central to their importance for thinking alongside today's social movements—where questions of race are central.

A product of the Civil Rights Movement and the Black power era,[42] CRT scholars challenged narratives about Black, brown, and indigenous people to transform, in Charles Lawrence's words, "the nomos of the larger social world in which we live."[43] Major early works were inspired by or in conversation with popular struggles.[44] In the last few decades, CRT's connection to social movements has receded as scholars have emphasized CRT's central insights as being about the co-constitutive relationship between race, law, and inequality.[45] While many founding scholars frame CRT as a product of the civil rights movement, they are less likely to frame CRT as an

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[42] For various tellings of the origins, see, for example, Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1262-64 (2011); Richard Delgado, *Liberal McCarthyism and the Origins of Critical Race Theory*, 94 IOWA L. REV. 1505, 1510-11 (2009); Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. L. REV. 329, 333 (2006); Cheryl I. Harris, *Critical Race Studies: An Introduction*, 49 UCLA L. REV. 1215, 1220-21 (2002); *Introduction*, *in* CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT xiii, xiv (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995). CRT is more commonly remembered as a response to the lack of attention to race by CLS and the larger legal academy. *Id.* at xiii, xvi-xviii.

[43] Charles Lawrence III, Commentary, *Listening for Stories in All the Right Places: Narrative and Racial Formation Theory*, 46 L. & SOC'Y REV. 247, 252 (2012) ("When outsider racial groups tell stories, when we engage in the project of racial reconstruction, we seek not only to change the pejorative meanings assigned to our races, but also to transform the communal narrative that defines the nomos of the larger social world in which we live.").

[44] *E.g.*, Richard Delgado, Essay, *Two Ways to Think About Race: Reflections on the Id, the Ego, and Other Reformist Theories of Equal Protection*, 89 GEO. L.J. 2279, 2282-83, 2291, 2296 (2001) (contrasting "idealist" and "materialist" takes on race, reflecting briefly on the long civil rights movement, and describing the 1999 World Trade Organization protests in Seattle). Scholars of color also drew on their own experiences. *See, e.g.*, Harlon L. Dalton, *The Clouded Prism*, 22 HARV. C.R.-C.L. L. REV. 435, 439-40 (1987) ("We learned from life as well as from books. We learned about injustice, social cruelty, political hypocrisy and sanctioned terrorism from the mouths of our mothers and fathers and from our very own experiences.").

[45] *E.g.*, Devon W. Carbado & Daria Roithmayr, *Critical Race Theory Meets Social Science*, 10 ANN. REV. L. & SOC. SCI. 149, 151 (2014) (articulating the "key modernist claims" of CRT, with none focused on organizing, protest, or social movements); Devon W. Carbado, Afterword, *Critical What What?*, 43 CONN. L. REV. 1593, 1606-15 (2011) (discussing CRT as engaging in "organizational learning" demonstrated by civil rights movement organizations and CRT's core focus on "how the law constructs whiteness" specifically and race and racism generally, without further reference to social movements). *But c.f.* Lawrence, *supra* note 10, at 387 (articulating three lessons of CRT, with two focused on movements, e.g.: "All race reform, all racial justice, is achieved through the work of people who join together in justice movements to disrupt systems and institutions of plunder and to contest the racialized narratives that justify that plunder.")

exercise of movement praxis beyond institutional fights within law schools.[46] But it is this connection between CRT and movement imagining that inspires us now.

We begin with Derrick Bell. Much of his work was animated by a commitment to social struggle and suffused with a sense of accountability to Black communities, even as he grappled with what he surmised was the permanence of anti-Black racism.[47] In *Serving Two Masters,* Bell critiqued the NAACP-LDF desegregation strategy out of fidelity to African American community groups and their parent-leaders.[48] The parents took issue with LDF's focus on the ideal of desegregation over the material quality of educational opportunities for Black children.[49] Bell attributed the litigators' unwillingness to recognize Black parents' concerns about "the increasing futility of 'total desegregation'" in the face of massive resistance by whites to their embrace of "racial balance" as a central "symbol of the nation's commitment to equal opportunity."[50] In contrasting the parents' commitments to their children's education with the focus of lawyers—as well as middle-class Black people and whites—on the symbolic domain, Bell critiqued one of the most venerated litigation strategies in our history.[51] He disrupted accepted truths and showed how conceptions of justice can be contested from the grassroots.

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[46] Cho & Westley, *supra* note 30, at 1378-80. Feminist legal theorists and Critical Race Theorists faced off with both Critical Legal Theory scholars (often white men) as well as the larger institutional forces of the mainstream legal academy. *E.g.*, Robin West, Commentary, *Deconstructing the CLS-FEM Split*, 2 WIS. WOMEN'S L.J. 85, 85-86 (1986); Crenshaw, *supra* note **Error! Bookmark not defined.**, at 1288-1300.

[47] *E.g.*, DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM ix-xii (1992); Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 373 (1992) ("What was it about our reliance on racial remedies that may have prevented us from recognizing that abstract legal rights, such as equality, could do little more than bring about the cessation of one form of discriminatory conduct that soon appeared in a more subtle though no less discriminatory form?"; Derrick A. Bell, Jr., Comment, Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 533 (1980) ("Criticism, as we in the movement for minority rights have every reason to learn, is a synonym for neither cowardice nor capitulation. It may instead bring awareness, always the first step toward overcoming still another barrier in the struggle for racial equality.").

[48] For instance, Bell begins the article with a quotation from a coalition of community groups articulating their own, contrasting version of equity. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation,* 85 YALE L.J. 470, 470-71, 477-78 (1976) (contrasting Black parents' critiques about the failures of the litigation strategy to materially improve the "quality of the education available" with the NAACP-LDF's focus on the "separate" prong of "separate but equal").

[49] *Id.* at 483, 486-87.

[50] *Id.* at 488-89.

[51] *See id.* at 516 (describing how lawyers "sacrificed opportunities to negotiate with school boards and petition courts for the judicially enforceable educational improvements which all parents seek.").

In turn, Mari Matsuda encouraged law scholars to look to "the actual experience, history, culture, and intellectual tradition of people of color in America" as "a new epistemological source."[52] "Looking to the bottom"—to "those who have seen and felt the falsity of the liberal promise"—would help scholars in "fathoming the phenomenology of law and defining the elements of justice."[53] Matsuda studied campaigns for reparations by Japanese-Americans for internment during World War II, and by Native Hawaiians for the overthrow of Hawaiian rule and expropriation of indigenous land.[54] For Matsuda, studying and supporting the organized struggles of people of color opened up possibilities of moving beyond critique to conceive of legal strategies that challenge the status quo.[55] Reparations was a quintessential "critical legalism" from the bottom designed to "achieve and maintain the utopian vision."[56] For decades now, Matsuda distilled brilliance born within collective struggle.[57]

In a parallel vein, Kimberlé Crenshaw's work on intersectionality attends to multiply constituted forms of oppression to deepen understanding of how the law

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[52] Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations,* 22 HARV. C.R.-C.L. L. REV. 323, 325 (1987). Matsuda explicitly issued her call in response to the Critical Legal Studies (CLS) movement. *Id.* at 323. A more recent example of work examining the co-constitutive nature of legal repression, organizing, and race is advanced by Ian F. Haney López. RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE 228 (2004) (examining Chicano movement in Los Angeles during the late 1960s, and the emergence of new self-conceptions among young Chicanos of their racial identities as nonwhite).

[53] Matsuda, *supra* note52, at 324 (referring to oppressed people as "special voice[s] to which we should listen"). *But cf.* Devon W. Carbado, *Race to the Bottom*, 49 UCLA L. REV. 1283, 1285 (2002) (contesting as insufficient CRT's theorization of people at "the bottom"). For a further nuanced discussion of "looking to the bottom," see MARI J. MATSUDA, CHARLES R. LAWRENCE III, RICHARD DELGADO, & KIMBERLÉ WILLIAMS CRENSHAW, WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 9 (1993) (noting that it is not enough to "simply tell the victim's story;" we ought to "listen first to the voices of the victims of hate speech" because "[t]heir liberation must be the bottom line of any first amendment analysis").

[54] Matsuda, *supra* note 52, at 362, 363-73 (concluding that "[t]he Native Hawaiian and Japanese-American claims for reparations each represent emerging norms and social movements generated from the bottom.").

[55] *See id.* at 324, 349; Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction,* 100 YALE L.J. 1329, 1398-99 (1991) (arguing that "unmasking hidden centers and false objectivity is an important first step in producing a counter-ideology of antisubordination" and identifying "strategies [such] as affirmative action, reparations, and restriction of hate speech.").

[56] Matsuda, *supra* note 52, at 362.

[57] For recent work building out these themes, see generally Mari Matsuda, *The Next Dada Utopian Visioning Peace Orchestra: Constitutional Theory and the Aspirational,* 62 MCGILL L.J. 1203, 1245-46 (2017) [hereinafter Matsuda, *The Next Dada*]; Mari J. Matsuda, *This Is (Not) Who We Are:* Korematsu*, Constitutional Interpretation, and National Identity*, 128 YALE L.J.F. 657, 683 (2019).

operates and a broader normative vision of what the law can be.[58] Using intersectionality, legal scholars might "map[] the margins,"[59] looking, for example, to how courts render invisible the experiences of Black women,[60] or to how antiracist and feminist struggles fail to attend to the multiple marginalization of women of color.[61] While organizing and social movements are points of departure for Crenshaw, rather than her exclusive or even primary focus, to this day, she grounds many of her interventions in social movements and organizing—for example, through her launching of the #SayHerName campaign that we discuss in Part II.[62]

Building off this work, Lani Guinier's and Gerald Torres's work demonstrates how new legal and political understandings can and do emerge from collective imagining, especially within organizing and social movements.[63] Guinier and Torres focus on how multiracial groups led by people of color critique the legal, social, and political structures around them, and experiment with political work that "enlarge[s] the idea of what is possible."[64] They illuminate how social movements can generate and shift ideas about constitutional and legal interpretation from the ground up, what they term "demosprudence."[65] Although theirs is a theory of legal and social change rooted in historical examples and focused on democracy, the lessons for scholars inspired by Guinier and Torres are clear: that scholars must be part of "a commitment

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[58] *See* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 UNIV. CHI. LEGAL F. 139, 145 [hereinafter Crenshaw, *Demarginalizing*] (describing the expansion of a "normative vision" through intersectional analysis of anti-discrimination statutes); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1243-44 (1991) [hereinafter Crenshaw, *Mapping the Margins*] ("[E]xploring the various ways in which race and gender intersect in shaping structural, political, and representational aspects of violence against women of color.").

[59] Crenshaw, *Mapping the Margins*, *supra* note 58, at 1243-44 ("[T]he experiences of women of color are frequently the product of intersecting patterns of racism and sexism, and . . . these experiences tend not to be represented within the discourses of either feminism or antiracism.").

[60] Crenshaw, *Demarginalizing*, *supra* note 58, at 148-50; *see also* Regina Austin, *Sapphire Bound!* 1989 WIS. L. REV. 539, 542.

[61] Crenshaw, *Mapping the Margins, supra* note 58, at 1264-82.

[62] *Id.* at 1299 ("[R]ecognizing [how] . . . the intersectional experiences of women of color are marginalized in prevailing conceptions of identity politics does not require that we give up attempts to organize as communities of color. Rather, intersectionality provides a basis for reconceptualizing race as a coalition between men and women of color."); *see also* Part II(d), *infra.*

[63] LANI GUINIER & GERALD TORRES, THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY 11-22 (2002).

[64] *Id.* at 37.

[65] *See* Lani Guinier & Gerald Torres, *Changing the Wind: Notes Towards a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2749-50 (2014) ("[D]emosprudence focuses on the ways that ongoing collective action by ordinary people can permanently . . . chang[e] the people who make the law and the landscape in which that law is made.").

not only to struggle but also to struggle toward a larger vision."[66] They encourage us that "[j]ust outcomes will emerge, we believe, from experiments in democratic process."[67]

The potential of scholarship that centers social movements and grassroots contestation is clear beyond CRT as well.[68] Consider some examples. Catharine MacKinnon participated in feminist organizing and consciousness raising as she produced her most significant works in feminist theory.[69] Lucie White engaged in a dialectic between critical theory and the experiences of the most marginalized, illuminating how law can both facilitate and repress their power.[70] Gerald López called

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[66] GUINIER & TORRES, *supra* note 63, at 159.

[67] *Id.* at 158.

[68] Early critical lawyering theorists drew on the disillusion with legal liberalism to push public interest lawyers to think in more complex ways about power. We use the term critical lawyering to encompass a broad range of practices described and advanced in legal scholarship, including rebellious lawyering, political lawyering, collaborative lawyering, and community lawyering. *See* Eduardo R.C. Capulong, *Client Activism in Progressive Lawyering Theory*, 16 CLINICAL L. REV. 109, 119 (2009) (arguing that progressive lawyers "measure success by how practice raises political consciousness, motivates and strengthens client activity and supports effective grassroots activism generally."). Scott Cummings has empirically substantiated the content of critical lawyering across sectors in closely observed case studies of legal mobilization campaigns in Los Angeles in the 2000s. SCOTT L. CUMMINGS, AN EQUAL PLACE: LAWYERS IN THE STRUGGLE FOR LOS ANGELES (forthcoming 2020). Martha Mahoney, John Calmore, and Stephanie Wildman provide another key resource on critical lawyering across subject areas: CASES AND MATERIALS ON SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW 1-2, 5 (2d ed. 2013). Especially generative work on critical lawyering can be found in scholarship on the struggle for environmental justice. *See, e.g.*, LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 1 (2001).

[69] MACKINNON, *supra* note 36, at ix-xvii; CATHARINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION xii (1976); *see also* Robin L. West, *Law's Nobility*, 17 YALE J.L. & FEMINISM 385, 389-90 (2005) (laying out Catharine MacKinnon's legal theory and describing her "ethical imperative" to stay grounded in the actual experiences of women); *cf.* Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585-86 (1990) (engaging feminist movements and Black women's organizing as points of departure in her engagement with feminist legal theory, and in particular in arguing against gender essentialism within MacKinnon's and West's works).

[70] *See* Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 538 (1987-88) (theorizing the potential of social welfare litigation to serve as a space in which those who have been aggrieved by actions of the state might educate themselves and engage in participatory activities that defy their powerlessness); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 700-01 [hereinafter White, *To Learn and Teach*] (drawing from a South African case study to describe coordinated law and organizing that leads to the politicization of problems in community and subsequent concerted social action); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38

for lawyers to work collaboratively with community members, to accompany rather than to lead, to learn rather than wield professional privilege, and to define success through collective work rather than litigation wins.[71] LatCrit scholars emphasized the importance of the collective and of solidarity from within legal education.[72] These scholars, and many more, have charted how legal scholarship can build a more just, equal, and democratic world, through a grounded understanding of power's operations and through solidarity with those closest to the problems of our world. Many of these scholars wrote about movements and organizing in which they participated, within communities from which they came.

The critical scholars that we name each operated within their own historical crises.[73] Today, we write in a different era. While we make this call for movement law within a

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BUFF. L. REV. 1, 5 (1990) (examining how race, gender, and class operate to construct norms that render speech in procedural settings as deviant, with a now canonical focus on Mrs. G, a poor, Black, woman client who defies those norms to speak truth to power); Lucie E. White & Jeremy Perelman, *Introduction* to STONES OF HOPE: HOW AFRICAN ACTIVISTS RECLAIM HUMAN RIGHTS TO CHALLENGE GLOBAL POVERTY 4 (2011) (Lucie E. White & Jeremy Perelman eds., 2011) (discussing case studies that illuminate "activists' consciousness about their tactics, calculations, expectations, theories of change, and motivating values.").

[71] GERALD LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LEGAL PRACTICE 7-8 (1992); Gerald P. López, *Transform—Don't Just Tinker With—Legal Education* (pt. 1), 24 CLINICAL L. REV. 247, 285 (2018) ("The problem solving at the heart of all lawyering inevitably responds to and deploys power."); *see also* Bill Ong Hing, *Coolies, James Yen, and Rebellious Advocacy*, 14 ASIAN AMER. L.J. 1, 1 (2007) ("We should be collaborators: working *within* rather than simply *on behalf of* clients and allies from whom we have much to learn."); Ascanio Piomelli, *Rebellious Heroes*, 23 CLINICAL L. REV. 283, 291 (2016) ("Rather than presuming they are smarter or more knowledgeable than subordinated people, [rebellious lawyers] appreciate the intelligence, insights, and skills of all those with whom they work."); Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5, 13 (2016) ("López's vision focuses on enhancing the community-informed, collaborative problem-solving capacity of lawyers across a wide range of practice settings"). New generations continue to find inspiration in López's work. *See, e.g.,* Brenda Montes, *A For-Profit Rebellious Immigration Practice in East Los Angeles*, 23 CLINICAL L. REV. 707, 707-09 (2017); Veryl Pow, *Rebellious Social Movement Lawyering Against Traffic Court Debt*, 64 UCLA L. REV. 1770, 1773 (2017).

[72] *E.g.*, Francisco Valdes, *Legal Reform and Social Justice*: *An Introduction to LatCrit Theory, Praxis and Community*, 14 GRIFFITH L. REV. 148, 161-63 (2005).

[73] CRT, for example, took form in the 1980s and 1990s at a nadir in social movement activity in the United States, with a notable exception being the anti-AIDS activism of ACT-UP. See Richard Delgado, *Liberal McCarthyism and the Origins of Critical Race Theory*, *supra* note **Error! Bookmark not defined.**, at 1510-11 for a discussion of how CRT arose in a moment when "lawyers and legal scholars across the country realized that the impressive gains of the 1960s civil-rights era had halted and were, in many cases, being rolled back." For an account of the important social movement organizing on AIDS in the 1980s and 1990s, see generally DAVID FRANCE, HOW TO SURVIVE A PLAGUE: THE INSIDE STORY OF HOW CITIZENS AND SCIENCE TAMED AIDS 355, 433-35 (2016). The mass movements of the 1960s and 1970s had been whittled down to formations at the edges of civil society (for example, MOVE in

moment of renewed vitality of social movements and particular crises, movement law can play an important role even in times of depressed social movement activity. As Cornel West noted in his 1990 essay, *The Role of Law in Progressive Politics*, radical lawyers—including, we would argue, movement law scholars—can do important "defensive work . . . [to] keep alive memory traces left by past progressive movements of resistance—memory traces requisite for future movements."[74]

B. Movement Law Today

We find ourselves now facing distinct crises and possibilities. Our current political moment underscores the misalignment between much contemporary legal scholarship, the decaying state of conventional democratic institutions, and the material reality of people's lives.[75] Though there are important exceptions, the legal academy has largely failed to meaningfully engage current social movement ideation. This can be partially explained by the hold of what Law and Political Economy (LPE) scholars have called "the Twentieth-Century synthesis"—the separation of the study of economic and political forms of law and lawmaking that has "muted problems of distribution and power throughout public and private law."[76] This moment calls on us to contest the dominant ideology and institutions that undergird our legal and political configurations.

Philadelphia) or to bureaucratized and deradicalized non-governmental organizations vying for power as interest groups (for example, the Leadership Conference on Civil Rights). There are multiple explanations for the defusing of social movement power, though the most direct is related to the work of the FBI through its COINTELPRO program to infiltrate and decapitate radical movement formations, such as the Black Panther Party. WARD CHURCHILL & JIM VANDER WALL, THE COINTELPRO PAPERS: DOCUMENTS FROM THE FBI'S SECRET WARS AGAINST DISSENT IN THE UNITED STATES (2d ed. 2001). The original CRT scholars both harkened back to the struggle for civil rights, particularly in their defense of rights against the Critical Legal Studies attack, and spoke with and for activists who continued to agitate against growing economic and social inequality, often through narrowing legal channels. *See, e.g.,* PATRICIA WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR 5-6 (1991) (discussing the contemporary uses of j rights); Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, *supra* note 55, at 1332 (describing immigrant anti-discrimination activism). But CRT scholars did not take root at a time of flourishing mass movements. They wrote in a time of racial retrenchment and in the first part of the neoliberal era of social and economic stratification fueled by color-blind ideologies. *See* Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1336-37 (1988). David Singh Grewal and Jedediah Purdy connect the civil rights and civil liberties advances of the time with a rare historical period of receding economic inequality between 1945 and 1973, later reversed by neoliberal attacks on the state. *Inequality Rediscovered*, 18 THEORETICAL INQUIRIES L. 61, 70 (2017).

[74] Cornel West, *The Role of Law in Progressive Politics*, 43 VAND. L. REV. 1797, 1799 (1990).

[75] For a powerful argument about the gutting of our formal democratic institutions, see Klarman, *supra* at note 12.

[76] Britton-Purdy et al., *supra* note 16, at 1791.

Movement law gives scholars permission to ground their work in movement organizing and ideation as an initial matter, rather than beginning with our siloed legal understandings. Movement law engages in what Aziz Rana has described as "a genuinely sympathetic hermeneutic," in contrast to traditional scholarship that "often fails to make sense of the actual nature . . . of legal struggle and conflict."[77] Movement law begins with a commitment to grassroots contestation, and aims to emerge with new understandings of legal and economic structures and how they can shift as part of, rather than separate from, political struggle.

Our scholarship must shift to meet this particular moment—in support of the rising social movements of our time. To be sure, many legal scholars tacitly write in support of movement efforts–for example, they may write sharp doctrinal pieces to be used in court by movement allies, or they may excavate histories of resistance that help illuminate the present. We ourselves have written scholarship in this vein.[78] We celebrate this work even as we call for modes of scholarship that more explicitly align with left social movements. Movement law recognizes a role for legal scholarship *alongside* social movements, the power of an open dialectic between grounded understandings of liberatory possibilities and scholarly understandings of legal and political constellations.[79]

We are not the only legal scholars calling for a shift in scholarly approaches in our current crises. Many of the scholars we discuss above continue to write in response to our crises today in alignment with today's social movements.[80] The LPE "Manifesto" demands that we dismantle artificial distinctions between law, politics, and economy.[81] Bernard Harcourt argues that what is required is "a renewed embrace

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[77] Email from Aziz Rana to authors (July 24, 2020) (on file with author).

[78] *See, e.g.,* Jocelyn Simonson, *Beyond Body Cameras: Defending a Robust Right to Record the Police,* 104 GEO. L.J. 1559, 1560 (2015) (advancing an understanding of the First Amendment that sees the act of recording the police as itself protected speech).

[79] *See* Gerald Torres, *Legal Change*, 55 CLEVELAND ST. L. REV. 135, 146 (2007) ("It is the theory and philosophy of legal meaning making through popular mobilization that engages a 'thick' form of participation by people who are pushing for change by resisting manifestations of either public or private power."); Cover, *supra* note 41, at 11 ("Although the state is not necessarily the creator of legal meaning, the creative process is collective or social.").

[80] *See, e.g.,* Lawrence, *supra* note 10, at 387-88 (describing the lessons of CRT for the Movement for Black Lives); KIMBERLÉ WILLIAMS CRENSHAW & ANDREA J. RITCHIE, AFR. AM. POL'Y F., SAY HER NAME: RESISTING POLICE BRUTALITY OF WOMEN, 2 (2015) http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF_SMN_Brief_Full_singles-min.pdf; Matsuda, *The Next Dada, supra* note 57, at 1216-17.

[81] David Singh Grewal, Amy Kapczynski & Jedediah Britton-Purdy, *Law and Political Economy: Toward a Manifesto*, L. & POL. ECON. PROJECT: LPE BLOG (Nov. 6, 2017), https://lpeproject.org/blog/law-and-political-economy-toward-a-manifesto/.

of praxis" alongside critique.[82] We feel this urgency along with these and so many others in the legal academy and our broader communities.[83]

By co-generating ideas with social movements seeking to transform the political, economic, and social status quo, movement law scholars adopt a counter-cultural posture within the academy and profession. Movement law aims to disrupt the processes of social reproduction within law and legal education that naturalize the status quo and foreclose alternatives to elite rule.[84] By thinking alongside movements that seek to delegitimize the status quo in service of transformation, we reject the status quo orientation of much of the legal scholarly project. Precisely because of law's entanglement with hierarchal power relations, it is essential that we pay attention to the grassroots.

Now is the time for more scholars to engage in movement law. John Whitlow underscores that our current political moment is particularly open to bottom-up calls for change: "in the midst of a societal pendulum swing, we become increasingly aware that historical time is open and contingent, rather than flattened and fixed: there *is* an alternative to the status quo, and it is acceptable, in fact necessary, to talk about it openly."[85] Scholars have a role to play in understanding the nature of the moment—one of contingency and uncertainty—describing the stakes and co-constituting the terrain of the struggle. Through thick collaborations with social movements, scholars

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[82] Bernard E. Harcourt, *Introduction to 1/13: On Theory and Praxis, and Truth, Politics, and Power* CRITIQUE & PRAXIS 13/13 (Sept. 8, 2018), http://blogs.law.columbia.edu/praxis1313/bernard-e-harcourt-introduction-to-1-13-on-theory-and-praxis-and-truth-politics-and-power/. For a full articulation of this form of critique and praxis, see BERNARD HARCOURT, CRITIQUE AND PRAXIS: A CRITICAL PHILOSOPHY OF ILLUSIONS, VALUES, AND ACTION (2020). *See also* Aziz Rana & Jedediah Britton-Purdy, *We Need an Insurgent Mass Movement*, DISSENT (2020), https://www.dissentmagazine.org/article/we-need-an-insurgent-mass-movement (calling us to look to mass movements as a way to understand our current situation).

[83] *See, e.g.,* Christopher Tomlins & John Comaroff, *"Law As . . .": Theory and Practice in Legal History*, 1 UC IRVINE L. REV. 1039, 1044 (2011) ("'Law as . . .' dwells instead on the conditions of possibility for a critical knowledge of the here-and-now").

[84] *See* Heidi Boghosian, *The Amorality of Legal Andragogy*, AGORA, https://perma.cc/LVZ2-J2UG ("Legal andragogy is devoid of any critical analysis of the social policies that inhere in law or meaningful discussion of the role of lawyers in society."); Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEG. ED. 591, 592, 600-02 (1982) (arguing that legal education trains students to reproduce social hierarchy).

[85] John Whitlow, *Coming of Age at the End of History*, L. & POL. ECON. PROJECT: LPE BLOG(Apr. 23, 2019), https://lpeblog.org/blog/coming-of-age-at-the-end-of-history/ ("This means acknowledging . . . [how] the market economy has ravaged society, and focusing our political energies on the formation of a countermovement for redistributive equality and social justice."); *see* Rune Møller Stahl, *Ruling the Interregnum: Politics and Ideology in Nonhegemonic Times*, 47 POL. & SOC'Y 333, 335, 349 (2019) (drawing from Antonio Gramsci to describe the post-2008 crisis).

can help defend against the inevitable revanchism from political and economic elites in reaction to grassroots movements.

It doesn't escape us that movement law gives importance and agency to legal scholars in the midst of grassroots revolts led by activists and organizers, largely outside of the academy. We do not wish to exaggerate the importance of academics in political struggle. But we do believe that if we are going to generate scholarly work, we should do so responsibly, with attention to political dynamics and groups of people habitually ignored in the extant literatures. We should bring to bear our elite positions and the tools we've been privileged to acquire—whether they are social scientific methods, traditional legal analysis, or historical archives—to advance organizing and challenge entrenched social relations of hyper-inequality. Law review articles, as long as cumbersome as they may be, do powerful work. They can legitimize the existing architecture of the law and legal interpretation by confining arguments within existing understandings of the world,[86] or they can help articulate a contrasting "nomos" that cannot be reconciled with our current arrangements, a different understanding of our ethical commitments to each other with which the academy and the law must then contend.[87] As legal scholars, it is through thinking and acting in solidarity with social movements that we can most effectively move toward a more liberatory understanding of how we can relate to each other and to legal institutions and contribute to the building of a more just world. It is in this spirit that we work.

Movement law is rooted in solidarity with those who have begun to transform their own political and legal consciousness through participation in grassroots social movement organizations across issue areas.[88] These movement actors engage in a dialectic between praxis, critique, and ideation within various collective formations. In Antonio Gramsci's terminology, they are organic intellectuals—people who understand and represent the collective realities of social groups, in particular within

[86] Cover, *supra* note 41, at 47 ("The community that writes law review articles has created a law—a law under which officialdom may maintain its interpretation merely by suffering the protest of the articles.").

[87] *Id.* at 47-48 (describing how to protest the law is to create an alternate nomos that a judge must confront in their interpretation).

[88] Indeed, there are other scholars in ours and related disciplines that continue to think about engagement and participation as part of their methodology, for example through "engaged scholarship" and "participatory action research." *See, e.g,* Emily M.S. Houh & Kristin Kalsem, *It's Critical: Legal Participatory Action Research*, 19 MICH. J. RACE & L. 287, 294 (2014) ("'[L]egal participatory action research' . . . makes its most significant and original contribution to legal scholarship . . . by treating those 'at the bottom' as equal research partners who are presumptively best situated to identify, analyze, and solve the problems that directly affect them."); Setha M. Low & Sally Engle Merry, *Engaged Anthropology: Diversity and Dilemmas*, 51 CURRENT ANTHROPOLOGY S203, S203 (2010) (describing "[t]he importance of developing an engaged anthropology that addresses public issues").

the context of mass struggle.[89] Barbara Ransby has pointed to the civil rights organizer Ella Baker as an organic intellectual who centered the agency of oppressed communities in understanding their conditions and waging their own struggles for change.[90] This respect for on-the-ground thinking is blossoming in our current movement moment, opening up ways of thinking and acting collectively that have not been possible in the past.[91]

Our openness to the alchemy of developing political and legal consciousness in struggle deepens our understanding of the stakes, the strategies, and the emerging imaginaries of today's social movements.[92] Our posture should not be to dismiss and re-legitimate, but to listen and consider, learn, participate, and cogenerate. By standing in solidarity, we contribute to the larger effort to keep the portal and the possibilities open. We participate in building alternatives rather than reifying the status quo. In the next Part, we outline the contours of movement law in the work of contemporary legal scholars, charting what we hope can be a roadmap for all scholars within the orbit of this project.

II. Toward Movement Law

A small but growing number of law scholars are looking to organizing and social movements as sources of learning, inspiration, and ideation.[93] In this Part, we theorize what it looks like for legal scholars to work in sustained ways alongside and

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[89] *See* ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 3-6 (Quintin Hoare & Geoffrey Nowell Smith, eds. & trans., 1971); *see also* Matsuda, *supra* note 52, at 325-26 (describing her method of "looking to the bottom" as that of looking to Gramsci's idea of "organic intellectuals").

[90] BARBARA RANSBY, ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION 362 (2003) ("Baker's political philosophy emphasized the importance of tapping oppressed communities for their own knowledge, strength, and leadership in constructing models for social change. She took seriously and tried to understand seriously the ways in which poor black people saw and analyzed the world.").

[91] Barbara Ransby, *The White Left Needs to Embrace Black Leadership*, THE NATION (July 2, 2020), https://www.thenation.com/article/activism/black-lives-white-left/ ("This is not like the 1960s. White people marched in civil rights demonstrations, formed committees on interracial cooperation, and joined with the Black freedom movement, but the fire this time is hotter.").

[92] *Cf.* BERNARD HARCOURT, CRITIQUE & PRAXIS 17 (2020) ("The solution to the problem of speaking for others is not to silence anyone, but the opposite: to collaborate and cultivate spaces where all can be heard, especially those who are most affected by our crises today.").

[93] Lani Guinier and Gerald Torres's concept of demosprudence captures the idea that social movements and mobilized citizenry not only "change the fundamental normative understandings of our Constitution" but also "are critical . . . to the cultural shifts that make durable legal change possible." Guinier & Torres, *supra* note 65, at 2743. *Id.* at 2750 ("[D]emosprudence focuses on the ways that ongoing collective action by ordinary people can permanently alter the practice of democracy by changing the people who make the law and the landscape in which that law is made.").

in conversation with social movements fighting for transformation. We use examples of scholars engaging in movement law to illustrate the four main moves of our methodology, but we do not mean to give an exhaustive list of people we consider to be movement law scholars.

We surface movement law as a methodology or mode of legal scholarship. By so doing, we hope to integrate and engage more movement ideas and experiments in legal scholarship and our collective understanding of social change, social justice, and what is possible.[94] Our aim, like that of Critical Race Theorists, is to uncover voices, experiences, and logics otherwise disappeared in legal scholarship because of the strong institutional commitment to traditional sources of authority and the status quo; to center questions of race and colonialism; and to stay grounded in the practices of contestation and survival by social movements and directly impacted people of all kinds. We hope to contribute to the growth and power of today's social movements, and to their ideas, experiments, and campaigns.

Movement law is made possible by methodological pathways and commitments that came before us.[95] But its necessity is situated within twin aspects of our current moment: the increasingly clear failures of neoliberal law and politics, and the surge of social movement activity and grassroots organizing intent on transforming our social relations in fundamentally more just and liberatory ways. In a moment where the right and the left are rushing to fill a crisis of legitimacy of the status quo, and the status quo is increasingly failing, law scholars can play an important role. We seek to think and write in solidarity with movements because such work has the potential to shift actual power in the process, toward grassroots social movements, their ideas, strategies, and tactics. While social movements are not a perfect proxy for the demos at large—nothing is—they provide an important means by which to deepen democracy and expand collective self-governance.

Movement law involves four interrelated moves. While these four moves are not always made, it is fair to think of each move as deepening the practice of the prior. First, movement law scholars pay close attention to modes of resistance by social movements and everyday people. Paying attention to social movements and everyday resistance is in itself significant, for it meaningfully diversifies the sources and horizons of legal scholarship. Second, movement law scholars work to understand the strategies, tactics, and experiments of resistance and contestation. By studying these strategies, tactics, and experiments—including but not limited to law reform campaigns—scholars engage pathways and possibilities for justice often obscured within legal scholarship. Third, movement law scholars take seriously the epistemologies and

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[94] Legal scholarship's implicit acquiescence in "neoliberal' political projects" has facilitated the many interlinked crises to which today's movements are responding. Britton-Purdy et al., *supra* note 16, at, 1789, 1794-1818 (2020). We seek to unwind that acquiescence and allow for new sources and methods of social production.

[95] *See supra* Part I.A.

histories of the social movements they study. Fourth, movement law scholars move with a sense of solidarity and accountability to the social movements they study. They see themselves not as individual experts with opinions from above or apart from the movements they study, but as part of a collective process.

A. Locating Resistance

To start, movement law scholars pay attention to organizing, social movements, and collective resistance by everyday people. Movement law scholars are attuned to actually existing modes of resistance as a source for new insights about the nature and lived realities of law, as well as about what struggle for alternatives might look like. They start not from a discrete legal issue or doctrinal dispute, but from movements, their strategies and tactics. They recognize that social movements are engaging in deep ideation around questions of legal meaning and entitlement, citizenship and democracy.[96] Social movements bring to the foreground critiques of the status quo in the margins of law and legal scholarship.[97] Simultaneously, social movements advance radical reimaginations of law, legal institutions, and society more broadly.[98] In the course of locating resistance, then, scholars expand the terrain of critique and imagination within legal scholarship and legal institutions.[99] This expansion has profound potential to remake the project of law and legal scholarship: beyond elite technocracy, legitimation, law and order, or even radical critique, toward a transformative project of remaking ourselves and the world around us.[100]

Locating resistance can begin by looking around one's own local and virtual worlds. We are living in an era of intensified contestation of and rebellion against the

[96] Guinier & Torres, *supra* note 65 and accompanying text.
[97] Jocelyn Simonson, Essay, *The Place of "the People" in Criminal Procedure*, 119 COLUM. L. REV. 249, 252-55 (2019).
[98] Akbar, *Toward a Radical Imagination*, *supra* note 4, at 412.
[99] For example, there are now multiple accounts of how undocumented youth changed the terrain for immigration law and policy, and directly challenged notions of citizenship, through their direct action and organizing. *See* Kathryn Abrams, *Contentious Citizenship: Undocumented Activism in the Not1More Deportation Campaign*, 26 BERK. LA RAZA L.J. 46, 47-50 (2016); Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. REV. 1464, 1466-68 (2017); Christine N. Cimini & Doug Smith, *An Innovative Approach to Movement Lawyering: The Immigrant Rights Case Study* 35 GEO. IMMIGR. L.J. (forthcoming 2020). Marisol Orihuela has shown how positive emotions like love play a role in the forms of resistance employed by the sanctuary and Dreamer movements. Marisol Orihuela, *Positive Emotions and Immigrant Rights: Love as Resistance*, 14 STAN. J. C.R.-C.L. 19, 28-32 (2018).
[100] This study also has the power to transform our teaching. *See, e.g.,* Amna A. Akbar *Law's Exposure: The Movement and the Legal Academy*, 65 J. LEGAL EDUC. 352, 366-73 (2015) [hereinafter Akbar, *Law's Exposure*].

status quo.[101] Because of its utility in organizing campaigns, social media surfaces the work of social movements to a greater degree than ever before.[102] Moreover, in an era of heightened social movement activity and a broader popular turn to the left, mainstream news outlets cover protests and resistance more frequently, and feature op-eds by movement intellectuals.[103] As a result, local and national news, Twitter, Instagram, and Facebook—not to a mention a whole panoply of left media outlets—are all popular primary and secondary source materials to identify left social movement campaigns, toolkits, experiments, and ideation of all manner.[104]

We do not mean to suggest that movement law is limited to observation from above or afar. Indeed, many scholars are already part of social movements or come from communities that are sites of ongoing radical organizing. For those scholars, movement law facilitates a new kind of relationship to those struggles.[105] As we explain through the proceeding moves, movement law scholarship can also draw from engagement with movement sources and ideas through text and observation, to attendance at local organizing meetings and events, to participation in campaigns, to engagement in participatory action research with movement leaders. Social media and

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101 *E.g.,* Keeanga-Yamahtta Taylor, *Of Course There Are Protests. The State Is Failing Black People.*, N.Y. TIMES (May 29, 2020), https://www.nytimes.com/2020/05/29/opinion/george-floyd-minneapolis.html.

102 Consider for example Mariame Kaba's Twitter following of almost 150,000. Mariame Kaba (@prisonculture), TWITTER, https://twitter.com/prisonculture?lang=en. Or consider the number of social movement campaigns and organizations that have Instagram accounts. *See, e.g.,* #FreeThemaAll4PublicHealth; JusticeLA (@justicelanow), INSTAGRAM, https://www.instagram.com/justicelanow/; *see also* Monica Anderson et al., *2. An Analysis of #BlackLivesMatter and other Twitter Hashtags Related to Political or Social Issues*, PEW RESEARCH (July 11, 2018), https://www.pewresearch.org/internet/2018/07/11/an-analysis-of-blacklivesmatter-and-other-twitter-hashtags-related-to-political-or-social-issues.

103 Robin D. G. Kelley, *What Kind of Society Values Property Over Black Lives*, N.Y. TIMES (June 18, 2020), https://www.nytimes.com/2020/06/18/opinion/george-floyd-protests-looting.html; Kaba, *supra* note 27; Tolentino, *supra* note 25; Tolentino, *supra* note 28; Derecka Purnell, *George Floyd Could Not Breathe. We Must Fight Police Violence Until Our Last Breath*, THE GUARDIAN (May 27, 2020 2:12 PM EDT), https://www.theguardian.com/commentisfree/2020/may/27/george-floyd-police-violence-minnesota-racist.

104 *See generally* MARIAME KABA & SHIRA HASSAN, FUMBLING TOWARDS REPAIR: A WORKBOOK FOR COMMUNITY ACCOUNTABILITY FACILITATORS (AK Press 2019); ALEX VITALE, THE END OF POLICING (Verso 2017); Meagan Day, *The Coming Pandemic-Induced Eviction Crisis*, JACOBIN (June 30, 2020), https://www.jacobinmag.com/2020/06/cares-act-coronavirus-covid-stimulus-expiring-unemmployment; *Defund Police Organizers Forum*, THE DIG (June 20, 2020), https://www.thedigradio.com/podcast/defund-police-organizers-forum; *The Great May Day Rent Strike*, COMMUNE (Apr. 28, 2020), https://communemag.com/the-great-may-day-rent-strike.

105 *See generally* Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 24 AM. INDIAN L. REV. 229 (1999-2000).

conventional media can be an entry point to finding local grassroots campaigns and organizations for deeper engagement.

Scholars will undoubtedly develop distinct accounts of the types of resistance that merit study. For our part, we pay attention to the strategies, tactics, experiments, and narratives of left movements, organizations, and organizers, committed to political, economic, social transformation—not simple issue-specific reform or singular campaigns. We are interested in social movements, social movement organizations, unions and worker organizing, and other more fledgling formations of poor, working class people, and people of color that: (1) challenge law and politics as usual as they frame issues, deploy tools, tactics, and storytelling, and advance theories of change and transformative visions;[106] and (2) turn to strikes, protests, and direct action, build alternative institutions like bail funds, cooperative land trusts and mutual aid networks, and run campaigns for deep and widespread transformation.[107] These campaigns and experiments are rooted in a struggle for a radically reconstituted society. The strategies demonstrate commitments to an intersectional politics of anti-racism, anti-patriarchy, anti-capitalism, anti-colonialism, anti-imperialism, abolition, redistribution, gender justice, and economic democracy, even socialism.[108] They are

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[106] *E.g.*, BYP100, LAW FOR BLACK LIVES, & THE CENTER FOR POPULAR DEMOCRACY, REIMAGINING SAFETY & SECURITY: BUDGET TOOLKIT & RESOURCE GUIDE (last visited Nov. 15, 2020), https://static1.squarespace.com/static/5500a55ae4b05a69b3350e23/t/597650396b8f5b857dc48fa8/1500926014325/L4BL+-+Freedom+to+Thrive+Update.pdf; MOVEMENT FOR BLACK LIVES, REPARATIONS NOW TOOLKIT (2020) https://m4bl.org/wp-content/uploads/2020/05/Reparations-Now-Toolkit-FINAL.pdf; NATIONAL BAIL OUT, UNTIL FREEDOM COMES: A COMPREHENSIVE BAILOUT TOOLKIT (2017) https://www.nationalbailout.org/untilfreedomcomes.

[107] *E.g.*, Juliana Kim, *How the Floyd Protests Turned Into a 24-Hour 'Occupy City Hall' in N.Y.*, N.Y. TIMES (June 28, 2020), https://www.nytimes.com/2020/06/28/nyregion/occupy-city-hall-nyc.html; Brooklyn Community Bail Fund, https://brooklynbailfund.org/; CHI. CMTY. BOND FUND, https://chicagobond.org/; COOP. JACKSON, https://cooperationjackson.org/; *Mutual Aid Resources*, MOVEMENT FOR BLACK LIVES, https://m4bl.org/mutual-aid/; *What is Mutual Aid?*, BIG DOOR BRIGADE, https://bigdoorbrigade.com/what-is-mutual-aid/; PEOPLE'S BUDGET L.A., https://peoplesbudgetla.com/. For scholarship on some of these experiments, see, for example, James J. Kelly, Jr., *Land Trusts That Conserve Communities*, 59 DEPAUL L. REV. 69, 69-74 (2009); Renee Hatcher & Jaime Lee, *Building Community, Still Thirsty for Justice: Supporting Community Development Efforts in Baltimore*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L. 27, 27-28 (2016); Renee Hatcher, *Solidarity Economy Lawyering*, 8 TENN. J. RACE GENDER & SOC. JUST. 23, 25-26 (2019); Sheila R. Foster & Christian Iaione, *The City as a Commons,* 34 YALE L. & POL'Y REV. 281, 282-91 (2016).

[108] *E.g.*, MOVEMENT FOR BLACK LIVES, A VISION FOR BLACK LIVES: POLICY DEMANDS FOR BLACK POWER, FREEDOM, & JUSTICE (2016), https://neweconomy.net/resources/vision-black-lives-policy-demands-black-power-freedom-and-justice; MIJENTE, FREE OUR FUTURE: AN IMMIGRATION POLICY PLATFORM FOR BEYOND THE TRUMP ERA (2018), https://mijente.net/wp-content/uploads/2018/06/Mijente-Immigration-Policy-

rooted in study of past freedom struggles and the intellectual traditions and debates of those struggles.[109]

We focus on such transformative movements for a number of reasons. These movements contend with the violence and inequality of the law.[110] They represent experiences and histories often erased or flattened by doctrine and scholarship.[111] They represent people locked out of meaningful representation in the formal channels of statecraft.[112] They offer hopeful visions for a more equal world, a theory of change aligned with engaging and enfranchising the grassroots, and a meaningful set of experiments and demands to move us towards those visions.[113] In short, identifying and examining these movements and what they do make legal scholarship better, more hopeful, more grounded, and more accountable to the world we want to build.

We do not mean to suggest that social movements are perfect or divorced from the same limits of any other form of political action.[114] Social movements are not always democratic or accountable to the grassroots.[115] Organizations receive funding and support from the elite political and philanthropic strata in which the horizons of

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Platform_0628.pdf; RED NATION, THE RED DEAL: INDIGENOUS ACTION TO SAVE OUR EARTH, PART ONE: END THE OCCUPATION (2020), http://therednation.org/wp-content/uploads/2020/04/Red-Deal_Part-I_End-The-Occupation-1.pdf.

[109] *E.g.*, Estes, *supra* note 14, at 169-99.

[110] For example, the Malcolm X Grassroots Movement brought attention to the routineness of lethal police and vigilante violence through its hashtag #Every28Hours in 2014. ARLENE EISEN, MALCOLM X GRASSROOTS MOVEMENT, OPERATION GHETTO STORM: 2012 ANNUAL REPORT ON THE EXTRAJUDICIAL KILLINGS OF 313 BLACK PEOPLE BY POLICE, SECURITY GUARDS AND VIGILANTES (2014), http://www.operationghettostorm.org/uploads/1/9/1/1/19110795/new_all_14_11_04.pdf . *See also* Akbar, *Law's Exposure*, *supra* note 100, at 354-55.

[111] For example, the Mijente *Free Our Future* report makes its demands in the context of the history of colonialism, western expansion, and anti-Mexican policy and sentiment. MIJENTE, *supra* note 108, at 9.

[112] For example, Black and Pink is an abolitionist organization rooted in working with queer and trans people who are incarcerated. BLACK & PINK, https://www.blackandpink.org/.

[113] For example, the Vision for Black Lives includes six major demands, with a whole range of local, state, and federal possibilities for action. MOVEMENT FOR BLACK LIVES, *supra* note 108.

[114] For a related argument that it is impossible to operate outside of the law, for example, see Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 940 (2007).

[115] *See* ROBERT MICHELS, POLITICAL PARTIES: A SOCIOLOGICAL STUDY OF THE OLIGARCHICAL TENDENCIES OF MODERN DEMOCRACY 224-35 (Eden Paul & Cedar Paul trans., Batoche Books 2001) (1911) (describing an "iron law of oligarchy" in civil society organizations); SEYMOUR MARTIN LIPSET, MARTIN A. TROW & JAMES S. COLEMAN, UNION DEMOCRACY: THE INTERNAL POLITICS OF THE INTERNATIONAL TYPOGRAPHICAL UNION 8-9 (1956) (testing the oligarchy thesis in the context of labor unions in the mid-twentieth century).

political change are negotiated and limited.[116] Factions are often jockeying for position and power in ways that are difficult to assess from the outside.[117] Movement law should recognize this dynamism within social movements and between social movement organizations and other actors in civil society. Movement law also requires self-reflexivity, recognizing that the act of locating resistance may itself elevate particular social movement actors over others. In Part III we address some of these concerns. But, now more than ever, the impact of organizing strategies and tactics on institutions of law and the shape of our imaginations could not be clearer. So, despite these limits, we believe it is imperative to engage. When we ignore social movement visions and organizing, we tacitly give weight to conventional policy approaches and actors, and ignore transformative possibilities.

B. Thinking Alongside Strategies and Pathways for Justice

Movement law requires studying how movements build and shift power—beyond courts and the Constitution—and prefigure the economic, social, political relationships of the world they are working to build. As a result, movement law scholars study actually existing forms of social movement resistance: campaigns for legal and political change as well as prefigurative arrangements or experiments. The work shows a care and a concern for the unique contributions of social movements not simply in representing subordinated peoples, but as a locus for experiments, processes, and imaginations for transformational change.

Studying existing forms of social movement resistance includes studying the demands and campaigns of social movement organizations. Kate Andrias, for example, looks to "Fight for $15" campaigns by low-wage workers fighting for higher wages and a union for all workers.[118] Through a close study of these campaigns, Andrias demonstrates how contemporary workers' movements are reconceiving relationships between workers, employers, and the state, and running campaigns in

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116 *See* Andrea Smith, *Introduction*, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE PRISON INDUSTRIAL COMPLEX 1-18 (INCITE! ed., Duke Univ. Press 2017) (2007); Megan Ming Francis, *The Price of Civil Rights: Black Lives, White Funding, and Movement Capture*, 53 LAW & SOC'Y REV. 275, 277-79 (2019); Susan Staggenborg, *The Consequences of Professionalization and Formalization in the Pro-Choice Movement*, 53 AM. SOC. REV. 585, 597 (1988); *cf.* Ashar, *supra* note 106, at 1473, 1473 nn. 41-43.

117 *E.g.*, WALTER J. NICHOLLS, THE DREAMERS: HOW THE UNDOCUMENTED YOUTH MOVEMENT TRANSFORMED THE IMMIGRANT RIGHTS DEBATE 82–83 (2013).

118 Kate Andrias, *The New Labor Law*, 126 YALE L.J. 2, 8, 46-47 (2016) ("[F]rom the social movements' efforts one can derive a path toward a new labor law regime that is distinct from, even oppositional to, the legal regime that has governed since the New Deal."). For an example focused on intellectual property, see Amy Kapczynski, *The Access to Knowledge Mobilization and the New Politics of Intellectual Property*, 117 YALE L.J. 804, 806-10 (2008).

service of that vision.[119] The campaigns reject the private ordering of New Deal unionism and the employer-employee dyad as ushered in by the National Labor Relations Act.[120] Instead, they imagine public "social bargaining" on a sectoral and regional basis with an active role for the state, and reject a sharp divide between employment and labor law, empowering more workers to engage in some form of social bargaining.[121]

In taking movement strategies seriously, then, scholars learn from movement actors how to refuse categories in twentieth century law and social organizations—like the fixation on the employer-employee dyad—and can engage with grassroots ideation on alternative modes of legal and social organization—like social bargaining. Fight for $15 is a productive site for diversifying our understanding of strategies to reshape the terrain of labor law toward power for the working class and to win concrete changes for low-wage workers.[122] The campaign points to pathways for changing the entitlements and power of low-wage workers that do not rely centrally on courts or litigation.

Producing scholarship in conversation with such campaigns makes clear how grassroots contestation at the local level is central to the shape of law and legal entitlements. It brings attention to the limits of formal political and legal processes to represent the needs and preferences of working-class people, and the power of elites and corporations in defining the terrain.[123] It demonstrates how movements enact change as they build grassroots power and imagine new possibilities, challenging the normative legal frameworks with which most scholarship is engaged and building new horizons for social change projects.

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[119] A core way to imagine ways to move toward an "egalitarian distribution of power," she argues, is to look "to historical and contemporary social movements that have opposed, and are opposing, hierarchies of power." Kate Andrias, Response, *Confronting Power in Public Law*, 130 HARV. L. REV. F. 1, 7 (2016).

[120] Andrias, *supra* note 118, at 58-63.

[121] *Id.* at 63-68.

[122] *E.g.*, Peter Dreier, *How the Fight for 15 Won*, AM. PROSPECT (Apr. 4, 2016), https://prospect.org/economy/fight-15-won/; Jeff Schuhrke, *We've Been Fighting for $15 for 7 Years. Today I'm Celebrating a Historic Victory.*, SALON (Feb. 23, 2019), https://www.salon.com/2019/02/23/weve-been-fighting-for-15-for-7-years-today-im-celebrating-a-historic-victory_partner/. The campaign has been criticized for not being sufficiently grassroots, and for using top down "mobilizing" rather than "organizing," including by labor organizer and intellectual Jane McAlevey. Michael Rozworski, *Having the Hard Conversations: An Interview with Jane McAlevey*, JACOBIN (Oct. 4, 2015), https://www.jacobinmag.com/2015/10/strike-chicago-teachers-union-public-private-sector/; Micah Uetricht, *Is Fight for 15 for Real?*, IN THESE TIMES (Sept. 19, 2013), https://inthesetimes.com/article/is-fight-for-15-for-real. McAlevey powerfully lays out the distinctions between advocacy, mobilizing, and organizing in NO SHORTCUTS: ORGANIZING FOR POWER IN THE NEW GUILDED AGE 9-12 (2016).

[123] *See* Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 PERSP. ON POL. 564, 564-65 (2014).

Thinking with movements allows us to see that even legal rights can politicize, contest, and expand the power of working people. Paying attention to actual struggles opens up questions about how rights operate in particular contexts—whether and how they legitimate or shift relations of power—rather than what they are in the abstract. John Whitlow's examination of the new right to counsel in eviction proceedings in New York City is illustrative.[124] On the surface, the right to counsel in housing court should trigger the concerns articulated by CLS and CRT scholars about the limits of rights discourse to transform the prevailing order. But because Whitlow investigates the housing justice movement behind the establishment of the right, he is able to identify the right as part of a broader strategy "to increase the power of the tenant movement."[125] His deep study of the campaign allows him to appreciate how the right to counsel is functioning in more complex and transformative ways. He shows how organizers are deploying what could otherwise be a depoliticizing tactic as part of a larger movement "to intervene substantively in the affordable housing crisis and to contend with the private power of the real estate industry."[126]

The right to counsel is the beginning, rather than an end, to a strategy to take the courts away from landlords and a struggle to decommodify housing.[127] In revisiting the critique of rights through a deep study of a social movement campaign, Whitlow contributes to our understanding of the dynamism of rights. For example, he describes how a right to counsel in eviction proceedings is meaningfully distinct from the right to counsel in criminal cases because it is a right against the landlord rather than the state itself. It is a rejoinder to private power in a system of property and contract that largely defers to private power. Moreover, the work of rights, like the work of any law, is not simply about what it does on paper, but what it does in practice, and how it operates over time in ongoing contests over the shape of the world. Understanding the organizing context of this struggle, past and current, is essential to efforts like this to situate seemingly traditional legal change within broader possibilities for transformation.[128]

Studying actually existing forms of social movement resistance also helps unearth new possibilities for how to replace and restructure legal arrangements and institutions. Movement law scholars study the modes of organization and work that

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[124] John Whitlow, *Gentrification and Countermovement: The Right to Counsel and New York City's Affordable Housing Crisis*, 46 FORDHAM URB. L.J. 1081, 1082-87 (2019).
[125] *Id.* at 1082, 1128-32.
[126] *Id.* at 1123; *see also* SAM STEIN, CAPITAL CITY: GENTRIFICATION AND THE REAL ESTATE STATE 12-13 (2019).
[127] Whitlow, *supra* note 124, at 1129-30.
[128] On law as practice, see generally Inés Valdez, Mat Coleman & Amna Akbar, *Missing in Action: Practice, Paralegality, and the Nature of Immigration Enforcement*, 21 CITIZENSHIP STUD. 547 (2017); Inés Valdez, Mat Coleman & Amna Akbar, *Law, Police Violence, and Race: Grounding and Embodying the State of Exception*, 23 THEORY & EVENT (forthcoming 2020) (arguing that racialized police violence is constitutive of law); *see also* McCann, *supra* note 46.

movement organizations take on to prefigure the worlds that they seek.[129] This includes institutional prefiguration—for example, the creation of a workers center;[130] the development of mutual aid networks to provide food and medical equipment to protestors on the streets; or the design of dispute resolution practices within anarchist collectives.[131]

Campaigns and prefigurative experiments are in a dialectical relationship—articulating in different ways, through storytelling and relationship building, new modes of relating.[132] Sameer Ashar and Catherine Fisk have written about worker centers as an innovation within low-wage worker organizing outside traditional unions.[133] Worker centers experiment with different forms of worker representation on boards and campaign committees.[134] Organizers are explicitly prefigurative as they emphasize democratic governance and autonomy within their organizations so as to prepare workers to assert political agency in their places of work, in defiance of increasingly autocratic modes of economic organization.[135]

Ashar and Fisk show that organizers are keenly aware that the lives of workers—as women, people of color, differently abled, and queer and trans—are intersectional and that understanding their intersectional identities grounds organizing strategies for transformation.[136] In the last two decades, for example, the National Domestic Workers Alliance has successfully pushed multiple states to adopt domestic

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[129] Examples in past works include Guinier and Torres's depiction of Fannie Lou Hamer and the Mississippi Freedom Democratic Party's integration of the Democratic Party, and Lucy White and Jeremy Perelman's study of the collective prefiguration of social human rights in Africa. Guinier & Torres, *supra* note 65, at 2762-77; White & Perelman, *supra* note 70, at 3-5.

[130] Gordon, *We Make the Road by Walking*, *supra* note 19, at 428-30, 437

[131] Amy J. Cohen, *On Being Anti-Imperial: Consensus Building, Anarchism, and ADR*, 9 LAW, CULTURE & HUMANS. 243, 244-46 (2011).

[132] Relationships prefiguring in the transformational arrangements within social movements can then make their way into formal institutional arrangements. *See, e.g.,* K. Sabeel Rahman, *Policymaking as Power-Building*, 27 S. CAL. INTERDISC. L.J. 315, 328-33 (2018) (describing how social movements attempt to build power within the administrative state, through new institutional and policy-making arrangements); K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 680-89 (2020) (describing social movement pushes for community control of local resources across areas of law and policy, including policing and economic development).

[133] Sameer M. Ashar & Catherine L. Fisk, *Democratic Norms and Governance Experimentalism in Worker Centers*, 82 L. & CONTEMP. PROBS., no. 3, 2019, at 141, 168-76.

[134] *Id.* at 168-72.

[135] One organizer portrayed the mission of his worker center as filling the "need to figure out how to make people feel bigger" in relation to their employers. *Id.* at 163. *See* ELIZABETH ANDERSON, PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON'T TALK ABOUT IT) vii-xii (2017).

[136] Ashar & Fisk, *supra* note 133, at 167-68.

worker bills of rights.[137] These victories speak to the power built by domestic worker organizing around the country. The focus on personal transformation in domestic worker organizing is a product of the identities of organizers and their close understanding of the standpoint of immigrant women in isolated work environments.[138] To build power, workers need to be reached where they exist and to be engaged in organizational and campaign activities that are both personally and politically transformative. Young Black and brown organizers are called to address sources of trauma in the lives of their largely immigrant women worker base—of forced migration, of the abandonment of their children and families and their feelings of isolation in the U.S., of their vulnerability to bullying and abuse by their employers.[139] Movement organizations are creatively devising means by which workers may make material gains through personal transformation and political engagement. They teach us that because the economic and the social are inextricably intertwined, we must begin to understand law and legal change in terms outside of and beyond conventional law reform campaigns.

Grassroots campaigns for change exist across expert siloes and beyond the realm of worker and housing movements. Jocelyn Simonson, for example, has written about proliferating experiments in collective action against the carceral state: cop- and court-watching, participatory defense, community bail funds, and campaigns for people's budgets and community control of the police.[140] In studying grassroots contestation, Simonson moves the common points of reference within criminal law scholarship, from within the institutions of policing and prosecution to that of directly impacted communities. Bail funds, cop- and court-watching destabilize the normative footing of the carceral state: they redefine concepts of harm, community, and public

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137 Lauren Hilgers, *Out of the Shadows*, N.Y. TIMES (Feb. 21, 2019), https://www.nytimes.com/interactive/2019/02/21/magazine/national-domestic-workers-alliance.html.

138 *Id.* at 168, 173.

139 *Id.* at 172-174; *see* JENNIFER ITO, RACHEL ROSNER, VANESS CARTER, & MANUEL PASTOR USC DORNSIFE PROGRAM FOR ENV'T & REG'L EQUITY, TRANSFORMING LIVES, TRANSFORMING MOVEMENT BUILDING: LESSONS FROM THE NATIONAL DOMESTIC WORKERS ALLIANCE STRATEGY – ORGANIZING – LEADERSHIP (SOL) INITIATIVE 31-59 (Nov. 2014).

140 *See* Jocelyn Simonson, *Police Reform Through a Power Lens,* 130 YALE L.J. (forthcoming 2021); Jocelyn Simonson, *The Place of "the People" in Criminal Procedure*, 119 COLUM. L. REV. 249, 256 (2019), [hereinafter Simonson, *The Place of "the People"*] (examining "bottom-up practices of marginalized groups intervening on behalf of defendants to show the possibility of a different way of thinking about the place of the people in the criminal process" where "members of the public are allowed to voice their support or opposition through procedural channels other than elections, juries, or community justice fora."); Jocelyn Simonson, *Democratizing Criminal Justice Through Contestation and Resistance*, 111 NW. U. L. REV. 1609, 1610-13 (2017) [hereinafter Simonson, *Democratizing Criminal Justice*] (discussing communal contestatory tactics within the criminal legal system); Jocelyn Simonson, *The Criminal Court Audience in a Post-trial World*, 127 HARV. L. REV. 2173, 2231-32, 2183-85, (2014) [hereinafter Simonson, *The Criminal Court Audience*]; Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. 391, 392-98 (2016).

safety, as they directly contest the racialized logic of criminal law enforcement.[141] Institutional experimentalism borne of social movement activism challenges approaches to law that are individualized and embedded in carceral logics.

For example, as Simonson shows, in posting bail for community members who cannot otherwise make bail, bail funds founded by social movement organizations problematize the system actors' deployment of the terms "community" and "public safety."[142] "Community" is a kind of dog whistle—evoking an undifferentiated collective but speaking to whites, wealthy, and upper middle class people to whom the police tend to be accountable and for whom the basic structures and operations of the criminal legal system make sense, equate with justice.[143] When bail funds post bail, they challenge notions of community and public safety by performing alternative visions of community and safety that include those targeted by the carceral state.[144] At the same time, these projects provide modes of contestation and participation in a system that attempts to silence, shame, and exclude poor, Black, and brown communities from participating in self-governance. They create space for movements and communities to build bonds of solidarity and safety as they grow their power and their political analysis.[145]

Thinking with social movements allows us to see how communities organize to survive increasingly perilous conditions and teaches us how legal process is central to the precarity of everyday life for so many poor and working-class people. Recently, Dean Spade has written on mutual aid networks, which have proliferated in the wake of COVID-19.[146] The turn toward mutual aid is an essential alternative and

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[141] For another example, Allegra McLeod recently examined an abolitionist view of justice emerging out of organizing in Chicago and contrasted it with legal concepts of justice. Allegra M. McLeod, *Envisioning Abolition Democracy,* 132 HARV. L. REV. 1613, 1637-49 (2019).

[142] Jocelyn Simonson, *Bail Nullification*, 115 MICH. L. REV. 585, 586-93 (2017) (describing how community bail funds contest larger ideas about the meaning of public safety and community).

[143] *Cf.* IAN HANEY LÓPEZ, DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS 4-5 (2013); IAN HANEY LÓPEZ, MERGE LEFT: FUSING RACE AND CLASS, WINNING ELECTIONS, AND SAVING AMERICA 16-17 (2019).

[144] CHI. CMTY. BOND FUND, YEAR-END REPORT 2019 12 (2019), https://chicagobond.org/wp-content/uploads/2019/12/ccbf_year_end_2019-final.pdf.

[145] *E.g.*, Jocelyn Simonson, *The Bail Fund Moment: Reclaim the Neighborhood, Reclaim Community, Reclaim Public Safety*, N+1 (June 22, 2020) (describing the relationship between the long-term organizing of bail funds and the surge of bail fund donations and activities during the uprisings of 2020) https://nplusonemag.com/online-only/online-only/the-bail-fund-moment/.

[146] Dean Spade, *Solidarity Not Charity: Mutual Aid for Mobilization and Survival*, 142 SOC. TEXT, Mar. 2020, at 131 [hereinafter Spade, *Solidarity Not Charity*]; DEAN SPADE, MUTUAL AID: BUILDING SOLIDARITY DURING THIS CRISIS (AND THE NEXT) (2020). For two decades, Dean Spade has been writing with social movement organizations against the grain of legal scholarship and offering insights from social movement strategies. *See generally* Dean Spade, *Intersectional Resistance and Law Reform*, 38 SIGNS 1031, 1046-47 (2013); DEAN SPADE, NORMAL

complement to law reform strategies, Spade argues, in part because of how law reform often fails to offer material relief to the most vulnerable people.[147] Mutual aid is an essential mode of "building new social relations that are more survivable."[148] Spade speaks to mutual aid as an abolitionist strategy rooted in practices of collective care and self-determination.[149] Mutual aid strategies, like the Black Panther Party's survival programs, illustrate the failures of the state to provide for the basic needs of everyday people.[150] Through mutual aid, he explains, people do more than facilitate collective survival, they learn how to work together, collaborate, learn from each other. For example, by "help[ing] one another through housing court proceedings [participants] will learn the details of how the system does its harm and how to fight it, but they will also learn about meeting facilitation, working across difference, retaining volunteers, addressing conflict, giving and receiving feedback, following through, and coordinating schedules and transportation."[151] They learn how to make change together.

Whether it is Fight for $15 or bail funds, mutual aid projects or workers centers, these prefigurative social change projects directly challenge prevailing legal and institutional arrangements and the ideas that hold them in place.[152] They point to the problems with status quo political, economic, and social arrangements. They create new pathways for justice and fight for horizons otherwise invisible within legal scholarship. They point to the broad array of strategies and tactics central to justice projects focused on transformation. Scholars miss much when they ignore social movement experimentation and prefiguration.

C. Shifting the Episteme

Movement law shifts the focal point of legal studies by taking seriously the epistemes and histories of social movements—their worldviews, source material, and intellectual traditions. This is especially important given the centrality of law in the history of exclusion and domination in the United States, and in today's attempt to maintain the legitimacy of the status quo. Movement law unearths an alternative arc

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LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF LAW (Duke Univ. Press 2015) (2009).

147 Spade, *Solidarity Not Charity*, *supra* note 146, at 131-33 (discussing how mutual aid "is an often devalued iteration of radical collective care that provides a transformative alternative to the demobilizing frameworks" of law reform).

148 *Id.* at 136, 147.

149 *Id.* at 131, 138; *see also* Angela P. Harris, *Compassion and Critique*, 1 COL. J. RACE & L. 326, 351 (2012) (connecting how the capacity to care is central to advancing critical race theory and coalescing movements).

150 Spade, *Solidarity Not Charity*, *supra* note 146, at 136.

151 *Id.* at 137-38.

152 For another example, see Cházaro, *supra* note 99, at 67-74 (examining Chicago's Erase the Database campaign—a "collaboration between immigrant-led and Black-led grassroots organizations"—that has worked to eliminate the Chicago gang database).

of history, of people collectively generating ideas and struggling to build and practice alternative possibilities: from the bottom up, often at great risk to their own safety, rather than top down. How can we create structures of living that allow us to thrive together on shared land and with multiple forms of life? How have people lived and struggled in these ways in the past? What past struggles over land, resources, and labor shape our current norms and laws? These questions are deeper than what constitutional discourse and traditional adjudicatory forums allow. And when put next to conventional legal structures they allow for new, often revelatory, ways of thinking about law, the state, and justice.[153]

Social movements draw on lines of thought and material struggles across time to arrive at their collective analyses of the present. The Movement for Black Lives situates its critiques and paths forward in Black struggles and Black intellectual traditions.[154] The Red Nation grounds itself in centuries of Native resistance.[155] Grounded in not just their own histories, but also the histories of other movements, contemporary movement actors build broader solidarities. When Mijente discusses its movement's "DNA," for example, there is an insistence: "We see our liberation as bound to Black Liberation, Indigenous sovereignty, economic and climate justice and other liberation movements."[156] These are histories of intellectual thought born in struggle, always dynamic, but full of wisdom for our times. Contingency—to be rooted in the present crises—is an aspect of grounded and historical analysis from which we learn.

Movement scholars point to the contingency of social-political-economic relations, not simply as a way to throw the status quo into question, but to point to the status quo itself as a product of ongoing struggle. They do this by turning to the history of people's movements. Aziz Rana, for example, critiques the rise of constitutional veneration as a way overshadow our colonial slave-holding past and deep social movement contestation.[157] To recover alternate histories and possibilities,

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153 These questions echo those long asked in Black feminist scholarship. *See generally* Patricia Hill Collins, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT 266, 270-71 (2000) (describing how black feminist epistemology can destabilize established understandings of the world).

154 Akbar, *supra* note 4, at 408.

155 THE RED NATION, *supra* note 6.

156 *Our Principles of Unity*, MIJENTE, https://mijente.net/our-dna/.

157 *See, e.g.*, Aziz Rana, *Rise of the Constitution* (unpublished manuscript, on file with author); AZIZ RANA, *supra* note 12, at 5-7 ; Aziz Rana, *Colonialism and Constitutional Memory,* 5 U.C. IRVINE L. REV. 263, 269 (2015) [hereinafter Rana, *Colonialism*] ("[P]art of the discursive power of civic national identity continues to come from its disavowal of any need for . . . structural transformation, precisely since it reads a liberal and egalitarian identity into the country's very genesis."). For other work denaturalizing our current understanding of Constitutional arrangements, and historicizing shifting understandings, through time and political contestation, see Joseph Fishkin & William E. Forbath, *The Anti-Oligarchy Constitution*, 94 B.U.

Rana tells the story of the Black Panther Party's (BPP) own 1970 constitutional convention, attended by at least 12,000 people, including members of the American Indian Movement, the Young Lords, Students for a Democratic Society and more.[158] For the BPP, the convention was a rejection of the U.S. Constitution and how it naturalized the "economic and political subordination" of Black people within the United States at the same time that it severed the Black freedom struggle from anticolonial struggles around the world.[159] During breakout sessions at the convention, participants generated "a new alternative text framed around a variety of basic demands" that drew from global decolonization efforts.[160] The resulting proposals included reparations, the transfer of wealth, truth commissions, and expanded socioeconomic rights.[161] The convention marked the United States as a colonial project and conjured the possibility of a radical and reconstituted alternative, even if the ratification of the document was stymied by internal discord.[162] Rana's work, then, reminds us of the contingency of our legal order. In his charting of the rise of constitutional veneration, he denaturalizes our almost religious preoccupation with the Constitution as central to American political identity. In documenting the BPP's convention, he centers long histories of contestation, in particular within the Black freedom struggle.

Movement law scholars take cues from social movement epistemes as a way to denaturalize the status quo, refuse the abstraction of the violence of everyday law, make clear the contingency of our political, economic, and social relationships, and gesture at new possibilities.[163] Movement law scholars take seriously the horizons of social movement imaginations—even if they reject outright the Constitution or

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L. REV. 669, 672 (2014) (looking to political movements of the gilded age to generate ideas about how political economy is a *constitutional* problem); LAURA WEINRIB, THE TAMING OF FREE SPEECH: AMERICA'S CIVIL LIBERTIES COMPROMISE 1-13 (2016) (telling the history of the right to free speech as rooted in labor struggles to strike and organize, before it shifted to being understood as an individual right to be effectuated in court); Amy Kapczynski, *Historicism, Progress, and the Redemptive Constitution*, 26 CARDOZO L. REV. 1041, 1041-47 (2005) (exploring constitutional historiography, that is, "how theorists, lawyers, and judges elaborate the past in constitutional context.")]

158 Rana, *Colonialism*, *supra* note 157, at 285.

159 *Id.* at 282-85.

160 *Id.* at 285.

161 *Id.* at 285-86.

162 The ratification of their Constitution was stymied by internal discord within BPP leadership, and the second ratifying convention was never held. *Id.* at 286.

163 *See* DAVINA COOPER, EVERYDAY UTOPIAS: THE CONCEPTUAL LIFE OF PROMISING SPACES 32 (2014) ("Epistemologies of the margins are not simply intended as perspectives from which to critique mainstream, hegemonic forms; they also open up possibilities for exploring what other kinds of forms could be like.").

prevailing legal norms and arrangements—to make new demands.[164] In so doing they point to new possibilities that legal scholarship might otherwise ignore.

Amna Akbar's work, for example, centers around the contemporary imaginaries of the Movement for Black Lives and abolitionist organizing.[165] Akbar mines a rich lineage of Black radical thought at the juncture of race and capitalism to contextualize movement demands. She puts this intellectual history in dialogue with contemporary criminal law scholarship to question liberal legalism and our traditional approaches to reform.[166] Like Rana's turn to the BPP, Akbar features left intellectuals and organizers not commonly featured in legal academic work, such as those of abolitionist intellectual-organizers Rachel Herzing and Mariame Kaba.[167] At the same time, Akbar requires us to take seriously the long historical arc invoked by today's left movements in understanding the United States today. For example, abolitionist organizers invoke the history of enslavement, slave patrols, and border patrols to understand contemporary policing—redefining policing as central to racialized violence past and present.[168] Akbar shows us how our thinking expands when we encounter this long history of struggle. Taken together, after reading Akbar's work we emerge with not just deeper critique, but larger possibilities—a "radical imagination," an "abolitionist horizon"—through which movements seek to de- and reconstruct law and the state.[169]

Movement law inquiries that shift epistemes can range from close, critical analysis of movement texts, to immersion in social movement spaces, to even co-authoring or engaging in participatory action research with movement leaders. Janet Moore, for example, has co-authored with movement leaders in her work examining the power of the practice of participatory defense,[170] and now engages in participatory

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164 In a recent work, Matsuda thinks with left intellectuals and social movements to imagine a utopian constitution as a basis for imagining the right to art. Matsuda, *The Next Dada , supra* note 57, at 1211, 1217-30 (arguing that "Frederick Douglass believed that the preamble was ground enough to demand the end of slavery" and so "it is ground enough to say there is a right to art.").

165 *See* Amna Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 101, 103-07 [hereinafter Akbar, *Abolitionist Horizon*] (forthcoming 2020); Akbar, *Law's Exposure*, *supra* note 100 at 353, 366-73 Akbar, *Toward a Radical Imagination*, *supra* note 4, at 406-10.

166 Akbar, *Abolitionist Horizon*, *supra* note 165, at 105; Akbar, *Law's Exposure*, *supra* note 100, at 352, 355; Akbar, *Toward a Radical Imagination*, *supra* note 4, at 407-09. *See also* Sean Flores, *"You Write in Cursive, I Write in Graffiti": How #BlackLivesMatter Reorients Social Movement Legal Theory*, 67 UCLA L. Rev. 1022 (2020).

167 Akbar, *Abolitionist Horizon*, *supra* note 165, at 149, 162; Akbar, *Toward a Radical Imagination*, *supra* note 4, at 436, 460-61, 466, 468.

168 Amna Akbar, *Abolitionist Horizon*, *supra* note 165, at 102.

169 *Id.* at 101; Akbar, *Toward a Radical Imagination*, *supra* note 4, at 412.

170 *See* Janet Moore, Marla Sandys & Raj Jayadev, *Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform*, 78 ALB. L. REV. 1281, 1285-86 (2015) (describing the

action research alongside movement activists who are working to redefine public safety in their community.[171] With participatory action research, legal scholars can use tools of social science to treat movement actors and activists as equal research partners in the generation of questions and answers about the world—for example, the question "what is public safety?".[172]

Whatever form the scholarship takes, whether participatory action research or a different form of grounded inquiry, movement law points to the contingency of the stories we tell about the histories of the United States—of oppression and resistance—as well as the contingency of our contemporary arrangements.[173] It points to the limitations of telling grounded stories about the workings of the law that rely primarily on traditional legal sources, and do not pay heed to people's experiences or movements' stories. Even grounded stories told through conventional frames may reify the status quo; movement intermediation and interpretation is essential. It reveals the limits of liberal legalism and its histories of linear progress. And yet, it gives us hope for future possibilities and openings, too.

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participatory defense movement and its power, co-authored with movement leaders who pioneered the practice of participatory defense).

[171] *See* Lauren Johnson, Cinnamon Pello, Ebony Ruhland, Simone Bess, Jacinda K. Dariotis, & Janet Moore, *Reclaiming Safety* at 3, 8-9 (unpublished manuscript) (on file with authors)(describing participatory action research in which community members in Cincinnati are collectively redefining public safety alongside academic researchers, using a method that "prioritizes prioritizes shifting research capacities from academic researchers to the communities themselves by focusing on their needs, strategies, and expertise.".

[172] Johnson and her co-authors have found that some participants in their study—community members in Cincinnati—rejected dominant punitive frameworks of safety as connected to policing, and instead voiced demands for education, housing, and healthcare. *Id.* at 3, 17-18, 22-23, 25. Other legal scholars have written about participatory action research. *See* Houh & Kalsem, *supra* note 88, at 294 ("'[L]egal participatory action research' . . . makes its most significant and original contribution to legal scholarship not only by 'looking to the bottom' in a theoretical sense, but also by treating those 'at the bottom' as equal research partners who are presumptively best situated to identify, analyze, and solve the problems that directly affect them."); Editha Rosario-Moore & Alexios Rosario-Moore, *From the Ground Up: Criminal Law Education for Communities Most Affected by Mass Incarceration,* 23 CLINICAL L. REV. 753, 754-55 (2017) ("In concert with Critical Legal Theory, [participatory action research] challenges both the objective neutrality of the law and claims of empirical objectivity made by social researchers.").

[173] *See, e.g.,* Rana, *supra* note 12, at 336 (arguing that imagining big change first requires "linking the concrete material interests of specific groups to the larger common good and thus showing how experiences of inequality or subordination illuminate a more pervasive social predicament.").

D. Adopting a Solidaristic Stance

Movement law asks scholars to engage in the scholarly project in solidarity and in conversation with social movements.[174] This solidaristic stance requires commitment to experimentation, transformation, and collectivity. It displaces the legal scholar as an individual expert with just the right technocratic fix, taking a stance both more humble and more bold. Movement law does not require a particular kind of relationship (for example, as a legal advocate or advisor), but does require writing in conversation rather than from above in critique: participating in a collective process for generating and testing ideas and strategies for transformative change.

Solidarity is essential because meaningful ideas for transformative change develop and gain traction through collective struggle and political praxis.[175] Veena Dubal is a powerful example of how a solidaristic stance can transform scholarship. As a legal scholar and anthropologist who started her legal career as an Asian Law Caucus staff attorney, Dubal has complicated accounts of the "gig economy" and liberal legalist approaches to reform. She uses scholarly method—ethnographic interviews with drivers and organizers in the gig economy—to engage worker organizing in a time of deep economic precarity for workers and consolidated political power of employers in the industry. Dubal has studied how state and local regulators have been coopted by the platform companies, showing how the companies initially disrupted regulatory regimes by disregarding them and then consolidated their power by mobilizing dispersed consumers and drivers to alter those regimes in their favor.[176] Dubal has argued that employers maintain an overwhelming advantage over workers through corporate restructuring and their refusal to bargain collectively.[177]

Dubal's scholarly work deepens her advocacy. But perhaps more interestingly, her engagement with worker organizing through social movement groups has defined her scholarly trajectory. Dubal's nuanced understanding of worker identities has informed her involvement with groups like Rideshare Drivers United on legislation

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[174] *See* COOPER, *supra* note 163, at 20 (exploring "the oscillating movement between imagining and actualization").

[175] For another example of a legal scholar whose work has been impacted by engagement with social movements, consider Justin Hansford. *See, e.g.,* Justin Hansford, *The First Amendment Freedom of Assembly as a Racial Project*, 127 YALE L.J.F. 685, 685-91 (2018); Justin Hansford & Meena Jagannath, *Ferguson to Geneva: Using the Human Rights Framework to Push Forward a Vision for Racial Justice in the United States After Ferguson*, 12 HASTINGS RACE & POVERTY L.J. 121, 123 (2015); Justin Hansford, *Demosprudence on Trial: Ethics for Movement Lawyers, in Ferguson and Beyond*, 85 FORDHAM L. REV. 2057, 2057-60 (2017).

[176] *See* V.B. Dubal, Ruth Berins Collier & Christopher Carter, *Disrupting Regulation, Regulating Disruption: The Politics of Uber in the United States*, *in* PERSPECTIVES ON POLITICS (forthcoming 2020) (manuscript at 2-4) (on file with authors).

[177] V.B. Dubal, *Winning the Battle, Losing the War?: Assessing the Impact of Misclassification Litigation on Workers in the Gig Economy*, 2017 WIS. L. REV. 739, 747, 794, 800 fig. 1.

codifying employee status for drivers.[178] She intervened directly in Uber and Lyft's class action litigation against worker organizing by objecting to a class-action settlement on behalf of a group of plaintiffs from a fledgling worker organization called the San Francisco Bay Area Driver Association.[179] Dubal was recently targeted by Uber and Lyft as a consequence of her scholarship and advocacy,[180] as the companies spent $200 million to overturn the state legislative effort in which she was involved.[181] She has picked sides, with fledgling organizing formations and against the ongoing efforts by established unions to collaborate with the platform companies to create a new legal status for workers devoid of statutory employee protections.[182] By targeting Dubal, the platform companies have effectively forced her to own her political work as a significant component of her identity as a scholar and teacher and she has not backed down.

Angélica Cházaro's work also embodies a strong dialectic between scholarship and solidarity.[183] At the outset of her academic career, in 2014, Cházaro served as a "chief negotiator" on behalf of immigrants during an almost two-month hunger strike at the Northwest Detention Center (NWDC) in Tacoma.[184] The hunger strike emerged in response to a one-day shut down of NWDC by the nascent #Not1More

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178 Veena Dubal, *Rule Making as Structural Violence: From a Taxi to Uber Economy in San Francisco*, L. & POL. ECON. PROJECT: LPE BLOG(June 28, 2018) https://lpeproject.org/blog/rule-making-as-structural-violence-from-a-taxi-to-uber-economy-in-san-francisco/; V.B. Dubal, *An Uber Ambivalence: Employee Status, Worker Perspectives, & Regulation in the Gig Economy*, 4-6 (U.C. Hastings L. Legal Stud. Rsch. Paper Series, Rsch. Paper No. 381, 2019). For a discussion of how many workers see themselves as independent contractors rather than "wage slaves," see V.B. Dubal, *Wage Slave or Entrepreneur?: Contesting the Dualism of Legal Worker Identities*, 105 CALIF. L. REV. 65, 120 (2017).

179 Declaration of Veena Dubal in Support of Objections to Class Action Settlement Filed by Adham Shaheen, Gladys Quinones, Mahmood Noori, and Edward Escobar, Mohammad Zadran, at 2, 7 O'Connor v. Uber Technologies, Inc., 904 F.3d 1087 (9th Cir. 2018) (Nos. 13-3826-EMC & 15-00262-EMC).

180 Dara Kerr, *'A totally different ballgame': Inside Uber and Lyft's fight over gig worker status*, CNET.com (Aug. 28, 2020), https://www.cnet.com/features/uber-lyfts-fight-over-gig-worker-status-as-campaign-against-labor-activists-mounts/.

181 Wilfred Chan, *Can American Labor Survive Prop 22?*, The Nation (Nov. 10, 2020), https://www.thenation.com/article/politics/prop-22-labor/ (Quoting Veena Dubal as saying, "It needs to be about ownership, redistribution, collective power. We're not at a place anymore where enough people are getting by, that things are OK. If people feel this anger collectively, they can build something transformative.").

182 Id.

183 Cházaro started her legal career at the Northwest Immigrant Rights Project (NWIRP). UNIV. WASH. SCH. L., *Angélica Cházaro*, https://www.law.uw.edu/directory/faculty/chazaro-angelica.

184 *Id.*; Liz Jones, *Protestors Try to Block Deportations from Northwest Detention Center*, KUOW (Feb. 25, 2014, 8:45 AM), https://www.kuow.org/stories/protestors-try-block-deportations-northwest-detention-center/.

formation—an early abolitionist turn among immigrant organizing.[185] Later, Cházaro helped to start La Resistencia, a grassroots effort to shut down NWDC, which eventually became a hub organization in Mijente and an organization in the Decriminalize Seattle coalition focused on defunding the Seattle Police Department.[186] As she engaged in organizing and produced scholarship, Cházaro co-authored Mijente's abolitionist policy platform *Free Our Future*.[187] In scholarly work on deportation abolition, Cházaro builds out critiques of deportation and detention embedded within *Free Our Future*.[188] Cházaro reframes the scholarly question of how to "comport" deportation "with the rule of law" to whether deportation is justifiable as a broader matter of politics and ethics.[189] She situates deportation in a historical context, denaturalizing its existence and questioning its ongoing function.[190] In this way, she suggests the fait accompli embedded within the mode of analysis that takes

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185 Tania Unzueta, Maru Mora Villalpando & Angélica Cházaro, *We Fell in Love in a Hopeless Place: A Grassroots History from #Not1More to Abolish ICE*, MEDIUM (June 29, 2018), https://medium.com/@LaTania/we-fell-in-love-in-a-hopeless-place-a-grassroots-history-from-not1more-to-abolish-ice-23089cf21711; NWDC Resistance, A Hunger Strikers Handbook 13-16 (Apr. 2017), available at https://www.nwdcresistance.org/wp-content/uploads/2015/09/HungerStrikersHandbook-ENG.pdf.

186 LA RESISTENCIA, http://laresistencianw.org/; Daniel Beekman, *Seattle City Council Pressed to Defund Police, Move 911 Response Dispatchers Out of Department*, SEATTLE TIMES (July 8, 2020 7:33 PM) (updated Aug. 12, 2020 11:35 AM), https://www.seattletimes.com/seattle-news/politics/seattle-city-council-pressed-to-defund-police-move-911-response-dispatchers-out-of-department/; *Seattle Urged to See a 'World Without Law Enforcement,'* ASSOCIATED PRESS (July 9, 2020), https://apnews.com/7ff3a5143ae9306ced7613c9824e05d0.

187 Press Release, Leading Latinx Racial Justice Organization Releases "Free Our Future" Policy Platform in Wake of War Waged Against Immigrants, Mijente (June 28, 2018), https://mijente.net/2018/06/leading-latinx-racial-justice-organization-releases-free-our-future-policy-platform-in-wake-of-war-waged-against-immigrants-policy-calls-for-full-scale-decriminalization-of-immigrat/; Marielena Castellanos, *Demonstrators Call for ICE to be Abolished and Protest Operation Streamline*, PORTSIDE (July 4, 2018) https://portside.org/2018-07-04/demonstrators-call-ice-be-abolished-and-protest-operation-streamline; *Coalition Demands Moratorium on Construction of Youth Jail*, PUBL. NEWS SERV. (Mar. 20, 2018) https://www.publicnewsservice.org/2018-03-20/juvenile-justice/coalition-demands-moratorium-on-construction-of-youth-jail/a61880-1.

188 Cházaro, *supra* note 99, at 6-7 ("The [Free Our Future] platform brings together diverse sites of implementation of the deportation machinery, while reorienting allegiance away from an unquestioning attachment to the abstraction of the rule of law and towards the populations such abstraction preserves as deportable.").

189 *Id.* at 23-24, 27-28, 37 (citing Angela Davis, Ruth Wilson Gilmore, Micol Siegel, and Chandan Reddy).

190 *Id.* at 36 ("[F]or much of US immigration history . . . noncitizens were arrested and were *not* deported. As recently as 1984, only 1,000 people were deported on criminal grounds, as compared to 138,669 'criminal aliens' deported in 2016.").

for granted a historically contingent form of enforcement, and gestures at the deeper questions that social movement actors are posing.[191]

Scholars adopt a solidaristic stance in various ways. Dorothy Roberts and Daniel Farbman have each written about the histories of abolitionist struggles against enslavement: in tone and content, these articles are offerings, in conversation with lawyers and organizers in movement, rather than criticisms from on high.[192] Monica Bell has written "in conversation with movements for racial and economic justice" about entitlements to "[s]afety, friendship, and dreams" for Black people as central to the unfinished work of the Civil Rights Movement.[193] Kimberlé Crenshaw has authored a number of reports in conversation with the Movement for Black Lives and street mobilizations against police killings of Black people. Most significantly, in 2015, through the African American Policy Forum, she coauthored with Andrea Ritchie the #SayHerName report, which draws attention to Black women's experiences of police violence.[194]

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191 She draws on indigenous intellectuals and the history of settler colonialism to reveal the contingency of states and borders more broadly. *Id.* at 49-54. Cházaro also draws on the work of E. Tendayi Achiume, who theorizes migration as a mode of decolonization in ways that disrupt conventional ways of thinking about migration, borders, and immigration law. *Id.* at 51-54, 58; *see also* E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509, 1519-20 (2019).

192 *See, e.g.,* Farbman, *supra* note 11, at 1953 (using the history of abolitionist lawyers to argue that, in the present, "a clear political analysis and a deep connection with movement activists can transform a triage legal practice into a tool in a broader project of social change"); Dorothy E. Roberts, *The Supreme Court 2018 Term—Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 6-10 (2019) (discussing the long arc of the abolitionist movements from slavery to prisons); *see also* Alexandra Natapoff, Atwater *and the Misdemeanor Carceral State*, 133 HARV. L. REV. F. 147, 176-77 (2020) (exploring how movement-based anticarceral commitments can intersect with contemporary approaches to low-level criminal offenses).

193 Monica C. Bell, *Safety, Friendship, and Dreams*, 54 HARV. C.R.-C.L. L. REV. 703, 707-08 (2019).

194 Crenshaw & Ritchie, *supra* note 80, at 1; *see also #SayHerName: Resisting Police Brutality Against Black Women, African American Policy Forum*, AFR. AM. POL'Y F., http://aapf.org/sayhernamereport/; #SayHerName, African American Policy Forum, (n.d.) https://aapf.org/shn-campaign (describing the #SayHerName campaign); Shatema Threadcraft, *North American Necropolitics and Gender: On #BlackLivesMatter and Black Femicide*, 116 S. ATL. Q. 553, 566, 568-69 (2017). In the same year, Crenshaw co-authored with Priscilla Ocen and Jyoti Nanda a report on the experiences of girls of color with the "school-to-prison pipeline." KIMBERLÉ WILLIAMS CRENSHAW, PRISCILLA OCEN & JYOTI NANDA, AFR. AM. POL'Y F., BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED, AND UNDERPROTECTED, at 5 (2015), https://www.law.columbia.edu/sites/default/files/legacy/files/public_affairs/2015/february_2015/black_girls_matter_report_2.4.15.pdf. Crenshaw and others have argued that intersectionality strengthens solidaristic practices. *See* Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control*, 59

Solidarity generates new understandings.[195] We, too, have each learned profound lessons about law, violence, justice, and social change from collaborations with social movement organizers and organizations.[196] We have shifted our habits of study, lawyering, teaching, and writing as a result. Our collaborations with social movements live on the page as well as in how we spend our time: lawyering for immigrant workers or caged human beings, providing legal support for protests, co-authoring reports or toolkits for movement spaces, or participating in meeting after meeting for campaigns or bail funds. And we do much of this work with our students, both inside and outside of the classroom.

Movement law scholars share commitments to experimentation; collectivity; political, economic, and social transformation; and building mass social movements of ordinary people. This solidarity is born of a recognition and understanding of law as a

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UCLA L. REV. 1418, 1450 (2012) ("Thinking more critically about the intersectional failures of feminism and antiracism reveals how the political marginality of women of color might be understood as a condition that weakened the capacity of both movements to recognize and resist the ideological foundations upon which these dynamics are grounded."); Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1500 (2012) ("[T]his analysis suggests the need for cross-movement strategies that can address multiple forms of systemic injustice to contest the overpolicing of women of color and expose how it props up an unjust social order"); Jyoti Nanda, *Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System*, 59 UCLA L. REV. 1502, 1521 (2012) ("An intersectional analysis allows us to see how the marginalization experienced by girls of color is different from that experienced by girls generally and boys of color."); Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 UCLA L. REV. 1540, 1559-64 (2012) ("When we examine the surveillance and exclusion that occurs in the context of subsidized housing, we can see the ways in which the constructs of Black women are doing significant work in the maintenance of racial stratification and the criminalization of Black populations.").

[195] Luke Herrine gives a compelling example of this when he describes lawyering alongside the Debt Collective, through which the "shared condition of indebtedness" became "a source of solidarity that could strike at the very heart of both the current structure of governance and the dominant form of profit accumulation." Luke Herrine, *Debtor Organizing Against Neoliberalism*, L. & POL. ECON. PROJECT: LPE BLOG (Apr. 26, 2019), https://lpeblog.org/2019/04/26/debtor-organizing-against-neoliberalism/; *see also* Luke Herrine, *The Law and Political Economy of a Student Debt Jubilee*, 68 BUFF. L. REV. 281 (2020).

[196] We have also learned the importance of collaborative projects within the academy, and how they open up new ways to study and teach. The three of us came together in 2016 to think together about how to teach differently. We worked with Bill Quigley and a cohort of law faculty who strive to teach our classes in a way that responded to the period of protest and organizing that was sparked by Darren Wilson's killing of Michael Brown. We issued a series of Guerrilla Guides to Law Teaching on a number of core law school classes. GUERRILLA GUIDES TO L. TEACHING, https://guerrillaguides.wordpress.com/. We started with four principles that began to articulate what we are now theorizing here. *No. 1: Four Principles*, GUERRILLA GUIDES TO LAW TEACHING (2016), https://guerrillaguides.wordpress.com/2016/08/29/fourprinciples/.

discourse of power and legitimation, as well as a tool to build power from the left and for the many. Solidarity is borne of collaboration and accountability. One result of this orientation is a degree of accountability to get the stories right, to offer thick description of social movement activity and the normative frameworks that undergird such activity. As we write about the lived experience of the people engaged in movement work and organizing from an orientation that grounds us in a collective project, we are simultaneously accountable to them. This stance of solidarity changes the work of legal scholarship itself.

Clinical legal scholars have cultivated solidarity in robust ways over the last decade, engaging in a "collective critical stance" grounded in lived realities.[197] Many clinical legal scholars have unearthed potential for transformative change through their clinical work alongside social movement organizations.[198] These scholars recognize that regnant forms of public interest legal practice reinstantiate the lawyerly idea of the client's individuated "problem" in ways that undermine collective power-building. Clinical collaboration with collectives allows for cogeneration of collective understanding and strategizing for transformative change that speaks to the collective realities of poor, Black, brown, and indigenous people. This cogeneration then feeds into distinct modes of lawyering practice and scholarly projects.[199]

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[197] *See* Wendy A. Bach & Sameer M. Ashar, *Critical Theory and Clinical Stance*, 26 CLINICAL L. REV. 81, 81-83 (2019). Ashar argues that social movement collaborations have the power to remake legal work, its strategies, and its possibilities. *See* Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 357-59 (2008) (evaluating existing clinical legal education and emerging alternative models and their impact on the field of public interest law) [hereinafter Ashar, *Law Clinics*]; Sameer M. Ashar, *Fieldwork and the Political*, *in* TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 288, 289-90 (SUSAN BRYANT, ELLIOTT S. MILSTEIN & ANN C. SHALLECK eds., 2014) [hereinafter Ashar, *Fieldwork and the Political*] (describing the "many pedagogical opportunities created by collaborations with movement organizations"); Sameer M. Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CALIF. L. REV. 201, 203-06 (2016) (arguing for progressive reform of legal education emphasizing justice and cogeneration of solutions by lawyers and communities on the ground) [hereinafter Ashar, *Deep Critique*].

[198] *See* Ashar, *Fieldwork and the Political*, *supra* note 197, at 288, 293 (arguing for clinical practice that aims to expose law students to the limits of law and the promise of alternative visions of socio-economic organization from grassroots organizers).

[199] *See*, *e.g.*, Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399, 400-402 (2019) (describing how "[c]linical teaching's signature pedagogical vehicle" fails to "effectively prepare students to address and combat structural or chronic inequality" and how clinical educators should expose students to "integrated advocacy"); Ramzi Kassem & Diala Shamas, *Rebellious Lawyering in the Security State*, 23 CLINICAL L. REV. 671, 675-77 (2017) (describing collaborations with Muslim community organizers in New York against FBI and NYPD surveillance and harassment in the post 9/11 period); Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 CLINICAL L. REV. 775, 776-80 (2017) (describing efforts to infuse critical concepts in human rights and impact litigation in clinical contexts); John Whitlow, *Community Law Clinics in the Neoliberal City: Assessing CUNY's Tenant Law and Organizing Project*, 20 CUNY

But the methodology of movement law is not just for clinical professors, or for professors who formally engage in the "practice of law." There are many forms of solidarity and engagement: paying close attention to the words and actions of social movements, reading and learning from both scholarly histories of left movements and movement toolkits and manifestos articulating their own histories and visions, and above all crediting the generation of those ideas within movement spaces. Movement law scholars should take the time to notice the collective struggle happening around us, or within the areas of law that we study. We should find out what groups are meeting in our local areas, and go to those meetings, or, if not, follow Twitter feeds of collectives of grassroots organizations. We should ask our peers what movements they seek wisdom from or work alongside. We should join in when we are moved to do so. And we must recognize that all of this is just a beginning.

Movement law, then, provides a model for scholars to generate ideas in ways that are in conversation both with other scholars and with social movements. It diversifies the episteme, strategies, and community of ideas collectively building energy and power around social, political, and economic transformation. It allows us to engage explicitly with the inescapable politics of the scholarly and legal enterprise. It is possible and it is being done. In the next part, we explore why it is necessary.

III. Revisiting the Scholarly Stance

In our commitment to working alongside grassroots social movements with particular visions for political, economic, social transformation, movement law may open up questions about what it means to be a legal "scholar" at all, in contrast to other possible identities: activist, movement lawyer, public interest lawyer, public intellectual. But legal scholarship has various traditions of normativity: approaches to scholarship that seek not just to describe the law, legal institutions, and how they play out in the world, but also to critique outcomes and to proscribe how law or legal institutions *should* behave.[200] We agree with Robin West, who, in defending what she terms "impassioned normativity," has argued that legal scholars should "embrac[e] the passionate root of justice, of our understanding of it, and hence of our normative scholarship."[201] Through movement law, we wish to expand modes of generating

L. REV. 351, 352-55 (2017) (describing collaborations with organizers on eviction cases in New York).

[200] Normative legal scholarship is itself a contested terrain, and we do not jump full-on into that debate here. *See* Pierre Schlag, *Normativity and the Politics of Form*, 139 U. PA. L. REV. 801, 808 (1991) ("The normative orientation is so dominant in legal thought that it is usually not noticed."); Robin West, *The Contested Value of Normative Legal Scholarship,* 66 J. LEGAL EDUC. 6, 8 (2016) (describing various critiques of normative legal scholarship and concluding that "[f]or every critique, both inside and outside the academy, one can find its opposite, also forcefully voiced. Legal scholarship does not want for critics.").

[201] West, *supra* note **Error! Bookmark not defined.**, at 16.

normative scholarship in particular ways: alongside grassroots social movements committed to racial, economic, social justice.[202]

In this Part, we address questions and potential criticisms of movement law in relation to traditional notions of what it means to be a legal scholar, recognizing that critical scholars who have come before us have also engaged with many of these questions.[203] Like all methodologies, ours comes with risks: of losing objectivity, lacking rigor, or depending so much on current social configurations that lessons soon evaporate. We recognize these risks, but we defend the methodology as necessary if legal scholars are to work toward undoing the fundamentally undemocratic nature of our political, economic, and social order.

A. Objectivity

Scholarly objectivity is a challenge oft put to scholars who study legal, political, or social change, racial and gender justice. On the one hand, as scholars we all aim for truth rather than opinion.[204] On the other hand, objectivity is perpetually out of our grasp. Sociologist Pierre Bourdieu famously challenged the notion of scholarly objectivity, but urged constant self-reflexivity with regard to our social positions and how those positions influence and reflect our own approaches to what we study.[205]

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[202] In 2013, Martha Minow put together a "field guide" to archetypical forms of legal scholarship. Although her typology is not meant to be exhaustive, it does present a series of eight prominent ways that legal scholars can and do approach their work, including "doctrinal restatements," "recasting projects," "policy analysis," empirical analyses (either that test a theory or explain and assess legal institutions), sociological and historical approaches, and critical projects. And, as she notes, these approaches can be combined. Martha Minow, *Archetypal Legal Scholarship: A Field Guide*, 63 J. LEGAL EDUC. 65, 65-69 (2013) (capitalization altered).

[203] *See supra* Part I.A; *see also* Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443, 459-60, 471 (1996) (examining the relationship between activism and lawyering, from the position of a clinical law professor).

[204] Catharine A. MacKinnon, Essay, *Engaged Scholarship as Method and Vocation*, 22 YALE J.L. & FEMINISM 193, 193–94 (2010) ("Scholarship . . . is ideally imagined to be, in a word, disengaged. Its disengagement is believed to conduce to objectivity, meaning beginning from no preconceived position, taking no sides, pulled by no consequence or advocacy necessity, making no judgments of value.").

[205] *See* Pierre Bourdieu, *The Scholastic Point of View*, 5 CULTURAL ANTHROPOLOGY 380, 381-88 (1990) (explaining how factors like power, position, and prestige interact with forces and stakes unique to the academic community to influence the outcome of academic scholarship); Pierre Bourdieu & Loïc J.D. Wacquant, *The Purpose of Reflexive Sociology (The Chicago Workshop)*, *in* AN INVITATION TO REFLEXIVE SOCIOLOGY 60, 73-99 (1992); *see generally* PIERRE BOURDIEU, HOMO ACADEMICUS, at xi (Peter Collier trans., Polity Press 1988) (1984) (noting that sociologists who wish to "study [their] own world" must "exoticize the domestic").

With this we agree: while objectivity is merely a cover for other concerns, movement law scholars must, like all legal scholars, remain self-reflexive in our work.[206]

Scholarship with normative commitments to social movements is biased. But this aspect of the methodology does not make it stand out. All legal scholarship is biased: inevitably our views of the law are shaped by our underlying moral understandings and commitments, by our experiences and social location. The most revered legal thinkers—those often viewed as objective and unbiased—generated their ideas from their own life experiences in particular institutional contexts,[207] including through funding by and collaborations with groups with explicit political commitments.[208] In this way, what passes as objective can often be regressive. The mantle of objectivity has its own profound status-quo-enhancing implications.[209] Indeed, for well over a century, legal scholars have unearthed ways in which our primary commitments to legal institutions and elites perpetuate social and political hierarchies.[210] These observations have most often come from critical legal scholars, who have embraced bias and subjectivity as inevitable.[211]

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[206] For a discussion of Pierre Bourdieu's idea of self-reflexivity in sociology as applied to the theory-practice divide in lawyering and legal academia, see Nisha Agarwal & Jocelyn Simonson, *Thinking Like a Public Interest Lawyer: Theory, Practice, and Pedagogy*, 34 N.Y.U. REV. L. & SOC. CHANGE 455, 464-67 (2010).

[207] *See* Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 561-66 (1984) (identifying a scholarly tradition of racial exclusion in scholarship on civil rights); J. Skelly Wright, *Professor Bickel, the Scholarly Tradition, and the Supreme Court*, 84 HARV. L. REV. 769, 769-72 (1971) (defining a tradition of scholarly hostility to the Warren court's judicial responses to injustice).

[208] *See*, *e.g.*, Robert Van Horn, *Corporations and the Rise of Chicago Law and Economics*, 47 ECON. & SOC'Y 477, 477-78, 481-87 (2018) (tracing the mutually beneficial relationship between large corporations and law and economics scholars at the University of Chicago in the mid-twentieth century).

[209] *See* Britton-Purdy et al., *supra* note 16, at 1806 (arguing that law and economics-focused legal scholarship in the twentieth century "lost the ability to see certain commitments in our law . . . as either reflecting or calling forth certain kinds of political values, or as taking a side in disputes that were inevitably struggles for power. That move . . . expressed a particular view of power and legitimacy, one that viewed market ordering as tending to diffuse and neutralize power and as earning legitimacy by producing both a wealthy society and an appropriately constrained state.").

[210] *Cf.* Katerina Linos & Melissa Carlson, *Qualitative Methods for Law Review Writing*, 84 U. CHI. L. REV. 213, 213 (2017) ("For over a century, American legal scholars have participated in the realist project, understanding law not as an autonomous, independent system of rules, akin to geometry, but as the product of heated political, economic, and societal conflicts.").

[211] *See, e.g.,* Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, 79 IOWA L. REV. 803, 830 (1994) ("The neutral principles or process that critics seek to enforce against feminists and scholars of color is based on the existence of a scholarly community whose intellectual values are synonymous (majoritarian) and exclusive of the Feminist Voice and the Voice of Color."); *cf.*

We should be as cognizant of our own biases as ever, situated as we are at the dawn of political ferment and change. Our challenge is to approach our scholarship openly: We *are* committed to certain visions of liberation, solidarity, and equality. And we aim to avoid "scholarmush": a combination of descriptive and normative claims that fails to explicitly name its political or moral commitments.[212] We are not claiming that we have always been successful ourselves in making these distinctions. But we have come to believe that they are critical. In this call for transparency in our social and political orientations, we are inspired by "outsider" scholars, including in Critical Race Theory, Feminist Legal Theory, LatCrit, and OutCrit, who have demonstrated the value of a scholarly stance that names itself as directly engaged in the lived realities of the world, in inequality, racism, and patriarchy, in the violence of the law.[213] MacKinnon emphasizes this in searing terms that resonate for us: "to attempt to be truly disengaged is to strain to say so little that one's scholarship weighs nothing at all on the scale of the legal quotidian. What an ambition. Imagine not only what is ossified but what is lost because of it."[214]

In contravention to the common sense in law that the embrace of politics is the end of analysis, we believe it is a beginning. As a result, we do not evade but rather embrace the politics of what we do as scholars, teachers, and lawyers. We believe the politics of law are central questions that scholars should take head on. Embracing the politics of law reorients—arguably reveals—the terrain of analysis, the subjects, objects, and processes of research and solidarity. It allows us to better understand

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Joseph William Singer, *Legal Realism Now*, 76 CALIF. L. REV. 465, 543 (1988) ("Liberal and critical theorists . . . do not disagree about the possibility of generating legitimate moral commitments or normative discourse. We do disagree, in fundamental ways, about how to conceptualize and engage in moral inquiry and conversation.").

[212] Adam J. Kolber, *How to Fix Legal Scholarmush*, 95 IND. L.J. 1191, 1193-94 (2020) (coining the term "scholarmush" and arguing that "[legal] scholars must be more clear, transparent, and rigorous about the extent to which their claims are descriptive as opposed to normative (and what sort of normativity is at issue.)"); *cf.* Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 9 (2002) ("Too much legal scholarship ignores the rules of inference and applies instead the "rules" of persuasion and advocacy. These 'rules' have an important place in legal studies, but not when the goal is to learn about the empirical world.").

[213] *See generally* WILLIAMS, *supra* note 77, at 3-14; Daria Roithmayr, *Guerrillas in Our Midst: The Assault on Radicals in American Law*, 96 MICH. L. REV. 1658, 1663 (1998) (reviewing DANIEL A. FARBER & SUZANNA SHERRY, BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW (1997)); Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323-24 (1989) (defining the term "outsider jurisprudence"); Kim Lane Scheppele, *Foreword: Telling Stories,* 87 MICH. L. REV. 2073, 2074–75 (1989) (describing the methodology of focusing on narrative in legal scholarship as one that brings out the perspectives of outsiders excluded from our reigning understandings of law and legal theory); Valdes, *supra* note 34, at 377-78 n.4 ("These genres of outsider jurisprudence have in common an outsider, and often times critical, perspective vis-à-vis law and society.").

[214] MacKinnon, *supra* note 204, at 201.

inequality and explore new pathways for change in solidarity and in conversation with others outside the academy.

As a scholarly methodology, movement law is not necessarily restricted to collaboration with and learning from left and progressive social movements. Much like movement lawyers, scholars of movement law must be self-conscious about the process through which they choose particular coalitions to support.[215] This process must be grounded by reflection tied not just to movements, but also to larger political commitments. For us, this requires attention to the layers of subordination that structure material realities, and a focus on movements that hope to transform both those layers and those realities.[216]

How one chooses the social movement actors and ideas that match one's political commitments is difficult, in part because the process is so iterative: to be engaged with social movement ideations is so often to be moved to shift one's moral understandings of the world; and to think and write about those understandings in dialogue with movement actors is in turn to co-create new theories of change, and potentially to critique existing methods and ideas on the ground. This is praxis.[217]

This praxis, in turn, requires constant self-reflexivity of the kind Bourdieu described. As part of our position within elite institutions, we risk reinforcing hierarchies even as we name them and try to dismantle them.[218] And, on the other end, accountability to movements must not mean an unquestioning following of those

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[215] *Cf.* Ashar, *supra* note 99, at 1490 (placing "the actions of activists and their lawyers in the fight for immigrant rights within the socio-legal framework of law and resistance").

[216] *See supra* note 11 and accompanying text (describing our commitment to left social movements). The methodology of movement law could potentially be taken up by someone in solidarity with a right-leaning social movement. And yet, because movement law focuses on broadscale transformative possibilities, it is both less likely to happen and less likely to have a formative impact. *Cf.* Farbman, *supra* note 11 at 1937-39 (making similar arguments with respect to his theory of resistance lawyering, for which critical thinking from the left is what "supplies the latent political power to the project of resistance lawyering in the first place").

[217] *See, e.g.,* Bernard Harcourt, *A Dialectic of Theory and Practice*, 12 CARCERAL NOTEBOOKS 19, 19-23 (2016) (describing how Michel Foucault's politics and theories dialectically influenced each other, during the period in which Foucault was involved deeply in the movement effort *Le Groupe d'information sur les prisons* (the Prisons Information Group)). This mandate also evokes organizer Mary Hook's mandate for Black people, which includes being "willing to be transformed in service of the work." Southerners on New Ground, *The Mandate: A Call and Response from Black Lives Matter Atlanta*, at 2:36 (July 14, 2016), https://southernersonnewground.org/themandate/.

[218] *See* PIERRE BOURDIEU, PASCALIAN MEDITATIONS 15 (Richard Nice trans., Polity Press 2000) ("[T]he suspension of economic or social necessity . . . in the absence of special vigilance [by scholars] . . . threatens to confine scholastic thought within the limits of ignored or repressed presuppositions, implied in the withdrawal from the world.")

movements' ideas.[219] Scholars interested in movement law should be vigilant about these concerns through ongoing introspective and outward-looking critique.[220]

To engage in movement law is therefore to write in solidarity with movement actors with particular stances and commitments, and to recognize that solidarity requires reflexive analysis.[221] Critiques of social movements should come from engagement with particular social movement spaces, rather than declarations from afar and on high. Critiques should be borne of a recognition of shared commitments rather than a "gotcha." This should include an awareness of one's own positionality, a question we examine in Part III.C below.

B. Rigor

Like all legal scholarship, movement law aims to engage in rigorous analysis of the law. Scholarship must take care to choose its subject and methods, and engage in those methods with diligence. Analytical rigor in legal scholarship consists of "precise questions, correct frameworks, technical answers, and logical conclusions."[222] One concern with movement law may be that without defined parameters it could veer into something more akin to reporting or opinion writing.[223] In order to maintain rigor, then, scholars engaged in movement law must combine their urgent quest to co-generate ideas alongside social movements with a deep commitment to the slow,

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[219] Scholars of social movements have long been critically engaged with the place of the scholar in relation to the social movements we study. *See* Rubin, *supra* note 8, at 43 (describing the "distinctive theme in Continental social movement scholarship [of] the self-conscious concern with the scholar's own role in the social movements that she studies.").

[220] For a scholarly critique in conversation with movement ideation, see Jamelia N. Morgan, Disability's Fourth Amendment 9, 12 (unpublished manuscript) (on file with the Stanford Law Review) (describing "[t]he erasure of disability in movements" against police violence). *See also Disability Solidarity: Completing the "Vision for Black Lives,"* HARRIET TUBMAN COLLECTIVE, (Sept. 7, 2016), https://harriettubmancollective.tumblr.com/post/150072319030/htcvision4blacklives (criticizing the Movement for Black Lives' Vision for Black Lives for "not once mention[ing] disability, ableism, audism or the unspeakable violence and Black death found at the intersection of ableism, audism, and anti-Black racism").

[221] Indeed, legal scholars with different political commitments can still use our methodology – for example, someone might generate ideas alongside the Tea Party, or even the Alt-Right. That scholarship might suffer from a particular bias, in that one can imagine scholarship that implicitly or explicitly upholds tenets of white supremacy or patriarchy. But such scholarship cannot be rejected simply on the grounds that it is political or aligned with social movements.

[222] Reginald Leamon Robinson, *Race, Myth and Narrative in the Social Construction of the Black Self*, 40 HOW. L.J. 1, 15 n.54 (1996).

[223] For an articulation of the goals of legal scholarship, see Orin S. Kerr, *Blogs and the Legal Academy*, 84 WASH. U.L. REV. 1127, 1128 (2006), stating that the goals include "shed[ing]light in an important and lasting way on the function, purposes, meaning, and impact of the legal system and the role of law in society."

difficult work of producing writing that reflects the nuanced legal and social worlds that we inhabit.

The debate in the early 1990s and beyond over the use of narrative and storytelling in critical legal scholarship is instructive for thinking through rigor. During that period, CRT, feminist legal studies, and other critical traditions used narrative, including first-person narrative, as a device to denaturalize legal and social arrangements that conventional forms of scholarship did not question.[224] Critical scholars endured accusations that their methods lacked rigor,[225] and defended those accusations with renewed methodological commitments.[226] Patricia Williams, for

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[224] *See generally* Scheppele, *supra* note 213, at 2074–75; Kathryn Abrams, *Hearing the Call of Stories*, 79 CALIF. L. REV. 971, 982 (1991) (examining "feminist narrative scholarship as a distinctive form of legal argument."); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2413 (1989) ("Stories, parables, chronicles, and narratives are powerful means for destroying mindset—the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place."); *see also* Derrick Bell, *The Final Report: Harvard's Affirmative Action Allegory*, 87 MICH. L. REV. 2382, 2409 (1989) (telling a hypothetical story about the effect of *Michigan Law Review*'s storytelling issue as his contribution to *Michigan Law Review*'s storytelling issue).

[225] *See, e.g.,* Kennedy, *supra* note **Error! Bookmark not defined.**, at 1801-08 (arguing that critical race theorists are wrong to claim a uniquely valuable perspective for scholars of color—to claim "racial status as an intellectual credential," in Kennedy's words); Richard A. Posner, *The Skin Trade*, NEW REPUBLIC, Oct. 13, 1997, at 40 (reviewing DANIEL A. FARBER & SUZANNA SHERRY, BEYOND ALL REASON THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW (1997)) (critiquing the "identity politics" of the "postmodern left" in legal academia); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 852-53 (1993) (critiquing the "validity" of the forms of narrative storytelling found in feminist legal theory and critical race theory).

[226] For a summary of these critiques, see Kimberlé Williams Crenshaw, *The First Decade: Critical Reflections, or "A Foot in the Closing Door"*, 49 UCLA L. REV. 1343, 1365-70 (2002), describing the "media reports that CRT truly is [a] backward, racist, unsophisticated assortment of half-baked scholarship." *See also* Cheryl I. Harris, *Critical Race Studies: An Introduction*, 49 UCLA L. REV. 1215, 1218 (2002) (describing how "CRT . . . has often been characterized as (or caricatured and reduced to) nothing more than relativism and narratives"); Larry Alexander, *What We Do, and Why We Do It*, 45 STAN. L. REV. 1885, 1888-97 (1993); Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255, 256 (1994) (describing "the sudden, and rather vehement, resistance to legal storytelling"); Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 COLO. L. REV. 683, 683-89 (1992) (arguing that outside scholarship and its storytelling are the future of scholarship); Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229, 1239-1340 (1995) (discussing mainstream legal discourse's rejection of outsider perspectives as related to the universal human experience); Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 VAND. L. REV. 665, 665-76 (1993) (countering Farber and Sherry's assessment of outsider scholarship); Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, 79 IOWA L. REV. 803, 807 (1994)

example, described student editors' requests for her to omit reference to her own race in her scholarship—in service to "principles of neutrality.[227] As Daria Roithmayr explains, to defend narrative in legal scholarship is to make "the radical argument that the choice of which stories are 'accurate,' 'valid' or 'good scholarship' is a political choice, [that] requires the suppression or marginalization of alternative 'counterstories'…."[228]

Just as critical scholars deployed and defended storytelling to advance their arguments, so too do we seek to elevate movement-based narratives that stem from everyday precarity and collective analysis. These movement narratives help denaturalize the status quo and make another world seem within reach. Movement law does not necessarily center narrative. But it often does in part because storytelling is central to what social movements do.

Indeed, a meta-insight of critical scholarship is that judgments of rigor are themselves political.[229] To bring this observation to our own method: those who believe that the rule of law is neutral and objective—separate from our political and social arrangements, from white supremacy, and from gender and class hierarchies—are unlikely to be persuaded by movement law scholarship. And those who believe we live in a robust democracy, who trust our current institutions of governance to represent all people fairly, are unlikely to be sympathetic to grassroots social movements demanding alternative visions. These scholars will likely leave unconvinced that it is possible to judge the rigor of scholarship that situates itself in solidarity with some of those alternative visions.

(defending "the value inherent in Critical Race Theory and Narrative"); Philip C. Kissam, *The Evaluation of Legal Scholarship*, 63 WASH. L. REV. 221, 221-23, 244-51 (1988) (arguing that new pluralism in legal scholarship requires more evolved evaluation methodologies). On the development of measures of rigor, see Susan Bandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. CHI. L. REV. 361, 390 (1996) ("[W]e need some safeguards to ensure that critical reflection supersedes preconscious prejudice, and to ensure equality of treatment."); Francisco Valdes, *Rebellious Knowledge Production, Academic Activism, & Outsider Democracy: From Principles to Practices in LatCrit Theory, 1995 to 2008*, 8 SEATTLE J. FOR SOC. JUST. 131, 138 (2009) (proposing "guideposts" for LatCrit and other outsider scholarship, "rooted in our jurisprudential legacy.").

[227] Williams, *supra* note **Error! Bookmark not defined.**, at 48.

[228] Roithmayr, *supra* note 213, at 1671.

[229] *See, e.g.,* Bandes, *supra* note 226, at 393 (describing "the emptiness of the concepts of empathy and narrative when they are not constrained by extrinsic normative, political, or moral principles"); Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 DUKE L.J. 705, 733 ("[A particular piece of scholarship] can be judged only by reference to a particular research tradition or scholarly paradigm, . . . Yet conclusions at the level of what is valuable or interesting are very often dispositive in deciding which of two articles is better.").

For those who are already on board with movement law's orientation, in Part II we outline the requirements for rigorous work within this method.[230] Moreover, we can imagine work that writes about social movement ideas that is *not* rigorous—perhaps it does not engage adequately with context, or with ideas in movement spaces. Perhaps it does not bring up counterarguments or name difficulties with movement ideation. Perhaps there are not adequate citations to the collective genealogy of ideas, especially to writings of people at the center of struggle. To run through the four moves that we lay out in Part II is, we believe, to see a pathway to rigorous scholarship, as well as to see possible offramps to less rigorous forms of scholarly engagement with social movement visions.

C. Positionality

The self-reflexivity necessary for movement law requires maintaining awareness of one's own position in relation to the social movements one studies. This awareness of positionality is in part about our professional identities—as law faculty, our professional identities shape our experiences, judgments, and scholarship. But it is also about maintaining an awareness of our social locations and how they shape our worldviews in more intersectional ways, including as to our race, class gender, sexuality, disability, and national origin. One can be situated as a clinical or doctrinal teacher, or a budding scholar who has yet to enter a classroom on the other side of the podium. The key is to maintain an awareness of that position and its relationship to one's scholarship. In movement law, this can mean walking a tightrope of both deep engagement and solidarity with movement actors, and the distance required for nuanced scholarship and humble solidarity.

A constant awareness of one's own positionality is necessary because scholars can coopt social movements in unintended ways. There is always the risk that our own position as elites will distort social movement ideas toward legitimation of injustice.[231] As Aziza Ahmed reminds us in the context of reproductive justice struggles, social movements have splintered and sub-movements have formed when faced with elite-driven efforts at law reform.[232] Often "the pull towards mainstream issues and constitutional doctrine prevails."[233] This does not mean that as elites we should

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[230] *Cf.* Edward L. Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 CALIF. L. REV. 889, 889-91 (1992) (describing the need for criteria with which to evaluate different methods of legal scholarship, specific to each methodology).

[231] *Cf.* Lawrence, *supra* note 10, at 381, 387 ("When people's movements successfully challenge and disrupt racist structures and institutions, and contest the narratives of racial subordination, the plunderers will respond with new law.").

[232] *See* Aziza Ahmed, *Social Movements in the Struggle for Redistribution*, L. & POL. ECON. PROJECT: LPE BLOG (Apr. 24, 2019), https://lpeblog.org/2019/04/24/social-movements-in-the-struggle-for-redistribution. In the reproductive justice context, the result was that "issues like HIV that continue to disproportionately impact largely poor, Black, and Latina women are left off of the mainstream reproductive rights agenda." *Id.*

[233] *Id.*

abandon attempts to co-produce dynamic ideation. Instead, we should engage social movements as collaborators, not seers.[234] When there is splintering, we need to make choices with the information and relationships we hold in that moment, without defaulting to frameworks of relegitimation.

We should be mindful and engaged about how our professional and other identities, including race, gender, class, sexuality, and disability, may impact how one shows up in movement spaces, and how those identities shape what it means to engage in solidarity.[235] Questions like how much space to take up, whether one's role is in the background or foreground, are central. Our identities matter, not as signifiers in and of themselves, but as having been formed socially through the interaction of systems of power and wealth that endow some with the presumptions of intelligence, while marginalizing and diminishing others.[236] Stepping forward to make contributions in movement spaces can be risky, but so too can hanging back and only observing and writing. This is the case both when we are engaged in collaborations across identities, as well as when we may be working in the communities from which we ourselves may have come.[237] It is our responsibility to resist habits of intellectual extraction and exploitation.[238]

Collective struggle is a necessary part of building a more just and free future, in part because elite rule is a central problem for democracy. When we do not engage in these collective projects, we have no hope of redistributing power or resources, we

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[234] *See* Ed Sparer, *Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement*, 36 STAN. L. REV. 509, 573-74 (1984) ("The radical law teacher's responsibility is not simply to expose doctrinal incoherencies and build historical accounts. . . It is to point the way to a different kind of practice, one which utilizes that historical account. . . It is a practice located 'out there,' in the world outside the law school, where injustice, legal procedures and programs, incipient protest, and social movement constantly intermingle."); *see also* Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. REV. L. & SOC. CHANGE 369, 377-78 (1982-83) (stating that radical lawyers "build the power of popular movements").

[235] Intersectionality offers an intellectual framework by which social movements integrate its membership and generate power. *See* Sumi Cho, Kimberlé Williams Crenshaw & Leslie McCall, *Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis*, 38 SIGNS 785, 801 (2013) ("One set of questions has to do with how identities, awareness, and transformation are fostered within organizations that attend to a diverse array of issues and power differentials among members."); ERIN MAYO-ADAM, QUEER ALLIANCES: HOW POWER SHAPES POLITICAL MOVEMENT FORMATION (2020) (examining local intersectional alliances within the immigrant rights, queer and trans, and labor rights movements).

[236] *See generally* White, *To Learn and Teach*, *supra* note 70, at 752-54; Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 33-44 (2011).

[237] *Cf.* Julie D. Lawton, *Am I My Client? Revisited: The Role of Race in Intra-Race Legal Representation*, 22 Mich. J. Race & L. 13, 42-50 (2016) (describing the challenges of same-race legal representation).

[238] *See* Zuni Cruz, *supra* note 122 at 233-35 (on scholarly appropriation and the call for non-exploitation).

hoard them for ourselves, we fight for the status quo, sometimes unwittingly. When we do engage collectively and accountably, there are challenges and limits, undoubtedly, to our engagement as elites. But there is greater potential when we take the contradictions head on, when we pay attention to the material conditions of people and the world, and we work in solidarity with people outside of the academy.

IV. Legal Scholarship and Radical Possibility

Even as the long, slow work of organizing continues, this decade's surge of movement activity and grassroots contestation may soon begin to ebb. We can be assured that defenses of the current order—on the white supremacist right, in the diversity and inclusion center, amongst cultural conservatives and business elites—will remain vigorous. We see this dynamic in the aftermath of the killing of George Floyd in Minneapolis. As street protesters pull back from the violent police reaction to demonstrations, police unions are reasserting their power[239] and politicians retreat on early pledges to defund the police.[240] As scholars invested in transforming our political, economic, and social order, what are we to do?[241]

One contribution that we can make is the development of movement law scholarship. We agree with Matsuda's admonition that "since legal scholars will never be the center of any successful movement for social change, if we believe that change is necessary, we must build coalitions with others."[242] However, our lack of centrality does not permit us to abdicate space. It is incumbent on legal scholars to document, critique, and advance grassroots struggle in an era where so many are reinforcing the democratic deficit at the heart of our system.

Movement law facilitates cogeneration of ideas necessary for largescale change. Legal scholars are assimilated into an intellectual universe that assumes its own primacy in debates about the construction and governance of the social. Movement law disrupts our uncritical incorporation into that universe. All three of us—and the scholars we discuss throughout this Article—have found direction and meaning from our engagement with social movement organizations, broadly defined.[243] Our collaborations have allowed us to see aspects of our political, economic, and social

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239 *See* Sam Adler-Bell, *How Police Unions Bully Politicians*, THE NEW REPUBLIC (Oct. 20, 2020), https://newrepublic.com/article/159706/police-unions-bully-politicians-new-york-deblasio (noting multiple examples of police intimidation of elected officials).

240 *See*, *e.g.*, Astead W. Herndon, *How a Pledge to Dismantle the Minneapolis Police Collapsed*, THE N.Y. TIMES (Sept. 26, 2020), https://nyti.ms/2S0hDRJ (discussing the retreat of Minneapolis city council members from their pledge to defund police).

241 *Cf.* HARCOURT, *supra* note 82, at 466-503 (asking "What more am I to do?" and describing how injustice should perhaps be one's primary motivator when engaging with and being on the side of social change).

242 Mari J. Matsuda, *supra* note 52, at 349.

243 *See supra* note 18 and accompanying text.

order that are hidden in legal academic discourse. Our immersion in organizing spaces has given us a lens through which to see people who are often ignored in that discourse. We have sought to integrate movement ideas, strategies, and horizons in our academic work on law and lawyering. We have named movement thinkers and grassroots leaders who have nurtured new ways of knowing and doing. We, in turn, have made modest contributions to those movements in the course of our work with them.

Movement activity has stimulated tectonic rumblings in certain fields of law. In the last decade, organizers and allied scholars are questioning the liberal nationalist underpinnings of immigration law and the ostensible "nation of immigrants" narrative which serves as a cover for colonialism and settlement as well as a system of mass detention and deportation. In criminal law, the Movement for Black Lives and abolitionist organizing have put police violence and impunity—and now the failures of reform—at the center of academic discourse. How might movement law ripple across other fields of law? How might we challenge the restricted scope of center-right academic debate in most fields of law?

When we write to identify and support the horizons of progressive and left movements, we contribute to seeding policy discourse with radical aims and means. Movements are coopted, contained, and channeled when they attempt to translate long-term organizing and mobilizing into policy programs. Elected officials and bureaucracies appear to respond to mobilizations while altering as little as possible. They say that we cannot do what is being demanded by the movement because of conventional interpretations of law. This furthers a form of political austerity that devastates poor and working class people by foreclosing real change. Movement law helps our organizational collaborators protect their most far-reaching aspirations. Rather than scholarship being "pull[ed] by the policy audience,"[244] movement law has the capacity to resist compromise and prevent the dilution of movement programs of structural social change. Movement law can help to sustain policy shifts and make them more politically durable.[245]

When we write alongside movements, we incrementally transform the discourse in which we participate. The lenses provided by social movements have the capacity to change what we study and how we study it. When movement law makes the academy permeable to movement influence, we challenge and alter academic discourse and we transform legal education.[246] It is beyond the bounds of this Article, focused squarely on the production of legal scholarship, to explore the role of social

[244] Austin Sarat & Susan Silbey, *The Pull of the Policy Audience*, 10 L. & POL. 97 (1988).
[245] *See* Rahman & Simonson, *supra* note 133 (on entrenching social change through changes to institutional and policy-making arrangements).
[246] *Supra* note 99.

movements in the transformation of legal pedagogy.[247] However, it is important to note that lawyers are trained to integrate bodies of knowledge that shift over time. When movement law alters bodies of knowledge to incorporate radical grassroots ideation and experimentation, we change how lawyers are trained, how they practice, and with whom. Movements enable lawyers to practice with a new, critical understanding of the plasticity and contestation of legal frameworks in their fields of specialization. Movement law enables law teachers to train cadres of lawyers prepared to support organizers and communities.

Legal scholars and lawyers are not the protagonists in movement struggles for progressive social change.[248] But law has constrained change and facilitated violence against working people, poor people, people of color, migrants, and youth, amongst many others. Legal scholars and practitioners have a responsibility to abate the violence of law and, in the most optimal cases, draw on movement struggle to transform the construction and governance of our polities. Movement law offers a means by which we may uphold our responsibility and make good use of our relative privilege—in service of transformation and redistribution.

Conclusion

By the time that Minneapolis police officer Derek Chauvin killed George Floyd in May 2020 and the country erupted into a national uprising against police violence amidst an ongoing pandemic, sustained social movement contestation had made the ground ripe for demands that took aim at the very structure of our government: defund the police and defend Black lives.[249] The radicality of the demand took many in law and policy circles by surprise. But for scholars who study social movement ideation, campaigns, and prefigurative politics, the surprise lay in only how quickly the idea took hold within the massive uprisings across the country. Because we were already engaged in movement law, we were familiar with abolitionist frameworks to defund and dismantle the police, and to build communities of care and systems of provision. We knew the decades of social movement labor behind it: organizing, debating, political education. We were ready to be a part of this change, to support it, to engage in loving critique that strengthens rather than undermines because it comes from a place of solidarity.

This is the promise and the urgency of movement law: as legal scholars, to situate ourselves in solidarity with social movements is to be a part of long-term, radical, collective rethinkings of social, political, and legal arrangements. And it is also

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[247] We have attempted to do this in prior work, separately and together. *See* Akbar, *Law's Exposure*, supra note 1007; GUERRILLA GUIDES TO LAW TEACHING, *supra* note 200; Ashar, *Law Clinics*, *Fieldwork and the Political*, and *Deep Critique*, *supra* note 202.

[248] Jennifer Gordon, *Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133 (2007).

[249] Akbar, *supra* note 27.

to be ready when the big changes happen, in swells of social movement energy and uprisings whose timing we cannot always predict. As legal scholars, we can be a part of collectively transforming these swells of power-building into durable, structural change. But we can only do so from a stance of solidarity. The choice is ours.