

# Think Nationally, Act Locally: Cities and the Struggle for Social Justice

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## I. INTRODUCTION

### A. What's the Problem?

Liberals and progressives typically look to the national government to make policy aimed at achieving social justice.<sup>1</sup> Historically, that is not without reason. As Professor Kathleen Morris of Golden Gate University School of Law put it in a recent email exchange, social elites reached for the federal level in large part because the states and localities proved themselves to be genuinely terrifying to marginalized folks between 1860 and 1980.<sup>2</sup>

Few things remain constant in the struggle for social justice, however. The liberal and progressive national focus backfired as conservative and right-wing forces built power in state legislatures, enabling them to control national outcomes through gerrymandering and voter suppression and to assert power at the local level by enlisting the police.<sup>3</sup> “In the forty years between 1980 and 2020,” Kathleen adds, “the feds have grown more terrifying, which is why progressives are now turning more attention to the local level.”<sup>4</sup>

### B. Where Did It Come From?

The tendency to nationalize and federalize is also partly a function of the fact that liberal and progressive leadership in the United States has typically come from social elites—well educated at the least and often from relatively affluent classes.<sup>5</sup> Certainly the “Founding Fathers” emerged

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1. See Heather K. Gerken & Joshua Revesz, *Progressive Federalism: A User's Guide*, DEMOCRACY, Spring 2017, at 3. See generally Hofstra Law, *Scholar in Residence: Heather K. Gerken*, YOUTUBE (Feb. 8, 2017), <https://www.youtube.com/watch?v=0CkgiSBZMy0> [<https://perma.cc/4P23-5F57>]; Heather K. Gerken, *Distinguished Scholar in Residence Lecture: A User's Guide to Progressive Federalism*, 45 HOFSTRA L. REV. 1087 (2017).

2. E-mail from Kathleen Morris, Assoc. Professor of L., Golden Gate U. Sch. of L., to author (May 12, 2021, 3:25 PM) (on file with author).

3. David Daley, *Inside the Republican Plot for Permanent Minority Rule*, NEW REPUBLIC (Oct. 15, 2020), <https://newrepublic.com/article/159755/republican-voter-suppression-2020-election> [<https://perma.cc/A6WJ-HPLG>] (explaining that GOP majorities in critical local state legislatures were empowered to redraw congressional district maps to pack as many Black and Democratic voters into as few districts as possible, creating wholesale political resegregation). See Joshua Tait, *Conservatives Love Limited Government – and Aggressive Policing*, WASH. POST (June 3, 2020), <https://www.washingtonpost.com/outlook/2020/06/03/conservative-police-limited-government/> [<https://perma.cc/YG3T-GLP4>].

4. E-mail from Kathleen Morris to author, *supra* note 2.

5. See, e.g., Niall Stanage, *The Memo: Democrats Grapple with 'Elite' Tag*, THE HILL (Dec. 10, 2020, 6:00 AM), <https://www.thehill.com/homenews/campaign/529572-the-memo-democrats-grapple-with-elite-tag> [<https://perma.cc/W77T-Y372>].

from these classes,<sup>6</sup> giving the impression that anything worth doing was federal, and the states and localities were reserved for bumpkins.

On the other hand, leadership originating from the working classes and the poor has been relatively rare.<sup>7</sup> When such leadership has emerged, it has been local. It has also been quickly terminated: organizations of farmers and workers provide powerful examples.

The civil rights movement itself was divided between these two camps: elite, “respectable”<sup>8</sup> professionals and “rebellious” activists focusing on the poor and on the working class.<sup>9</sup> Two graduates of Howard University precisely illustrate the point. Howard Law School graduate Thurgood Marshall carried the agenda of the respectable black middle class to the United States Supreme Court with *Brown v. Board of Education*.<sup>10</sup> Howard University College graduate Stokely Carmichael pursued a rebellious, community-based agenda in Lowndes County, Alabama, founding the first Black Panther Party (BPP).<sup>11</sup> The BPP banner, picked up in Oakland and Chicago, spread to other cities—not other states—and certainly not with action in national forums.<sup>12</sup>

6. *The Founding Fathers*, HISTORY (Mar. 23, 2021), <https://www.history.com/topics/American-revolution/founding-fathers-united-states> [<https://perma.cc/9FBZ-GYKF>] (“The Founding Fathers, a group of predominantly wealthy plantation owners and businessmen . . .”).

7. Nicholas Carnes, *Why Are So Few US Politicians from the Working Class?*, GUARDIAN (Oct. 4, 2018, 5:00 PM), <https://www.theguardian.com/us-news/commentisfree/2018/oct/04/few-us-politicians-working-class> [<https://perma.cc/TB75-XZWM>].

8. See Harold A. McDougall, *Class Contradictions in the Civil Rights Movement: The Politics of Respectability, Disrespect, and Self-Respect*, 1 HOW. HUM. & C.R.L. REV. 45, 50 (2017).

9. For the introduction of the concept of “rebelliousness,” see GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* 66–69 (1992) (describing progressive lawyers who connected with the community and saw it as their source of power as “rebellious”—that is, departing from “regnant,” or reigning norms of the professional establishment). I think that definition could also be applied to anyone working for social justice who sees the community as their power base rather than the establishment.

10. See *Meet the Legal Team Behind Brown v. Board of Education*, NAACP LDF, <https://www.naacpldf.org/ldf-celebrates-60th-anniversary-brown-v-board-education/meet-legal-minds-behind-brown-v-board-education> [<https://perma.cc/BYM7-8GKT>].

11. *Carmichael, Stokely*, STAN. UNIV.: THE MARTIN LUTHER KING, JR. RSCH. & EDUC. INST., <https://kinginstitute.stanford.edu/encyclopedia/carmichael-stokely> [<https://perma.cc/3DV6-3MKQ>].

12. On the distinction between “respectable” and “rebellious,” Jay Gillen says, “the issue is how to be explicit about the economic/material needs of the most disenfranchised

Progressive lawyers have struggled with this problem as well. Sascha Bollag, writing in the *National Lawyers Guild Review*, discusses activism as a legal strategy to promote social justice.<sup>13</sup> Bollag sees activism as an adjunct to legal work, amplifying and intensifying it, and notes that lawyers and legal workers can be effective at community mobilization as well as their chosen professions, as they have particular skill at framing issues.<sup>14</sup> Activism as community mobilization takes its place alongside other strategies, including litigation and legal representation, policy advocacy, legislative advocacy, and organizing and media.

But Bollag falls short of “rebelliousness” in Gerald Lopez’s sense, because he still sees lawyers and legal workers as the framers of the issue and the architects of the strategy.<sup>15</sup> Kathleen Morris observes, there is a really profound “difference between lawyers positioning themselves as masters versus positioning themselves as servants. Lawyers must humble themselves in order to be truly of service, but this is hard, because people become lawyers to feel powerful and some pit power against humility instead of seeing the possibilities when power joins hands *with* humility.”<sup>16</sup>

I see “rebellious” lawyer-community relations as best served when community members organize themselves into small, linked, deliberative democratic groups to make their voices heard. Such groups can provide a strategic and cultural context to our work that is beyond our legal training. How do we reach that outcome?

### C. *What’s Been Tried Already?*

#### 1. *Social Justice Movements With a National Scope*

Today, social justice movements, though not specifically middle class in agenda, typically orient themselves to national forums through social media, news media, magazines, TV and the internet.<sup>17</sup> Without physical

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—that’s the beauty of the Panthers 10-point program . . . [T]he core issue . . . is the life-and-death material precarity of the very poor.” Interview with Jay Gillen (May 12, 2021).

13. Sascha Bollag, *Activism as a Legal Strategy: Promoting Environmental and Social Justice*, 74 NAT’L LAWS. GUILD REV. 181, 181 (2017).

14. *Id.* at 184.

15. Compare *id.* (arguing that lawyers can be more successful activists by organizing strategy), with LÓPEZ, *supra* note 9, at 66–69 (arguing that lawyers need to make “rebellious” efforts).

16. Professor Morris wrote a paper about how legal education should be of service to this democratic moment by helping lawyers position themselves as servants to cities. See Kathleen S. Morris, *Legal Education, Democracy, and the Urban Core*, in LEGAL SCHOLARSHIP FOR THE URBAN CORE: FROM THE GROUND UP 175 (Peter Enrich & Rashmi Dyal-Chand eds., 2019).

17. Kayla Zhu, *From Posts to Protests: How Social Media Makes Social Justice Accessible*, EYEOPENER (Oct. 23, 2020), <https://www.theeyeopener.com/2020/10/from->

support from and accountability to the working class and poor they purport to represent, however, these efforts are easily coopted by funding sources, by politicians, and by media outlets themselves, who determine unilaterally what the public “wants” to hear.

Black Lives Matter (BLM), for example, faces some of these challenges, “experiencing growing pains as it steps into [the] national spotlight.”<sup>18</sup> Fox News launched a campaign against them, calling them a “hate group.”<sup>19</sup>

BLM and other such groups will need to build capacity in local communities if they do not want to have to depend on corporate media to get their message out. Overreliance on the media can be a distraction at best; at worst, it impedes the more important work of grassroots organizing. Social media looks like an attractive alternative, but it does not go deep enough.

In an earlier article I quoted Robin Kelley, author of *Hammer and Hoe*, as follows: “[s]trong community-based organizing really matters. Nowadays there’s so much mobility, so much displacement that [what takes its place is] [v]irtual organizing.”<sup>20</sup> Social media has been “able to mobilize huge numbers of people,” but with virtual organizing alone, “it’s very hard to sustain the day-to-day organizational structure that is required for long-term struggles.”<sup>21</sup>

posts-to-protests-how-social-media-makes-social-justice-accessible/ [https://perma.cc/5GA3-CFDM] (“With our society shifting towards an increasing digital future, the ways social media is wielded by activists can have a significant impact on how much attention and support an issue receives and as a result, how responsive institutions are to demands for change.”).

18. The Associated Press (@AP), TWITTER (Sept. 1, 2015, 4:30 AM), <https://www.twitter.com/AP/status/638675187274280961> [https://perma.cc/G9P4-HKJF].

19. See German Lopez, *There’s Nothing Linking Black Lives Matter to a Texas Cop’s Death. Fox News Did It Anyway.*, VOX (Sept. 3, 2015, 12:30 PM), <https://www.vox.com/2015/9/1/9239643/black-lives-matter-fox-news> [https://perma.cc/S59E-7VAE].

20. Sarah Jaffe, *What a Band of 20th-Century Alabama Communists Can Teach Black Lives Matter and the Offspring of Occupy*, NATION (Aug. 31, 2015), <https://www.socialistworker.org/blog/critical-reading/2015/08/31/lessons-from-alabama-communist> [https://perma.cc/V999-RTAK].

21. *Id.*; see also Adrian Florido, *‘Black Lives Matter’ Activists Meet in Cleveland to Plot Movement’s Future*, NPR (July 23, 2015, 4:39 PM), <https://www.npr.org/2015/07/23/425654428/black-lives-matter-activists-meet-in-cleveland-to-plot-movements-future> [https://perma.cc/249A-Y6YD]. See generally Malcolm Gladwell, *Small Change: Why the Revolution Will not be Tweeted*, NEW YORKER (Sept. 27, 2010), <https://www.newyorker.com/magazine/2010/10/04/small-change-malcolm-gladwell> [https://perma.cc/Q7B6-L6YJ].

Recognizing the need to build a grassroots, organized base, BLM co-founders began holding “one on one or small community/town hall[s] and panels to . . . engage . . . people in a deeper conversation” as early as 2015.<sup>22</sup> Co-founder Opal Tometti indicated that this was exhausting work.<sup>23</sup>

## 2. *Progressive Lawyers in Local Elected Office*

There are a number of legal and political professionals working at the state and local level toward social justice.<sup>24</sup> Their primary focal points include criminal justice, education and health, the environment, housing, and voting. All these issues have national implications.

Let us talk about their work in criminal justice. A key local strategy here has been to increase the number of progressive prosecutors and district attorneys being elected across the country.<sup>25</sup>

Jessica Curtis, a student in my Civil Rights Planning seminar, wrote a paper on the resulting new wave of progressive prosecutors.<sup>26</sup> According to Jessica, progressive prosecutors are not only addressing systemic injustice in our courts and prisons, but they are also collaborating with organizations and community groups fighting for criminal justice reform.<sup>27</sup>

A key player here is Fair and Just Prosecution (FJP), a network of progressive prosecutors sharing information, research and resource materials, technical assistance, and access to national experts.<sup>28</sup> They aim to move beyond incarceration-driven approaches to develop preventive approaches focused on community health and public safety for “all parts

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22. Mychal Denzel Smith, *A Q&A With Opal Tometti, Co-Founder of #BlackLivesMatter*, NATION (June 2, 2015), <https://www.thenation.com/article/archive/qa-opal-tometti-co-founder-blacklivesmatter/> [https://perma.cc/UT26-S4H2].

23. *Id.* All three co-founders have since departed the organization, Patrice Cullors being the last to leave. See *BLM's Patrisse Cullors to Step Down from Movement Foundation*, NBC NEWS (May 28, 2021, 8:17 AM), <https://www.nbcnews.com/news/nbcblk/blms-patrisse-cullors-step-movement-foundation-rcna1060> [https://perma.cc/7SQP-39CZ].

24. See Luz Herrera & Louise G. Trubek, *The Emerging Legal Architecture for Social Justice*, 44 N.Y.U. REV. L. & SOC. CHANGE 355, 357–58 (2020).

25. *The Power of Prosecutors*, ACLU, <https://www.aclu.org/issues/smart-justice/prosecutorial-reform/power-prosecutors> [https://perma.cc/SM39-KNJX].

26. Jessica Curtis, *Can This New Era of Progressive Prosecution Change Our Criminal Justice System?* 4 (unpublished manuscript) (on file with author).

27. *Id.* (citing *Criminal Justice Groups to Create New Training Approaches for Prosecutors to Promote Prevention and Diversion Over Incarceration*, BRENNAN CTR. FOR JUST. (Apr. 26, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/criminal-justice-groups-create-new-training-approaches-prosecutors> [https://perma.cc/M5WH-JYRB]).

28. See *About FJP: Our Work and Vision*, FAIR & JUST PROSECUTION, <https://fairandjustprosecution.org/about-fjp/our-work-and-vision/> [https://perma.cc/TK3K-HYXN].

of our community.”<sup>29</sup> Beginning with fewer than a dozen prosecutor’s offices, the organization now has nearly sixty members.<sup>30</sup>

The FJP is also working with the Brennan Center for Justice to consider the impact of incarceration on individuals struggling with poverty, substance abuse, and mental illness.<sup>31</sup> In this way they hope to facilitate the reentry into society of individuals previously incarcerated, thereby reducing recidivism. In 2019, the Center published a “how-to” manual of practical steps prosecutors can take to transform their offices in this regard, eventually changing the profession overall.<sup>32</sup> In addition, a national coalition of local government officials mounting progressive efforts and projects in policing has also just emerged.<sup>33</sup>

Progressive prosecutors operate inside a criminal justice system that is not designed to keep marginalized people safe, however. The effect and operation of the criminal justice system is instead to protect the affluent mainstream from perceived threats posed by the marginalized themselves.<sup>34</sup>

This is why progressive prosecutors have to make direct contact with the community. Cook County (Chicago, Il) State’s Attorney Kim Foxx put it this way: “I ran [for Cook County state’s attorney] because it’s an office that impacts disproportionately communities like the one I grew up in. The people . . . [elected to] those positions, generally live the furthest away from the problems . . . For so long, we gave the power to people who had the distance and not power to the people who were proximate.”<sup>35</sup>

The scope of issues, of course, goes far beyond criminal justice. In a recent talk, Washington, DC District Attorney Karl Racine highlighted

29. *Id.*

30. *See id.*

31. BRENNAN CTR. FOR JUST., *supra* note 27.

32. *See* Curtis, *supra* note 26, at 15 (citing FAIR & JUST PROSECUTION, 21 PRINCIPLES FOR THE 21ST CENTURY PROSECUTOR 3–13 (2018)).

33. *See Young Elected Officials Share Black Lives & Policing Resource Portal to Push Activism, Reimagine Public Safety Nationwide*, PEOPLE FOR THE AM. WAY FOUND. (July 13, 2020), <https://www.pfaw.org/press-releases/young-elected-officials-share-black-lives-policing-resource-portal-to-push-activism-reimagine-public-safety-nationwide/> [<https://perma.cc/G5HX-QZJJ>].

34. *See* Gyasi Lake, *There’s No Such Thing as a “Progressive Prosecutor” in a System Designed to Criminalize Blackness*, BLACK AGENDA REP. (July 7, 2019), <https://blackagenda.com/theres-no-such-thing-progressive-prosecutor-system-designed-criminalize-blackness> [<https://perma.cc/FTB4-LZ3R>].

35. Kim Foxx, POWER IN PLACE (Aug. 10, 2021), <http://www.powerinplaceproject.com/summer-2020/stories/2021/8/10/kim-foxx> [<https://perma.cc/GR5D-XLDY>].

consumer protection,<sup>36</sup> child support,<sup>37</sup> public safety,<sup>38</sup> worker rights,<sup>39</sup> tenant resources,<sup>40</sup> and “jobs & partner” opportunities<sup>41</sup> as high priorities. Racine’s office also looks at affordable housing, tenants’ rights, juvenile and restorative justice, and a violence interruption program called “Cure the streets” that employs ex-offenders.<sup>42</sup>

Professor Morris’ work looks at local governments across the country using their offices to “protect marginalized folks” in similar fashion.<sup>43</sup> Professor Morris invited me to a webinar sponsored by the Young Elected Officials (YEO) collaborative, aiming to network young black and minority mayors and elected officials in one hundred cities. Another new group, ARENA-RUN, “convene[s], train[s], and support[s] the next generation of [progressive] candidates and campaign staff.”<sup>44</sup>

YEO, in time, could challenge the American Legislative Exchange Council (ALEC). Like the YEO, ALEC is also a coalition of elected officials<sup>45</sup> but with two important differences. First, ALEC is a coalition of state legislators. Second, it operates on the extreme right of the political spectrum, sponsoring “model” legislation promoting gun rights and restricting the right to vote, for example.<sup>46</sup>

Opal Tometti, speaking from the social movement side, emphasized that “[p]olice are only one aspect. . . . [We must also look at] things like the immigration system . . . the education system . . . health care . . . the attacks

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36. See *Q&A: DC Attorney General Karl Racine Talks Consumer Privacy*, PRIV. ADVISOR (Int’l Ass’n Priv. Pros.) Apr. 26, 2016, at 1.

37. See *Child Support Services*, OFF. OF THE ATT’Y GEN. FOR THE D.C., <https://oag.dc.gov/child-support-services> [<https://perma.cc/7W63-V54R>].

38. See *Public Safety*, OFF. OF THE ATT’Y GEN. FOR THE D.C., <https://oag.dc.gov/public-safety> [<https://perma.cc/ZMJ7-N8YW>].

39. See *Worker Rights*, OFF. OF THE ATT’Y GEN. FOR THE D.C., <https://oag.dc.gov/worker-rights> [<https://perma.cc/3ES7-4M2G>].

40. See *Tenant Resources*, OFF. OF THE ATT’Y GEN. FOR THE D.C., <https://oag.dc.gov/tenant-resources> [<https://perma.cc/6HSA-KPH9>].

41. See *Jobs & Partner Opportunities*, OFF. OF THE ATT’Y GEN. FOR THE D.C., <https://oag.dc.gov/jobs-partner-opportunities> [<https://perma.cc/9VWJ-E9S7>].

42. *Cure the Streets, OAG’s Violence Interruption Program*, OFF. OF THE ATT’Y GEN. FOR THE D.C., <https://oag.dc.gov/public-safety/cure-streets-oags-violence-interruption-program> [<https://perma.cc/9R7W-NDVQ>].

43. Kathleen S. Morris, *Cities Seeking Justice: Local Government Litigation in the Public Interest*, in *HOW CITIES WILL SAVE THE WORLD: URBAN INNOVATION IN THE FACE OF POPULATION FLOWS, CLIMATE CHANGE AND ECONOMIC INEQUALITY* 189 (Ray Brescia & John Travis Marshall eds., 2016).

44. ARENA, <https://arena.run/> [<https://perma.cc/23LY-WSL8>].

45. *About ALEC*, ALEC, <https://www.alec.org/about/> [<https://perma.cc/5VJY-JDW6>].

46. Nancy Scola, *Exposing ALEC: How Conservative-Backed State Laws Are All Connected*, ATLANTIC (Apr. 14, 2012), <https://www.theatlantic.com/politics/archive/2012/04/exposing-alec-how-conservative-backed-state-laws-are-all-connected/255869/> [<https://perma.cc/P8RH-JBE5>].

on labor unions and what that has done to the standard of living, the employability of our people, the kind of wages that we are making, and the benefits [we can secure]. That to me is actually violence that's sanctioned by the state. . . . [We must] continue to rise up and fight back."<sup>47</sup>

How might this range of issues be addressed, from the standpoint of national social justice movements, on the one hand, and local, progressive elected lawyers and politicians on the other? I submit that a useful way to approach this might be to engage law students as interns to connect professional officeholders and community organizers, doing the necessary legal research<sup>48</sup> but also aiding in the needed community organizing and outreach—a task Opal Tometti described as “a lot of freaking work.”<sup>49</sup>

## II. VERNACULARIZING THE LAW, REBELLIOUSLY

The San Francisco Affirmative Litigation Project (SFALP) partners Yale Law School clinics with the San Francisco City Attorney's Office.<sup>50</sup> Students work directly with deputy attorneys in the office to develop public interest lawsuits that address “problems with local dimensions but national effects.”<sup>51</sup> These include issues of consumer protection, civil

47. Smith, *supra* note 22.

48. There is also social research to be done. I was fortunate enough to connect with Omolara Fatiregun, whose website and project, Thrive!, offers local governments an algorithm by which to do an “equity audit” of their budgets, comparing their program expenditures with programs that have worked—or not worked—in the past. See *Omolara Fatiregun*, HARV. KENNEDY SCH.: SICI, <https://sici.hks.harvard.edu/people/omolara-fatiregun/> [<https://perma.cc/FY5D-UXHC>]. A PhD candidate at Harvard's Graduate School of Education, her Thrive! project just won a Harvard President's Innovative Challenge Award for Social Impact. See Alex Parks, *13 Ventures Receive Top Prizes in President's Innovation Challenge*, HARV. GAZETTE (May 6, 2021), <https://news.harvard.edu/gazette/story/2021/05/13-ventures-receive-top-prizes-in-harvard-presidents-innovation-challenge/> [<https://perma.cc/V8HH-9LE7>]. She will be honing Thrive! on a fellowship to the Aspen Institute in Washington Fall 2021. *Omolara O. Fatiregun: Resident Fellow, Program on Philanthropy and Social Innovation*, ASPEN INST., <https://www.aspeninstitute.org/our-people/omolara-o-fatiregun/> [<https://perma.cc/XG23-9WN8>].

49. See Smith, *supra* note 22.

50. See *YLS Partners with San Francisco City Attorney and Boalt Law School in Affirmative Litigation Working Group*, YALE L. SCH. (Dec. 19, 2006), <https://law.yale.edu/yls-today/news/yls-partners-san-francisco-city-attorney-and-boalt-law-school-affirmative-litigation-working-group> [<https://perma.cc/9Q2P-VTZS>].

51. *SF City Attorney Discusses Local Advocacy with National Impact*, YALE L. SCH. (Mar. 23, 2018), <https://law.yale.edu/yls-today/news/sf-city-attorney-discusses-local-advocacy-national-impact> [<https://perma.cc/7ZD6-BR85>].

rights, and public health.<sup>52</sup> Some of the Project's most recent cases have focused on problems as diverse as climate change; same-sex marriage in California; the protection of sanctuary cities under the Trump administration; and the damages caused by the lead paint industry.<sup>53</sup> The clinic provides a model for what law schools can do from a city government base.<sup>54</sup>

SFALP's impact could be strengthened by expanding their partnerships with local district attorney's offices to include well-organized community groups in the cities in which the project operates. To engage effectively and robustly with such community groups, SFALP and its cognate projects in municipalities around the country would need to make some adjustments to their curriculum and their practice, considering ways to promote "rebellious" lawyering as well as to engage with community groups in "vernacular" exchange.

### A. *Rebellious Lawyering and Law Study*

I have elsewhere outlined how law professors and students, as well as lawyers, can proceed rebelliously. The notion of rebellious lawyering, of course, originates with Gerald López.<sup>55</sup> López maintains that relating more authentically and vigorously with the community as a partner rather than simply as a client is the best way for progressive lawyers to challenge the established order.<sup>56</sup>

But how to *make* that connection to the community? In my *Journal of Legal Education* article,<sup>57</sup> I suggested that law professors might prepare their students for this kind of practice by creating off-campus experiential learning opportunities that connect students not only with "rebellious," "cause" lawyers but also directly with social movements, exposing them to the insights, problem assessment, and problem-solving skills social movement organizers develop in their own practice.<sup>58</sup> Through such

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52. *See id.*

53. *See San Francisco Affirmative Litigation Project: About Us*, YALE L. SCH., <https://law.yale.edu/sfalp/about-us> [<https://perma.cc/UB6V-49V2>].

54. *See id.*

55. *See* LÓPEZ, *supra* note 9, at 68–69.

56. Harold McDougall, *The Rebellious Law Professor: Combining Cause and Reflective Lawyering*, 65 J. LEGAL EDUC. 326, 326 (2015).

57. *See id.*

58. *Id.* at 327 (first citing James M. Saslow, *Losing Our Faculties*, ACADEME, May-June 2012, at 47, 47 ("[W]hat is at stake . . . is, quite starkly, the nature of our still nominally democratic society."); and then citing Angelo N. Ancheta, *Community Lawyering*, 81 CALIF. L. REV. 1363, 1398 (1993) ("[C]ommunity lawyers . . . must remind themselves that they are part of the community for which they work. . . . [So] [p]ersonal empowerment can go hand-in-hand with . . . client empowerment.")).

“rebellious” service learning opportunities, we can help bridge the gap between university and community, for ourselves as well as for our students.<sup>59</sup>

Using class discussions to prepare them for their encounters in the community, participants would plan their work and reflect upon the work they have already done.<sup>60</sup> To organize student work outside the classroom, their teachers would need to establish ongoing relationships with the lawyers, organizers, and staff with whom the students will have contact.<sup>61</sup> Vernacularization is an important part of that process.

### *B. Vernacular Exchange*

Professor Sally Engle Merry has written a great deal about “vernacularization,” a feminist strategy emanating from the women’s movement.<sup>62</sup> Activists “vernacularize” women’s human rights by using local vocabulary and syntax to introduce these cosmopolitan concepts to local groups for use in local settings.<sup>63</sup> As local familiarity with and understanding of women’s human rights grows, the corresponding norms become part of the everyday speech of the communities engaged. Thus, the vernacularization project seeks to make human rights discourse part of the language and folkways of the broad base of the population, enlisting them in the project and building power from below.<sup>64</sup>

The dialogue is two-way, however. As local actors adapt human rights tools and language to fit and work in local culture, they also change the larger cosmopolitan discourse, embedding their own indigenous values within it. Indeed, the term “vernacular” itself derives from a Latin term

59. McDougall, *supra* note 56, at 330.

60. *Id.* at 332. Professor Kathleen Morris has also founded “We The Cities,” a non-profit organization affiliated with Golden Gate University that matches Golden Gate University Law School students in upper division research seminars with newly-elected progressive leaders of city governments, providing law and policy research support to the leaders under Prof. Morris’ guidance. E-mail from Kathleen Morris, Assoc. Professor of L., Golden Gate Univ. Sch. of L., to author (Sept. 26, 2021, 2:22 PM) (on file with author). At semester’s end, the students present their research to their clients orally and in writing. Prof. Morris is working now to expand the project to other law schools. *Id.*

61. Dominic T. Moulden, *Is Gentrification a Municipal Crime?: Reflections and Strategies on “Urban Activism: Staking Claims in the 21st Century City,”* RADICAL HOUS. J. 277, May 2021, at 277, 284–85. *Cf.* Duncan Kennedy, *Legal Education as Training for Hierarchy*, reprinted in THE POLITICS OF LAW 54, 57 (David Kairys ed., 3d ed. 1998).

62. *See, e.g.*, Sally Engle Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, 108 AM. ANTHROPOLOGIST 38, 39 (2006).

63. *Id.* at 38–40, 49.

64. *See id.* at 41.

meaning “native to a country.”<sup>65</sup> It refers not only to language but to an entire way of life, a people’s or a community’s unique way of solving problems and the customs and artifacts they create as they do so, their styles of work, and their forms of organization.<sup>66</sup>

The entire community participates—past, present, and future—and now the students will participate as well.<sup>67</sup> Thus students engaging in “rebellious” lawyering and law study, in dialogue with members of the lay community, add their own insights, problem-solving skills, and experiences to the conversation. Students as well as community members are thus enriched.

In the next section, we will examine how grass-roots organizations capable of operating in partnership with progressive law projects might emerge, providing professionals and students with authentic connections to the community, insuring accountability to that community as well.

### C. Organizing for Social Justice

I believe rebellious, vernacularizing exchanges are best carried on in intimate, small-group settings in which we can find the courage to reach out and build real connection, at a real human scale. The trick is to then arrange these small groups into patterns that enable them to consider the social problems that confront them without employing hierarchy to do so.

We will see that to accomplish this, the small groups are linked into federated concentric circles, represented by delegates to engage larger and larger numbers of people in small-group meetings. The delegates carry directives from small committees and councils to larger constituencies, called “assemblies,” that surface and nurture local community values while “vernacularizing” legal rights. Federated, the small groups would constitute parallel structures that could hold larger government and business organizations accountable through voting, boycotts, and organizing. They would be a force to be reckoned with.

The process in the community would begin by organizing at the neighborhood level, progressively linking up through a series of residents’ assemblies. There are few analysts who have considered this strategy

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65. *Vernacular*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/vernacular> [<https://perma.cc/6ESG-CZPL>].

66. See, e.g., Harold A. McDougall, *Reconstructing African American Cultural DNA: An Action Research Agenda for Howard University*, 55 HOW. L.J. 63, 68 (2011).

67. See Harold A. McDougall, *Cultural DNA: Bringing Civic Infrastructure to Life*, HUFFPOST (July 10, 2012, 9:31 AM), [https://www.huffpost.com/entry/animating-citizens-assembly\\_b\\_1656586](https://www.huffpost.com/entry/animating-citizens-assembly_b_1656586) [<https://perma.cc/FQ8N-5ZSP>]; McDougall, *supra* note 66, at 85–86.

more carefully than Murray Bookchin.<sup>68</sup> In a summary of his essays, we find him advising us to enter organizing with an understanding that the ultimate goal is “a conscious reconstruction of our relationship to each other and the natural world.”<sup>69</sup>

This cannot be achieved by protest alone. As important as a politics of protest may be, it is not enough. A social order “based on growth, production for its own sake, hierarchy, classes, domination, and exploitation” cannot be changed simply by moral suasion or individual action.<sup>70</sup> Such an order has learned to use partial, temporary concessions to deal with ephemeral insurgencies.<sup>71</sup> At the very least, protesters must “confront official power with popular power, even in incipient form . . . .”<sup>72</sup>

On the other hand, simply taking over existing political institutions is not sufficient either. Granted, formal “political entities” are part of the strategy.<sup>73</sup> Ultimately, activists should seek to “reclaim the public sphere for the exercise of authentic citizenship” however, moving beyond the “bleak cycle” of party politics that masquerades as real public engagement.<sup>74</sup>

This strategy, that Bookchin calls “libertarian municipalism,”<sup>75</sup> undergirds protest and community control of municipal government with organized, neighborhood-based, grassroots power. It aims to “transform and democratize city governments, to root them in popular assemblies, to knit them together along confederal lines, [and] to [create] a regional economy along confederal and municipal lines.”<sup>76</sup>

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68. See generally MURRAY BOOKCHIN, *THE NEXT REVOLUTION: POPULAR ASSEMBLIES AND THE PROMISE OF DIRECT DEMOCRACY* (Debbie Bookchin & Blair Taylor eds., 2015).

69. *Id.* at 77.

70. *Id.* at 41.

71. *Id.* at 191–92.

72. *Id.* at 170–72 (“Demonstrations are mobilizations of sizable numbers of serious people who, in taking to the streets, intend to let the authorities know that they earnestly oppose certain actions by the powers-that-be. Reduced to . . . [mere] antics, [however,] they become self-deflating forms of entertainment. As such, they constitute no challenge to the authorities . . . . Without the gravitas that commands respect—and, yes, the discipline that reveals serious intentionality—demonstrations and other such manifestations are worse than useless; they harm their cause by trivializing it.”).

73. *Id.* at 174, 186.

74. *Id.* at 84.

75. *Id.* at 64.

76. *Id.* at 93.

It thus seeks to engage the community in the economic and environmental as well as the political decisions that affect them.<sup>77</sup> The community thus begins to reach for an equilibrium or “social ecology.” This bespeaks a community-based society, “oriented toward meeting human needs, responding to ecological imperatives, and developing a new ethics based on sharing and cooperation.”<sup>78</sup> It uses “local and regional resources, implementing ecotechnologies, rescaling human consumption along rational—indeed, healthful—lines, and emphasizing quality production that provides lasting—instead of throwaway—means of life.”<sup>79</sup>

#### D. Local Assemblies

The process would begin with “popular neighborhood and town assemblies—even if they have only moral functions at first—and electing town and city councilors that advance the cause of these assemblies and other popular institutions.”<sup>80</sup> The Jackson People’s Assembly provides a contemporary example.

The Jackson Mississippi People’s Assembly has a formal dimension as an alliance of political parties, unions, churches, and civic organizations that lobbies local government for progressive policies. During times of crisis, however, the Assembly expands to engage the community directly, acting as an independent voice to defend such policies with direct action and social protest.

According to Ko Bragg, writing in the Jackson Free Press, The Jackson People’s Assembly “flips government structure on its axis by funneling policies from the bottom to the top, using the people’s demands as a way to influence laws, ordinances and policies, and not the other way around.”<sup>81</sup>

This disrupts the default setting in which laws, ordinances, and policies emerge from lobbying by those who pay for elections, followed by bought politicians using the power of government to manage the broad base of the population.<sup>82</sup> Going even further, the Assembly seeks to influence not

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77. *Id.* at 72, 77, 90 (explaining that this does not mean “centralization into state-owned ‘nationalized’ enterprises on the one hand or . . . ‘worker-controlled’ forms of collectivistic capitalism on the other.”).

78. *Id.* at 85.

79. *Id.* at 71.

80. *Id.* at 92.

81. See Ko Bragg, *Hot and Collective: Inside the People’s Assembly*, JACKSON FREE PRESS (Dec. 6, 2017, 12:05 PM), <http://www.jacksonfreepress.com/news/2017/dec/06/hot-and-collective-inside-peoples-assembly/> [https://perma.cc/ED2C-Q2MC].

82. See Kali Akuno, *People’s Assembly’s Overview: The Jackson People’s Assembly Model*, NAVIGATING THE STORM (Nov. 17, 2014, 10:37 AM), <http://navigatingthestorm.blogspot.com/2014/11/peoples-assemblys-overview-jackson.html> [https://perma.cc/23Z3-MWG8].

only government policy, but also the jurisdiction's economic, social, and cultural order.<sup>83</sup>

A “Democratic Visioning Committee” organized the first assembly meeting soon after Chokwe Antar Lumumba was elected Mayor in November 2017.<sup>84</sup> This “A-team”<sup>85</sup> laid out the Mayor's vision for the city at the meeting but stressed that the ultimate drivers of the process would be Assembly participants themselves.<sup>86</sup>

The Assembly's contemporary history goes back to the days of the Student Nonviolent Coordinating Committee (SNCC) and its work in Mississippi in the 1960s.<sup>87</sup> Kali Akuno, in a blog for the New Afrikan People's Organization and the Malcolm X Grassroots Movement, traces its roots back considerably further, however, to clandestine prayer circles organized by African slaves, to “Negro Peoples Conventions” emerging at the start of Reconstruction, to the Mississippi Freedom Democratic Party (MFDP) in which SNCC had a hand.<sup>88</sup> He does not mention its direct connection with the Republic of New Afrika (RNA),<sup>89</sup> a militant organization which was involved in several shoot-outs with the FBI. Antar Lumumba's father, former mayor Chokwe Lumumba, was one of the central leaders.<sup>90</sup>

Akuno places the Jackson People's Assembly along a spectrum of community engagement ranging from the “United Front” or “Alliance-based” Assembly to the Constituent Assembly to the Mass Assembly.<sup>91</sup> The “Alliance-based” Assembly is “populated and driven by formally organized

83. That is vernacularizing. It is not a common approach for municipal government. *See id.*

84. *See Bragg, supra* note 81.

85. *See id.* The A-team is led by the mayor's chief of staff, Safiya Omari and Akil Bakari, the co-chair of the mayor's transition team. *Id.* Bakari is also part of the Malcolm X Grassroots Movement, started by the mayor's father, former Mayor Chokwe Lumumba, which seems to have its origins in the Republic of New Afrika. *Id.*

86. *See id.*

87. *See Akuno, supra* note 82.

88. *See generally*, Kali Akuno, *The Jackson-Kush Plan and the Struggle for Black Self-Determination and Economic Democracy*, NAVIGATING THE STORM (May 23, 2012, 11:42 AM), <http://navigatingthestorm.blogspot.com/2012/05/tht-jackson-kush-plan-and-struggle-for.html> [<https://perma.cc/6DN3-JDYT>].

89. *See id.*

90. *See How The Vice President of New Afrika Became Mayor of Jackson*, NPR: CODE SWITCH (Mar. 12, 2014, 11:14 AM), <https://www.npr.org/sections/codeswitch/2014/03/12/289424285/how-the-vice-president-of-new-afrika-became-mayor-of-jackson> [<https://perma.cc/RYZ2-8JY7>].

91. Akuno, *supra* note 82.

entities (i.e., political parties, unions, churches, civic organizations, etc.).”<sup>92</sup> The Constituent Assembly is a “representative, [but] not a direct democratic body.”<sup>93</sup> In Akuno’s view, the Mass Assembly is the strongest example of people’s democracy.<sup>94</sup> It usually arises in times of crisis and is typically “all-consuming” and “short-lived . . . .”<sup>95</sup>

According to Akuno, The Jackson People’s Assembly has a partially mass<sup>96</sup> and a partially constituent<sup>97</sup> dimension. In its constituent phase, it lobbies for and defends progressive policies emerging from the Mayor’s office.<sup>98</sup> However, during times of crisis, the Assembly tends to take on more of a mass character, leading to its ultimate emergence as a permanent mass organization.<sup>99</sup>

The Jackson People’s Assembly has a core team, the People’s Task Force, composed of committees organized around general questions and issues emerging from the “event” of the Assembly itself.<sup>100</sup> The Task Force handles “the process of the Assembly”—strategy, planning, timelines, goals, and deliverables.<sup>101</sup> The Assembly’s institutional manifestation emerges from the “combined social weight of the Assembly’s events, processes, actions, and social outcomes,” but its real work is carried on by the core team.<sup>102</sup> In a twist, the Task Force is directly elected and is subject to recall—with due process, thus introducing the principle of subsidiarity.<sup>103</sup>

Akuno sums up with a broad view of possible Assembly functions.<sup>104</sup> In periods of relative stability, it focuses on “positional” reforms such as the Citizens Review or Police Control Boards and “low to mid-level autonomous projects” such as economic cooperatives.<sup>105</sup> If progressive forces gain strength, an Assembly can push for structural reforms such as constitutional changes and expanding the power and reach of cooperatives. As they grow stronger, they can create extensive zones of “self-rule” and

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92. *Id.*

93. *Id.*

94. *See id.*

95. *Id.*

96. *See id.* (explaining that the goal is to engage at least one fifth of the population).

97. *See id.* For example, residents are to be organized in each of the city’s seven wards. *See Akuno, supra* note 88.

98. *See Akuno, supra* note 82.

99. *See id.*

100. *Id.*

101. *Id.*

102. *See id.*

103. *See id.*

104. *See id.*

105. *Id.*

“autonomous production.”<sup>106</sup> On the other hand, if progressive forces are in retreat, an Assembly can help defend gains already won.

### *E. Confederation*

The next step after creating an assembly like Jacksons’, in Bookchin’s terms, would be “confederation”—creating councils of delegates elected from “popular face-to-face democratic assemblies, in the various villages, towns, and even neighborhoods of large cities.”<sup>107</sup> This stage introduces “democratic and truly communitarian forms of interdependence.”<sup>108</sup>

Policy is made at the assembly level,<sup>109</sup> administration and implementation of such policies takes place in the councils of networked delegates from the assemblies.<sup>110</sup> Councilors coordinate policies that are already decided upon at the base level, presenting any conflicts between policies made in the different assemblies for resolution by “majority vote at the base.”<sup>111</sup> Parochialism involving human rights violations, or “ecological mayhem,” can thus be checked “not only by the compelling realities of economic interdependence but by the commitment of municipal minorities to defer to the majority wishes of participating communities.”<sup>112</sup>

Note, councilors do not make policy, as do representatives in republican systems of government.<sup>113</sup> Exceeding that authority would replicate the kind of “professional” detachment from the will of the people that existing government exhibits, and that assemblies seek to avoid. Providing fail-safe protection against councilors misappropriating such power—becoming “bureaucrats”<sup>114</sup>—the delegates are strictly responsible to the assemblies that chose them and can be recalled at any time.<sup>115</sup> Members can also

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106. *Id.* (providing the example of the Zapatista movement in Chiapas, Mexico from 1994 until the mid-2000s).

107. BOOKCHIN, *supra* note 68, at 74.

108. *Id.*

109. *See id.* at 88.

110. *See id.* at 75.

111. *Id.* at 183.

112. *Id.* at 88.

113. *Id.* at 75 (“Their function is thus a purely administrative and practical one, not a policymaking one like the function of representatives in republican systems of government.”).

114. *Id.* at 77.

115. *Id.* at 75.

demand a full accounting of a confederal body's practices whenever they wish.<sup>116</sup>

Libertarian municipalism, “structured institutionally around the restoration of power by municipalities,”<sup>117</sup> could grow to a fairly large scale. It contemplates confederation not only in towns and villages but also in much larger contexts, in such “gigantic urban areas” as New York City, Montreal, London, and Paris.<sup>118</sup>

Even so, Bookchin envisions such large-scaled cities being “ultimately . . . parceled into smaller cities and decentralized to a point where they are once again humanly scaled communities, not huge and incomprehensible urban belts.”<sup>119</sup> In these very large urban agglomerations, neighborhoods would be grouped to create a number of reasonably-sized federations, working towards the physical as well as the institutional decentralization of the megalopolis itself.<sup>120</sup>

Bookchin sees these confederations, based at the neighborhood level, as truly localizing democracy, giving power directly to the people.<sup>121</sup> Localized democracy would then become a permanent feature of society, grounded in popular neighborhood and town assemblies and managing “a municipalized economy.”<sup>122</sup>

Such locally based movements, using their home cities<sup>123</sup> as launching pads for progressive action could be leavened by partnerships with law schools and progressive prosecutors and local officials. They could eventually link up to assert power at state and regional<sup>124</sup> levels and finally form national alliances.<sup>125</sup>

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116. *Id.* at 184.

117. *Id.* at 86.

118. *Id.*

119. *Id.* at 50.

120. *See id.* at 86–87.

121. *Id.* at 80–82 (“[A] city hall in a town or city is not a capital in a province, state, or nation-state. Unquestionably, there are now cities that are so large that they verge on being quasi-republics in their own right. One thinks, for example, of such megalopolitan areas as New York City and Los Angeles. . . . In a very real sense, these highly populated, sprawling, and oversized entities must ultimately be broken down institutionally into municipalities that are scaled to human dimensions and that lend themselves to participatory democracy.”).

122. *Id.* at 63, 85 (“[It is] a return to the word’s original Greek meaning as the management of the community, or polis, by means of direct face-to-face assemblies of the people in the formulation of public policy and based on an ethics of complementarity and solidarity.”).

123. *See generally* GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS (1999).

124. *See generally* GERALD E. FRUG & DAVID J. BARRON, CITY BOUND: HOW STATES STIFLE URBAN INNOVATION (2008).

125. *See generally* BOOKCHIN, *supra* note 68.

## III. HOW WILL WE MEASURE PROGRESS?

ONE DC is an example of how such an effort begins. It is a city-wide movement in the District of Columbia that is multi-national, multi-ethnic, multi-gender, and multi-class. It seeks to create “truly affordable housing, sustaining work, and wellness for all in DC.”<sup>126</sup> The organization engages in community organizing, education and training, advocacy, and nonviolent direct action.<sup>127</sup> They practice as well as promote participatory democracy.<sup>128</sup> At the same time, they are building parallel structures such as economic cooperatives, community loan funds, and community land trusts.<sup>129</sup> All decision-making is by consensus.<sup>130</sup>

Bookchin cautions that such movements begin slowly, however.<sup>131</sup> ONE DC Organizer Dominic Moulden echoes Bookchin’s cautions, expressing his concern that “for the next 50 years of organizing organizers will want rapid change; but people do not change rapidly, especially at their core.”<sup>132</sup>

This calls into mind Olli Tammilehto’s notion of “phase shifts” as a way of charting the progress of movements and organizations dedicated to social justice.<sup>133</sup> Tammilehto talks about our deeply human selves, uncomfortable with hierarchy.<sup>134</sup> I will call that our *cooperative* self. It sharply contrasts with our *hierarchal* selves that feed bullying, war, racism, and patriarchy.<sup>135</sup> Remember, hierarchy is a social construct, not

126. *The People’s Platform Manifesto*, ONE DC, <https://www.onedonline.org/peoplesplatform> [<https://perma.cc/7U5F-HNZ6>].

127. *See About ONE DC*, ONE DC, <https://www.onedonline.org/about> [<https://perma.cc/7Q77-9M4Y>].

128. *See id.*

129. *See* ONE DC, *supra* note 126.

130. *See Shared Leadership*, ONE DC, <https://www.onedonline.org/sharedleadership> [<https://perma.cc/TZM9-THUC>].

131. *See* BOOKCHIN, *supra* note 68, at 64, 89.

132. E-mail from Dominic Timothy Moulden, Senior Fellow, Cmty. Org. & the Democratic Econ. in the African and Latinx Diaspora, to author (May 12, 2021, 11:48 AM) (on file with author).

133. *See* Olli Tammilehto, *The Present is Pregnant with a New Future*, in SOCIAL ECOLOGY AND THE RIGHT TO THE CITY: TOWARDS ECOLOGICAL AND DEMOCRATIC CITIES 141, 141–42 (Federico Venturini, Ernet Degirmenci & Ines Morales eds., 2019).

134. *See id.* at 143–44.

135. I have written articles exploring this further. *See, e.g.*, Harold McDougall, *Humans, Hierarchy, and Human Rights*, 74 NAT’L LAWS. GUILD 129, 131–32 (2017) [hereinafter McDougall, *Humans, Hierarchy, and Human Rights*]; Harold McDougall,

“human nature” as some argue. It works to preserve the established order; it forces us all to respond, by accepting it, avoiding it, or challenging it.<sup>136</sup>

Tammilehto, a native of Finland, observes that when the structures supporting hierarchy are temporarily abated—as in a natural disaster or a social uprising—our cooperative selves come to the fore and become stronger.<sup>137</sup> He calls this a “phase shift.”<sup>138</sup>

Phase shifts can bring about rapid and lasting social change, just as a phase shift can quickly transform a natural equilibrium. They provide a possible timeline for social change that can be much more accelerated than the gradual changes Western philosophy tells us are the only possibility.

Every time our cooperative selves surface, we are modeling a better world, even building toward it. That better world involves cooperative selves engaged in cooperative politics and cooperative economics, cultivating a commons of human culture and environmental balance. A good contemporary example is the “miracle” village built by homeless people in West Oakland.<sup>139</sup>

For Tammilehto, phase shifts toward social justice proceed in stages, from awakening, to protest, to solidarity, to a new, autonomous social, economic, and political system, a “cooperative polity” if you will.<sup>140</sup> Phase shifts are accelerated by positive feedback loops and derailed by negative ones, just as in nature.<sup>141</sup>

Awakening occurs first, in free social spaces that are generally somewhat private, and hidden from hierarchy. In these spaces our cooperative selves emerge, and we typically really enjoy it. In 1999, Francesca Polletta summarized the work of several authors writing on free spaces, including Harry Boyte and Sarah Evans,<sup>142</sup> as follows: “free spaces [are] small-scale settings within a community or movement that are removed from the direct control of dominant groups, are voluntarily participated in, and

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*Human Hierarchy and High School Shootings*, 3 HOW. HUM. & C.R.L. REV. 79, 81, 90 (2019) [hereinafter McDougall, *Human Hierarchy and High School Shootings*].

136. See McDougall, *Human Hierarchy and High School Shootings*, *supra* note 135, at 96.

137. See Tammilehto, *supra* note 133, at 142.

138. *Id.*

139. See Gabrielle Canon, *Homeless Oaklanders Were Tired of the Housing Crisis. So They Built a ‘Miracle’ Village*, GUARDIAN (May 11, 2021), <https://www.theguardian.com/us-news/2021/may/11/oakland-homeless-cob-on-wood-village> [<https://perma.cc/6ARD-5TEM>].

140. See Tammilehto, *supra* note 133, at 141–48.

141. See *id.* at 146.

142. See generally SARA M. EVANS & HARRY C. BOYTE, *FREE SPACES: THE SOURCES OF DEMOCRATIC CHANGE IN AMERICA* (Univ. of Chi. Press 1992).

generate the cultural challenge that precedes or accompanies political mobilization.”<sup>143</sup>

This is as far as most people get. Free spaces collapse whenever hierarchy intrudes, and it will, unless it encounters resistance. That takes us to Stage Two, protest.

Stage Two is a demonstration, and then an occupation, creating free, open *public* spaces. Few movements or organizations progress beyond this point. They focus on speaking truth to power with demonstrations and testimony and lobbying but tend not to focus on building power from the ground up. Focusing on the top of the hierarchy creates negative feedback loops, and such movements lose their broad base of participants as time goes on. I have reflected on some of these issues in Huffington Post blogs, such as “American Spring”<sup>144</sup> and “What Happens When the Protests Are Over?”<sup>145</sup>

The third stage of cooperative activity, solidarity, emerges as we build independent institutions through direct democracy and public deliberation, aiming at real social autonomy.<sup>146</sup> We begin to build a cooperative polity, economy, and ecology. A few grassroots organizations have entered this stage, such as ONE DC.<sup>147</sup> Others are well on their way through it, such as Cooperation Jackson in Mississippi.<sup>148</sup>

The eventual goal is the fourth stage, a cooperative political economy.<sup>149</sup> Here, official political and economic structures are shadowed<sup>150</sup> by a

143. Francesca Polletta, “Free Spaces” in *Collective Action*, 28 *THEORY & SOC’Y* 1, 1 (1999).

144. See Harold A. McDougall, “American Spring?”, *HUFFPOST* (Dec. 10, 2014, 9:57 PM), [https://www.huffpost.com/entry/american-spring\\_b\\_6292942](https://www.huffpost.com/entry/american-spring_b_6292942) [<https://perma.cc/J7CS-YEGZ>].

145. Harold A. McDougall, *What Happens When the Protests Are Over?*, *HUFFPOST* (June 1, 2015, 5:41 PM), [https://www.huffpost.com/entry/what-happens-when-the-protests-are-over\\_b\\_7222548](https://www.huffpost.com/entry/what-happens-when-the-protests-are-over_b_7222548) [<https://perma.cc/LA5E-6TFY>].

146. See Tammilehto, *supra* note 133, at 142–43.

147. See ONE DC, *supra* note 127.

148. See *About Us*, COOP. JACKSON, <https://cooperationjackson.org/intro> [<https://perma.cc/384C-Q3XH>].

149. See Tammilehto, *supra* note 133, at 143–44.

150. Cf. *Official Opposition Shadow Cabinet (United Kingdom)*, WIKIPEDIA (Nov. 26, 2020, 4:41 PM), [https://en.wikipedia.org/wiki/Official\\_Opposition\\_Shadow\\_Cabinet\\_\(United\\_Kingdom\)](https://en.wikipedia.org/wiki/Official_Opposition_Shadow_Cabinet_(United_Kingdom)) [<https://perma.cc/HR8P-YUL9>] (“In British Parliamentary practice, the Official Opposition Shadow Cabinet (usually known simply as the shadow cabinet) consists of senior members of Her Majesty’s Loyal Opposition who scrutinize their corresponding government ministers, develop alternative policies, and hold the government to account for its actions . . .”).

confederated network of small, direct-democracy groups, scaled large enough to manage state, national, and international-level complexity. Social ecologists like Murray Bookchin hope for “politically independent communities whose boundaries and populations will be defined by a new ecological consciousness”—a self-reflecting direct democracy, set against hierarchy and ecological destruction.<sup>151</sup>

Understanding the potential of “phase shifts” urges us to carefully note the emergence of free spaces, demonstrations, occupations, and the creation of free open public spaces. In all, we should look for signs of local efforts, grounded in direct democracy and public deliberation that might succeed in creating confederated, politically independent communities. We begin by resisting hierarchy and cooperating broadly, beyond our neighbors and families to our communities and workplaces. All along the way we will encounter resistance and distractions, but we must learn to keep at it.

#### IV. WHAT STANDS IN THE WAY?

The move to base social justice action, litigation, and student engagement at the local level, then build real power, rooted in the community, back up to scale, is not just a strategically useful change in approach. It also carries the struggle for social justice directly into the lion’s den, because cities are locations where our society’s primary social and economic injustices are produced and reproduced in highly instrumental fashion.

Professor Gerald Frug of Harvard University Law School has spent most of his academic career considering the city as a “legal concept,” whose relative autonomy is subject to encroachment by the state legislatures that charter them, and in some cases by the federal government as well.<sup>152</sup> Local decisionmakers’ range of choice about the lives and livelihoods of their constituents is limited by the power of these external governments, Frug shows.<sup>153</sup>

But even local decisionmakers’ choices typically further their own interests and those of the affluent or otherwise privileged classes in the city. They might choose to develop as a “Global City,” for example, to create spaces for international finance and technology, or a “Tourist City,” to attract outsiders ready to pay for temporary access to the city’s attractions.<sup>154</sup> Even the path of the “Middle Class City”—health,

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151. BOOKCHIN, *supra* note 68, at 45.

152. *See generally* Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980).

153. *Id.* at 1062–63.

154. FRUG & BARRON, *supra* note 124, at 165.

education, and security services for “respectable” elements within the city itself—favors the relatively affluent.<sup>155</sup>

Professor David Harvey of the New School would say this is no accident. In fact, he would say that all top-down direction of the city’s future is ultimately in service of an expansionist capitalism that requires profit to be created and reinvested in ever-widening circles to survive.<sup>156</sup> The Tourist City is a perfect example, a model Harvey would trace back to mid-nineteenth century Paris, transformed by Hausmann at Napoleon’s behest to respond to an economic crisis facing Europe as a whole.<sup>157</sup> Hausmann deployed infrastructural enhancements, neighborhood uprooting and replacement, and extensive lifestyle accommodations to make the city a beacon for tourists who come to purchase leisure time and commodities that bespoke the Parisian lifestyle.<sup>158</sup>

But Paris the Tourist City was created on the backs of the working class, who were evicted from their neighborhoods so Hausmann could refashion them to attract the affluent.<sup>159</sup> The consequent working-class rebellion—the Paris Commune that inspired Marx and Engels—was short-lived, crushed by Napoleon II’s repression.<sup>160</sup>

The point here is that urban-based struggles for social justice will meet significant resistance, as their agenda to achieve just and equitable distribution of social benefits through city power, a “right to the city,”<sup>161</sup> stands in direct contradiction to the agenda neoliberal capitalism has laid out for the city itself.<sup>162</sup> That agenda, according to Harvey—and Henri Lefebvre whose work he cites—is the absorption of surplus capital into infrastructural and

155. *Id.* at 187.

156. David Harvey, *The Right to the City*, NEW LEFT REV., Sept/Oct 2008, at 23, 23–26.

157. *Id.* at 25–26.

158. *Id.* at 26.

159. *Id.* at 33.

160. *Id.* at 26; *Commune of Paris*, BRITANNICA, <https://www.britannica.com/event/Commune-of-Paris-1871> [<https://perma.cc/WJD4-EKZA>].

161. *Right to the City*, WIKIPEDIA (July 7, 2021, 12:22 PM), [https://en.wikipedia.org/wiki/Right\\_to\\_the\\_city](https://en.wikipedia.org/wiki/Right_to_the_city) [<https://perma.cc/Z8R6-2VLL>] (“The right to the city is an idea and a slogan first proposed by Henri Lefebvre in his 1968 book *Le Droit à la ville*.”). It speaks to the rise of spatial inequality in cities, calling for “action to reclaim the city as a co-created space . . . .” *Id.*

162. See McDougall, *Humans, Hierarchy, and Human Rights*, *supra* note 135, at 139. *Cf. Right to the City Alliance*, WIKIPEDIA (Dec. 17, 2020, 4:58 PM), [https://en.wikipedia.org/wiki/Right\\_to\\_the\\_City\\_Alliance](https://en.wikipedia.org/wiki/Right_to_the_City_Alliance) [<https://perma.cc/CC6X-7QD7>] (“The Right to the City Alliance (January 2007 – present) is a social movement that emerged as a response to the mass displacement of people because of gentrification.”).

service support for finance, technology, and the lifestyles and pursuits of the wealthy, rather than to improve the lives of the broad base of the population.<sup>163</sup> Using the city as an instrument in this way may be even more important in the future than the exploitation of labor, particularly given the advancement of automation and Artificial Intelligence.

Professor Morris and others have been trying to make the operation of local government more accessible, less confined to “professionals” by developing ways to get students and teachers involved in training and teaching local activists to run cities.<sup>164</sup> But at the same time, conservative state legislatures are moving quickly to “stop progressive cities and counties from doing progressive things.”<sup>165</sup> Professor Morris is looking for a “legal way out of this nightmare,” but if a way out does not appear, Morris concedes that ideas about “setting up democratic bodies outside the traditional government structures” will gain support.<sup>166</sup>

Dominic Moulden puts it this way: “The Right to the City means moving into contested spaces to organize against capitalist exploitation and expansion.”<sup>167</sup> Already, a Right to the City Alliance has emerged to address gentrification’s mass displacement of low-income communities.<sup>168</sup> Dominic, in a recent article, argued for “No Displacement Zones” to directly contest the organized displacement of the poor and working class, which he sees as part of a worldwide crime of gentrification being committed by neoliberal cities bent on capitalist expansion.<sup>169</sup>

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163. Harvey, *supra* note 156, at 27–28 (citing HENRI LEFEBVRE, *THE URBAN REVOLUTION* 1 (Robert Bononno trans., Univ. of Minn. Press 2003)).

164. E-mail from Kathleen Morris to author, *supra* note 2.

165. *Id.*

166. *Id.* Furthermore, in her email, Professor Morris provided a footnote from a coming paper. *Id.* (“Nestor M. Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 *YALE L.J.* 954, 957, 964–69 (2019); . . . Richard C. Schragger, *The Attack on American Cities*, 96 *TEX. L. REV.* 1163 (2018) (same). *See also* . . . Don Hazen & Steven Rosenfeld, *The other right-wing tidal wave sweeping America: Federal and state preemption of local progressive laws*, *SALON*, Feb. 28, 2017, <[https://www.salon.com/2017/02/28/the-other-right-wing-tidal-wave-sweeping-america-federal-and-state-preemption-of-local-progressive-laws\\_partner/](https://www.salon.com/2017/02/28/the-other-right-wing-tidal-wave-sweeping-america-federal-and-state-preemption-of-local-progressive-laws_partner/)> (“[disputes surround] every issue you can possibly imagine that anyone would care about that impacts workers, health, safety, or the natural environment.”)).

167. E-mail from Dominic Timothy Moulden to author, *supra* note 132.

168. *See* WIKIPEDIA, *supra* note 162 (“RTC arose when the Miami Workers Center, Strategic Actions for a Just Economy, and Tenants and Workers United convened a meeting in Los Angeles amongst 20 community organizations from 7 cities to start the alliance. Since then, RTC has a national governance structure, a network of regional member organizations, and thematic working groups that engage with academic, professional, and community leaders. RTC continues to follow their model of a more democratic form of democracy in their internal processes. They hold annual meetings with their steering committee, staff, and representatives to discuss the vision for RTC where everyone has to reach a consensus through trust, reflection, and listening.” (citations omitted)).

169. Moulden, *supra* note 61, at 283–84.

All in all, the coming confrontation will not be pretty.

Are we, and our students, prepared for this? These are important questions, raised for me by Jay Gillen, author of *The Power in the Room*.<sup>170</sup> The book describes the work of the Algebra Project, founded by Bob Moses, formerly of SNCC.<sup>171</sup> The Algebra Project aims to shift the paradigm of the American educational system from the bottom up, based on a simple device: pay young people to teach their peers what they know, and do this work through youth-led, community-based cooperative enterprises.<sup>172</sup> The book shows how relationships of young people to their own learning, to each other, and to the adults around them begin to shift during the program, and how these new relationships open up all kinds of educational and political possibilities.<sup>173</sup> Tammilehto would call these developments phase shifts.<sup>174</sup>

Student participants in the Algebra Project are inner-city, high school youngsters. Would law students, only slightly older but much deeper into the paradigm of the American educational system, be ready to similarly switch gears? In our conversation, Jay had this to say.<sup>175</sup>

Regarding law student internships, Jay agreed that the motive of doing something to both shake up the law schools and to support the communities is “of course the right one.”<sup>176</sup> But he remained interested in the question of what it would take for law students to decide to “put down their buckets where they are” and *stay* in the community.<sup>177</sup>

“You can’t be angling for a position in another city while you’re developing the kind of deep roots in a particular local struggle that your article advocates for. That requires standing on the side of the very poor long enough to make a difference, committing to the needs of the most alienated, and not being confused or seduced by the demands of the existing power structures (universities, state and federal governments, multi-

170. JAY M. GILLEN, *THE POWER IN THE ROOM: RADICAL EDUCATION THROUGH YOUTH ORGANIZATION AND EMPLOYMENT* (2019).

171. *Id.* at 10–11; THE ALGEBRA PROJECT, <https://algebra.org> [<https://perma.cc/NK4J-8FN6>]; *Activist Bob Moses to Speak about Civil Rights, Algebra Project*, POLYCENTRIC (Feb. 4, 2020), <http://polycentric.cpp.edu/2020/02/activist-bob-moses-to-speak-about-civil-rights-algebra-project/> [<https://perma.cc/7F89-2G4Q>].

172. GILLEN, *supra* note 170, at 147–48.

173. *Id.* at 10–11.

174. Tammilehto, *supra* note 133, at 147–48.

175. Interview with Jay Gillen, *supra* note 12.

176. *Id.*

177. *Id.*

national corporations) which imagine the good life as flying between neoliberal metropolises while spouting progressive rhetoric. There's real sacrifice involved."<sup>178</sup>

Each of us will have to decide. And, as with climate change, there is not much time.

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178. *Id.*