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TRANSACTIONAL COMMUNITY LAWYERING

*Alina Ball**

The racial reckoning during the summer of 2020 presented a renewed call to action for movement lawyers committed to collaborating with mobilized clients to advance racial equity and economic justice. During the last thirty years, community lawyering scholarship has made significant interventions into poverty lawyering and provides the theoretical framework for contemporary movement lawyers. Conceptually, community lawyering theory can be implemented in any practice area; however, prevailing narratives and models for community lawyering are based on group advocacy campaigns and, to a lesser extent, individual representation in dispute resolution. Transactional lawyers—who use private ordering to represent business entities as they form, transact, and manage risks—have been largely ignored in community lawyering scholarship, which focuses on governmental policy reform and rights acquisition. As a result, community lawyering scholarship remains inaccessible to many transactional lawyers, who are beginning to form a critical mass in antipoverty representations. Moreover, transactional lawyering theory does not meaningfully address how transactional lawyers can effectively advance social change.

To fill this gap in theory and praxis, community lawyering theory needs to evolve to contemplate and respond to the nuances of transactional lawyering if transactional

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lawyers are to become movement lawyers advancing racial and economic justice. This Article provides the first textured description of “transactional community lawyering”—the intentional application of community lawyering theory into a distinctly transactional practice. It argues that community lawyering theory must evolve to (1) demand structural, not merely cultural, competency; (2) emphasize strategic alliance building to supplement the boundaries of subject matter expertise; and (3) contemplate the impact of digital technologies in expanding community lawyering beyond its traditional geographic limitations in order to integrate transactional lawyers as community lawyers. By so evolving, community lawyering theory would not only better inform antipoverty transactional lawyering but also prepare the next generation of diverse movement lawyers.

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INTRODUCTION

On February 18, 2021, Morrison & Foerster LLP, a prominent global law firm, announced its launch of the “Black Venture Accelerator,”¹ a new pro bono program providing Black entrepreneurs and Black-owned businesses with access to pro bono transactional representation.² In announcing the initiative, the firm acknowledged that “Black entrepreneurs have had to confront economic under-inclusion and unfair obstacles to full participation in the economy for too long.”³ The program aims to realize the firm’s racial justice goals, released in the aftermath of “the senseless deaths of George Floyd, Ahmaud Arbery, and Breonna Taylor, the disproportionate number of people of color who have died of COVID-19, the rise of anti-Asian discrimination and bias related to COVID-19, and the disparate rates of incarceration in this country.”⁴ As the world watched two deadly pandemics⁵—racism and COVID-19—ravish Native American,

1. *Morrison & Foerster Launches Black Venture Accelerator*, MORRISON & FOERSTER (Feb. 18, 2021), <http://www.mofo.com/resources/news/210218-black-venture-accelerator.html> [http://perma.cc/HJ7X-XKWU].

2. *Id.* The term “transactional lawyer” is used in this Article to discuss business lawyers representing entities in business transactions and deals (commercial transactions, mergers and acquisitions, intellectual property, tax, real estate), internal governance matters, and regulatory compliance matters. In the relevant literature, “transactional lawyer” is synonymous with the terms business lawyer, deal lawyer, and corporate lawyer. See *Defining Key Competencies for Business Lawyers*, 72 BUS. LAW. 101, 103 (2016).

3. See MORRISON & FOERSTER, *supra* note 1.

4. *Responding to Racial Injustice*, MORRISON & FOERSTER, <http://www.mofo.com/special-content/racial-injustice/> [http://perma.cc/L8KE-2YTC] (last visited Apr. 1, 2022).

5. See Khiara M. Bridges, *The Many Ways Institutional Racism Kills Black People*, TIME (June 11, 2020), <http://time.com/5851864/institutional-racism-america/> [http://perma.cc/BQ5M-HMCC] (explaining the “inability [of Black people] to avoid contracting the novel coronavirus – and the increased likelihood of contracting the virus with a body that has already been damaged by structural racism – reveals [B]lack people’s vulnerability and marginalization” and noting that “George Floyd’s death reveals the exact same thing”).

Black,⁶ and Latinx populations,⁷ more than three hundred law firms across the country joined Morrison & Foerster LLP in committing to provide antiracist pro bono representation,⁸ including on corporate and transactional matters, through the Law Firm Antiracism Alliance.⁹ This tidal wave of corporate and transactional lawyers from elite law firms representing minority-owned businesses and businesses operating in

6. The Black Lives Matter 4-Year Anniversary Report states the following:

We organize because it is a matter of life or death. Our ancestors and movement elders dedicated their lives to organizing because they envisioned a day when their grandchildren could thrive outside the confines of oppression. Organizing is building and leveraging people power in order to disrupt systems that threaten our lives and the lives of others, and to build our own life-affirming systems.

BLACK LIVES MATTER 4-YEAR ANNIVERSARY REPORT (2013), [http://blacklivesmatter.com/resources/\[http://perma.cc/NQP4-SQNM\]](http://blacklivesmatter.com/resources/[http://perma.cc/NQP4-SQNM]) (scroll down to “Black Lives Matter 4-Year Anniversary Report;” click “open/download resource”); *see also Economic Justice*, M4BL, <http://m4bl.org/policy-platforms/economic-justice/> [<http://perma.cc/342H-DPAX>] (last visited Apr. 1, 2022) (“We demand economic justice for all and a reconstruction of the economy to ensure Black communities have collective ownership, not merely access. This includes: . . . (2) Federal and state job programs that specifically target the most economically marginalized Black people, and compensation for those involved in the care economy. Job programs must provide a living wage and encourage support for local workers centers, unions, and Black-owned businesses which are accountable to the community. (3) A right to restored land, clean air, clean water and housing and an end to the exploitative privatization of natural resources — including land and water. We seek democratic control over how resources are preserved, used and distributed and do so while honoring and respecting the rights of our indigenous family.”).

7. *See* Richard A. Oppel Jr., Robert Gebeloff, K.K. Rebecca Lai, Will Wright & Mitch Smith, *The Fullest Look Yet at the Racial Inequity of Coronavirus*, N.Y. TIMES (July 5, 2020), <http://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html> [<http://perma.cc/XJ6H-JELF>] (“Early numbers had shown that Black and Latino people were being harmed by the virus at higher rates. But the new federal data—made available after The New York Times sued the Centers for Disease Control and Prevention—reveals a clearer and more complete picture: Black and Latino people have been disproportionately affected by the coronavirus in a widespread manner that spans the country, throughout hundreds of counties in urban, suburban and rural areas, and across all age groups.”); *see also* Vanessa Williams, *Disproportionately Black Counties Account for Over Half of Coronavirus Cases in the U.S. and Nearly 60% of Deaths*, *Study Finds*, WASH. POST (May 6, 2020), <http://www.washingtonpost.com/nation/2020/05/06/study-finds-that-disproportionately-black-counties-account-more-than-half-covid-19-cases-us-nearly-60-percent-deaths/> [<http://perma.cc/KKX9-G3LG>].

8. *See* Patrick Smith, *Over 125 Firms Have Joined the Law Firm Antiracism Alliance*, LAW.COM: AM. LAW. (June 24, 2020), <http://www.law.com/americanlawyer/2020/06/24/over-125-firms-have-joined-the-law-firm-antiracism-alliance/?sreturn=20211027144023> [<http://perma.cc/6F5J-K2FT>] (discussing the Law Firm Antiracism Alliance and use of pro bono attorneys to affect systemic change and racial justice); Kiisha Morrow & Brenna DeVaney, *Why Now? Year One of the Law Firm Antiracism Alliance*, REUTERS (Aug. 10, 2021, 3:22 PM), <http://www.reuters.com/legal/legalindustry/why-now-year-one-law-firm-antiracism-alliance-2021-08-10/> [<http://perma.cc/T2LQ-EX5A>].

9. For more information on the Law Firm Antiracism Alliance, which totals more than 300 law firm participants as of December 2021, *see* L. FIRM ANTIRACISM ALL., <http://www.lawfirmantiracismalliance.org/lfaacharter/alliance-firms-list> [<http://perma.cc/B6LF-TCQ8>] (last visited Apr. 1, 2022).

low-income communities of color invites an examination of antipoverty, antiracist transactional lawyering initiatives.¹⁰

Progressive legal scholarship rarely acknowledges transactional lawyers, and instead focuses on litigators and policy advocates addressing acute racial and social injustices. While not often considered acute redress,¹¹ transactional representation is central to institution building, and thus necessary for sustained social change.¹² Transactional lawyers utilizing their expertise to structure transactions and draft deal documents to facilitate economic activity could have a significant positive impact in low-income communities because transactional lawyers possess the technical skills to leverage consolidated capital resources and support microbusinesses owned by underrepresented entrepreneurs.

History teaches, however, that most iterations of antipoverty lawyering do not produce lofty social change goals.¹³ Community lawyering,¹⁴ the dominant paradigm in antipoverty lawyering scholarship,¹⁵ is a well theorized model of social change lawyering

10. Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603, 1604 (1989) [hereinafter López, *Seven Weeks*] (“The practice of law in the modern fight for social change demands special scrutiny.”).

11. See Paul R. Tremblay, *Transactional Legal Services, Triage, and Access to Justice*, 48 WASH. J. L. & POL’Y 11, 15 (2015) (“The triage-driven sentiments of the access-to-justice campaigns plainly treat dispute resolution as more critically important than transactional business development.”).

12. See e.g., TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS 1954–63, at 635–36 (1988) (describing Wiley Branton as drafting bylaws, incorporating nonprofit organizations, and operating civil rights organizations that financed civil rights initiatives); Brian S. Feldman, *The Decline of Black Business*, WASH. MONTHLY (Mar. 19, 2017), <http://washingtonmonthly.com/2017/03/19/the-decline-of-black-business/> [<http://perma.cc/C6CW-X8LL>] (“[B]lack-owned independent businesses . . . supplied critical leadership and financial support for the civil rights movement.”); Louis Ferleger & Matter Lavalley, *How Black Businesses Helped Save the Civil Rights Movement*, INST. FOR NEW ECON. THINKING (Jan. 15, 2018), <http://www.ineteconomics.org/perspectives/blog/how-black-businesses-helped-save-the-civil-rights-movement> [<http://perma.cc/SN38-PAKZ>] (“But without the development of carpools and the support of small businesses, the boycott could not have succeeded. These stories demonstrate that the support of small black-owned businesses helped the civil rights movement to succeed in a variety of ways.”).

13. See Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CALIF. L. REV. 1879, 1905–06 n.113 (2007) (defining “regnant lawyering” as dominating clients where lawyers consider themselves the preeminent problem solvers in addressing society’s injustices).

14. See Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359, 364 (2008) [hereinafter Tokarz et al., *The Newest (Oldest) Wave*] (“[C]ommunity lawyering is an *approach* to the practice of law and to clinical legal education that centers on building and sustaining relationships with clients, over time, *in context*, as a part of and in conjunction *with* communities. It [also] incorporates a respect for clients that empowers them and assists them in the larger economic, political, and social contexts of their lives, beyond their immediate legal problems.”); see also Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999 (2007).

15. Poverty lawyering refers to the practice of law to help alleviate, and ultimately eliminate, poverty and its negative effects within neighborhoods, communities, and societies. Poverty lawyering was recognized as a distinct practice in the 1960s when the Johnson administration increased government assistance amid the growing need for lawyers to facilitate these services for poor and low-income individuals and families. Contemporary poverty lawyering is understood to include a wide range of legal services for low-income people such as civil rights litigation, employment litigation, housing, etc. See Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 GEO. L.J. 1529, 1529 (1995) (explaining that for many years there were two primary practices among poverty lawyers: individual service cases and impact cases); see also Lucie E. White,

grounded in critical race theory, feminist legal theory, and narrative theory.¹⁶ The intervention of community lawyering theory has been impactful because antipoverty lawyering, when not informed by critical legal theory, consistently functions to ultimately reproduce marginalization and subordination of clients and communities.¹⁷

Professor Gerald P. López's seminal book, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice*,¹⁸ pioneered scholarship in understanding how community lawyering should function in practice, not merely theory.¹⁹ A flurry of legal scholarship in the 1990s and early 2000s continued to refine and develop the theory of community lawyering in the context of civil litigation, impact litigation, immigration, workers' rights, criminal defense, and policy advocacy, to name a few areas.²⁰ Community lawyering theory has proven powerful because of its unique capacity to unite progressive, antisubordination²¹ lawyers across subject matters and client populations.²² As progressive lawyers have explored new practice areas for advancing equity and access to justice, scholars have continued to adapt to evolving client needs and integrate community lawyering theory into various practice areas.²³

Goldberg v. Kelly on the Paradox of Lawyering for the Poor, 56 BROOK. L. REV. 861, 872 (1990) (explaining the need for poverty lawyers to "attend to, and engage with, the poor people's movements" already underway in order to effectively "redress economic and political subordination"); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2133 (1991).

16. Angelo N. Ancheta, *Community Lawyering*, 81 CALIF. L. REV. 1363, 1364 (1993) (describing the progressive "legal theories [that] have focused on transforming law and lawyering to address the problems of the poor, people of color, immigrants, women, [the LGBTQIA community], the disabled, the elderly and other subordinated groups").

17. See, e.g., Derrick A. Bell Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 471 (1976).

18. GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992) [hereinafter *REBELLIOUS LAWYERING*].

19. Lucie White, *Paradox, Piece-Work, and Patience*, 43 HASTINGS L.J. 853, 854 (1992) ("Gerald López was one of the first writers to seek a new approach to change-focused advocacy, in his 'rebellious' alternative to the 'regnant,' or dominant, approach to poverty law."); see also Symposium, *Rebellious Lawyering at 25*, 23 CLINICAL L. REV. 1 (2016).

20. See, e.g., Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 CLINICAL L. REV. 775 (2017); Martha L. Gómez, *The Culture of Non-Profit Impact Litigation*, 23 CLINICAL L. REV. 635 (2017); Aaron Samsel, *Toward A Synthesis: Law As Organizing*, 18 CUNY L. REV. 375 (2015); Natalie Gomez-Velez, *Structured Discrete Task Representation To Bridge the Justice Gap: CUNY Law School's Launchpad for Justice in Partnership with Courts and Communities*, 16 CUNY L. REV. 21 (2012); E. Tammy Kim, *Lawyers As Resource Allies in Workers' Struggles for Social Change*, 13 N.Y.C. L. REV. 213 (2009); Zenobia Lai & Andrew Leong, *From the Community Lawyers' Lens: The Case for the "Quincy 4" and Challenges to Securing Civil Rights for Asian Americans*, 15 ASIAN AM. L.J. 73 (2008); Jessica A. Rose, *Rebellious or Regnant: Police Brutality Lawyering in New York City*, 28 FORDHAM URB. L.J. 619 (2000).

21. See López, *Seven Weeks*, *supra* note 10, at 1608 (explaining that antisubordination addresses the root problems that produce the symptoms of poverty and that antisubordination lawyering requires that "lawyers must know how to work with, not just on behalf of, subordinated people"); Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 953 (1992) [hereinafter Tremblay, *Regnant Lawyering*] (explaining that antisubordination lawyers "will encourage clients to organize, to connect, and to work for power and change extrasystemically as well as intrasystemically").

22. Tokarz, et al., *The Newest (Oldest) Wave*, *supra* note 14, at 362–63, 366 (recognizing that "[c]ommunity lawyering goes by different names and takes different forms").

23. *Id.*

Nearly thirty years after the groundbreaking publication of *Rebellious Lawyering* and in anticipation of its reprint,²⁴ the marginalization of transactional lawyers in community lawyering scholarship remains.²⁵ The vast majority of the canon of community lawyering scholarship has focused on group advocacy and litigation-based practices.²⁶ While one can hypothesize that the concept of community lawyering could be applied to any legal practice area, the preeminent narratives and models²⁷ of community lawyers are of litigators and policy advocates representing individuals and groups.²⁸ Transactional lawyers—who use private ordering²⁹ to represent business entities as they form, transact, and manage risks—continue to be largely ignored in community lawyering scholarship, which focuses on governmental policy reform and rights acquisition.

As a result, antipoverty transactional lawyering remains underexplored and undertheorized, and most community lawyering scholarship is inaccessible to transactional lawyers because it does not adequately address the nuances of corporate or transactional practice. Given the recent influx of transactional lawyers into the poverty law sphere³⁰ and the continued need of private ordering representation in low-income communities of color,³¹ this Article is a timely examination of community lawyering that argues for greater recognition of transactional lawyering in antisubordination work.³²

24. Lydialyle Gibson, *Rebel Lawyer: Gerald López's Radical Theory—and Practice*, HARV. MAG. (Sept.–Oct. 2018), <http://www.harvardmagazine.com/2018/09/gerald-lopez-rebellious-lawyering> [<http://perma.cc/V9U7-6RQM>].

25. But see *infra* Part I.C. for a discussion of community economic development literature.

26. See, e.g., SCOTT L. CUMMINGS, AN EQUAL PLACE: LAWYERS IN THE STRUGGLE FOR LOS ANGELES 4–6 (2021) [hereinafter CUMMINGS, AN EQUAL PLACE] (documenting the role of policy advocacy lawyers and litigators engaged in community lawyering between the 1992 riots and the 2008 recession in challenging economic inequality in Los Angeles, California); Rose Cuison Villazor, *Community Lawyering: An Approach to Addressing Inequalities in Access to Health Care for Poor, of Color and Immigrant Communities*, 8 N.Y.U. J. LEGIS. & PUB. POL'Y 35, 54 (2004) (discussing community lawyers, organizers, and community members strategizing to encourage hospital administrators to address community needs).

27. See, e.g., *Pro Bono Legal Clinics*, CMTY. LAWS., INC., <http://www.community-lawyers.org/services> [<http://perma.cc/3KGQ-SDTR>] (last visited Apr. 1, 2022).

28. Jules Lobel, *Courts As Forums for Protest*, 52 UCLA L. REV. 477, 478–79 (2004).

29. The term “private ordering” is used to describe the contracting, transacting, and extraregulatory organizing and structuring of rights, responsibilities, and obligations among private actors including, but not limited to, corporate governance practices within firms. See Jill E. Fisch, *Governance by Contract: The Implications for Corporate Bylaws*, 106 CALIF. L. REV. 373, 374, 378 (2018) (“The development of firm-specific governance terms has come to be known as private ordering.”); D. Gordon Smith, Matthew Wright & Marcus Kai Hintze, *Private Ordering with Shareholder Bylaws*, 80 FORDHAM L. REV. 125, 127 n.12 (2011) (“Consistent with the most common usage in corporate law scholarship, we use the term ‘private ordering’ as a near synonym for ‘contracting’ or ‘transacting.’”); Steven L. Schwarcz, *Private Ordering*, 97 NW. U. L. REV. 319, 321 (2002) (“Traditional private ordering derives legitimacy from costly procedural safeguards—essentially the same as those protecting the legitimacy of administrative agency rulemaking—designed to ensure fair process and reasoned decisionmaking by the private actor.”).

30. See *infra* Part II.B.

31. Thomas W. Mitchell, *Growing Inequity and Racial Economic Gaps*, 56 HOWARD L.J. 849, 879–81 (2013) (recognizing that while “law will not play the largest role or perhaps even a central role in efforts to promote more economic equality . . . there is an important role for lawyers and legal institutions . . . to increase economic opportunities for millions of Americans”).

32. The term “antisubordination transactional lawyers” describes transactional lawyers working towards antisubordination. See *supra* note 21 and accompanying text. Like poverty lawyering, antisubordination

In addition to the growing number of pro bono business lawyers, the burgeoning social entrepreneurship sector³³ and the increase in business law clinics also create new demand for antipoverty transactional lawyers. Social enterprises—businesses using market-based strategies to achieve a social mission or environmental purpose³⁴—often prioritize antipoverty objectives. Social enterprise clients need transactional lawyers who can advise them on how a transaction or contractual provision will affect their antipoverty business purpose. Almost every accredited law school in the country operates at least one business law clinic,³⁵ many explicitly serving low-income entrepreneurs and microbusinesses.³⁶ Yet in each of these iterations—pro bono business lawyers, social enterprise lawyers, and business law clinicians—there exists no dominant lawyering theory for how antipoverty transactional lawyers can achieve social change goals.³⁷ Moreover, given the lack of conventional incentives and measurements of lawyer performance—which are tied to case budgets, holdback fees, bonuses, and compensation—a harmonized antipoverty transactional lawyering theory would increase lawyer efficacy.³⁸

lawyering articulates the unifying goal. Community lawyering articulates the unifying means of conducting antipoverty work. I recognize that just as not all antisubordination lawyers are self-identified community lawyers, there are likely transactional lawyers working against subordination who do not self-identify as community lawyers. A goal of this Article is to suggest a means for antisubordination transactional lawyering under the theoretical framework of community lawyering. Antisubordination transactional lawyering attempts to resolve the root causes of poverty and indignity, such as wealth inequality, through equity ownership, preventing displacement from gentrification through homeownership, facilitating nonexploitative access to capital through fair lending instruments, structuring alternative mechanisms to pool community resources, etc.

33. See Emilie Aguirre, *Beyond Profit*, 54 U.C. DAVIS L. REV. 2077, 2087 n.35 (2021); Antony Page & Robert A. Katz, *Is Social Enterprise the New Corporate Social Responsibility?*, 34 SEATTLE U. L. REV. 1351, 1353 (2011) (describing the impact of the “social enterprise movement” on conventional business industries).

34. See Robert A. Katz & Antony Page, *The Role of Social Enterprise*, 35 VT. L. REV. 59, 59, 62 (2010) (describing social enterprise as “privately-led approaches that use business methods and forms for the express purpose of repairing society”).

35. See Paul R. Tremblay, *The Emergence and Influence of Transactional Practice Within Clinical Scholarship*, 26 CLINICAL L. REV. 375, 379 (2019) [hereinafter Tremblay, *The Emergence and Influence of Transactional Practice*] (“By 2014, virtually every law school in the country offered a least one, and often more than one, clinic focusing on for-profit business enterprises, nonprofits, CED, or similar transactional practice.”); Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195, 195 (1997) (“Small business and community economic development (CED) clinics represent an important and growing component of the future of clinical legal education.”); Eric J. Gouvin, *Learning Business Law By Doing It*, 14 BUS. L. TODAY 53, 53 (2004) (“In the past 10 years, an innovative approach to teaching business law has been gaining momentum in law schools across North America – clinical education for aspiring business lawyers.”); *Law School Entrepreneurship Clinics in the United States*, ESHIPLAW (last updated Jan. 21, 2018) (providing a list of clinics serving entrepreneurs at over one hundred law schools in the United States).

36. See Gouvin, *supra* note 35, at 56 (“Business clinics in general focus their efforts on clients who are not otherwise being served, so that can avoid the charge that they are taking paying clients away from working lawyers.”).

37. See ARTHUR KINOY, *RIGHTS ON TRIAL: THE ODYSSEY OF A PEOPLE’S LAWYER* 57 (1983) (“[T]he test of success for a people’s lawyer is not always the technical winning or losing of the formal proceeding. Again and again, the real test was the impact of the legal activities on the morale and understanding of the people involved in the struggle. To the degree that the legal work helped to develop a sense of strength, an ability to fight back, it was successful. This could even be achieved without reaching the objective of formal victory.”).

38. See Jane H. Aiken & Stephen Wizner, *Measuring Justice*, 2013 WIS. L. REV. 79, 82 (2013) (discussing the difficulty of measuring success in poverty lawyering cases).

The objective of this Article is to legitimize and articulate what I describe as “transactional community lawyering”—the intentional incorporation of community lawyering theory into a distinctly transactional practice.³⁹ Without a theoretical framework of community lawyering that contemplates transactional lawyering, antipoverty transactional lawyers are likely to practice “regnant lawyering,”⁴⁰ well-intentioned lawyering that reinforces subordination in marginalized communities.⁴¹ Or transactional lawyers will deduce there is no space for their technical expertise within social justice movements.⁴² Both of these options are to the peril of advancing social justice. To achieve racial and economic justice, marginalized populations need access to self-reflective lawyers⁴³ using private ordering expertise to facilitate economic activity and leverage financial resources.⁴⁴

Section I of this Article demonstrates how the canon of community lawyering scholarship fails to address transactional lawyering. This includes, in roughly chronological order, the scholarship’s significant theoretical interventions of client-centered lawyering, rebellious lawyering, and movement lawyering. Historically, transactional lawyers have been irrelevant or ignored in community lawyering scholarship because the majority of antipoverty and antiracist lawyering has focused first on acquiring substantive and procedural rights, and then shifted to facilitating community power-building through local advocacy campaigns and policy reforms.⁴⁵

With substantial legal rights and policy reforms obtained, Section II recognizes that the next wave of social justice lawyers will need to include private ordering attorneys to form and advise alternative institutions that social movements need to sustain and propel

39. Another term for transactional community lawyering could be transactional community economic development (or transactional CED) lawyering. However, I use the term transactional community lawyering because it invites antipoverty transactional lawyers to connect with the broader network of community lawyers and scholars. See Paul R. Tremblay, *Social Justice Implications for “Retail” CED*, 27 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 503, 504 (2019) (defining the terms “retail” CED and transactional CED as “transactional work performed for businesses or social enterprises that need it to survive or succeed”); Michael Haber, *CED After #OWS: From Community Economic Development to Anti-Authoritarian Community Counter-Institutions*, 43 FORDHAM URB. L.J. 295, 373 (positing the term may be broader than CED, “like transactional social change lawyers”).

40. See REBELLIOUS LAWYERING, *supra* note 18, at 23–24 (defining “regnant lawyering” as dominating clients where lawyers consider themselves the preeminent problem solvers in addressing society’s injustices).

41. See Lucie White, “Democracy” in *Development Practice: Essays on a Fugitive Theme*, 64 TENN. L. REV. 1073, 1076 (1997) (explaining that a “transactional lawyer [can] practice in ways that erode, rather than enhance, her clients’ power”).

42. See Lynnise E. Pantin, *The Economic Justice Imperative for Transactional Law Clinics*, 62 VILL. L. REV. 175, 183 (2017).

43. White, *supra* note 19, at 859 (“[W]e lawyers cannot ‘empower’ impoverished communities by fitting clients into our own strategic or theoretical schemes.”).

44. See GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* 71 (1983) (quoting Charles Hamilton Houston, “Personal Observations on the Summary of Studies in Legal Education as Applied to the Howard University School of Law” (May 28, 1929) (“[The] Negro lawyer must be trained as a social engineer and group interpreter. . . . [Moreover, he must act as] business adviser . . . for the protection of the scattered resources possessed or controlled by the group. . . . He must provide more ways and means for holding within the group the income now flowing through it.”)).

45. See CUMMINGS, *AN EQUAL PLACE*, *supra* note 26 (discussing the evolution from the Warren Court-era lawyering to movement lawyering within communities for local level policy reforms).

systemic change⁴⁶ against retrenchment.⁴⁷ That Section applies the core principles of community lawyering to transactional representation, thus concretizing a theoretical approach to antistatutory transactional lawyering. The Article then explores three current examples of antipoverity transactional lawyering—pro bono business law programs, social enterprise lawyering, and business law clinics—where applying the tenets of community lawyering would institutionalize an antistatutory framework to help sustain social change.

Section III provides a robust narrative description of transactional community lawyering. As the struggle for safe drinking water in California illustrates,⁴⁸ rights and power are not synonymous.⁴⁹ Almost a decade after California's history-making recognition of the human right to water,⁵⁰ many communities of color in rural California still lack safe drinking water.⁵¹ To sustain the power necessary to transform the right to safe drinking water into a reality, low-income communities of color need alternative institutions that disrupt structural inequalities and operate equitable water infrastructures.

46. See Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546, 564 (2021) (“Progressive era intellectuals, writing against the background of a political economy with significant parallels to today’s, understood that working people’s organizations could redistribute power over political decisionmaking and thereby could ensure a more egalitarian political economy.”).

47. Devon W. Carbado, *Critical What What?*, 43 CONN. L. REV. 1593, 1607–08 (2011) (discussing the “reform/retrenchment dialectic” as a defining aspect of American legal and political history preventing a linear narrative of racial progress); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1346 (1988) (explaining that antidiscrimination “law accommodated and obscured contradictions that led to conflict, countervision, and the current vacuousness of antidiscrimination law”).

48. Harriet Blair Rowan, *A Million Californians Don’t Have Clean Drinking Water. Where Do They Live?*, KHN (June 28, 2019), <http://khn.org/news/a-million-californians-dont-have-clean-drinking-water-where-do-they-live/> [http://perma.cc/6BZL-DMC5] (“More than 1 in 10 people in 12 California counties – totaling more than 718,000 people – have unsafe drinking water. The most common contaminants are nitrates from farming and naturally occurring arsenic.”).

49. See Paul D. Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L.J. 2176, 2178 (2013).

50. CAL. WATER CODE § 106.3 (West 2012) (recognizing that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes”); see also Alexander Louden, *California Takes Another Cookie from the Policy Jar: A Human Right to Water*, 17 U. DENV. WATER. L. REV. 121, 121–22 (2013).

51. Camille Pannu, *Bridging the Safe Drinking Water Gap for California’s Rural Poor*, 24 HASTINGS ENV’T L.J. 253, 255 (2018) (explaining “[t]he majority of those Californians [still lacking access to clean, safe, and affordable drinking water] are Latinx and live in disadvantages unincorporated communities (DUCs) throughout the state’s rural agricultural belts.”); Matthew McKerley, *Water, Water Everywhere? Establishing a Public Trust in Groundwater To Address Agricultural Pollution in California*, 43 ENVIRONS ENV’T L. POL’Y 163, 166 (2020) (“In short, poor communities and communities of color in the [San Joaquin] Valley have disproportionately suffered from lack of clean water. In this way, California’s clean water crisis slots into the larger discussion of socioeconomic and racial inequality raised in numerous other contexts by the environmental justice movement.”); *Unsafe Water More Common in Communities of Color*, NRDC (Jan. 22, 2021), <http://www.nrdc.org/stories/unsafe-water-more-common-communities-color> [http://perma.cc/VMW7-S8GL] (“Our analysis found that a number of communities shouldered a heavier burden: communities of color, low-income communities, and communities that don’t have access to adequate housing and transportation options.”).

In other words, these “disadvantaged communities”⁵² need access to transactional community lawyers who will represent their interests in creating and advising alternative water institutions and companies.

This narrative description is an epistemic source for community lawyering theory. By exploring the transactional representation of a housing cooperative for low-income farmworker families in the Salinas Valley who are fighting for safe drinking water, one recognizes current shortcomings in community lawyering theory that should be addressed. Specifically, community lawyering theory can learn from antistatutory transactional lawyers in how to (1) integrate an understanding of not merely cultural competency but “structural competency,”⁵³ (2) identify strategic partners as complements to the lawyer’s subject matter expertise boundaries, and (3) utilize digital technologies to expand community lawyering beyond its traditional geographic limitations. Ultimately, the Article concludes by calling for an evolved community lawyering framework that explicitly acknowledges transactional lawyers as they embark on their quest for racial equity and economic justice with “the rebellious idea of lawyering against subordination.”⁵⁴

I. THE EXCLUSION OF TRANSACTIONAL LAWYERING IN COMMUNITY LAWYERING THEORY

For all their decency, antipoverty attorneys often fail to achieve their own social change aspirations.⁵⁵ Community lawyering provides a theoretical intervention into poverty lawyering practices to align client representations with antistatutory.⁵⁶ Community lawyers often represent groups in policy advocacy; engage in direct-service representation of individuals in cases of civil litigation, criminal law, family law, or immigration law; or provide community legal education.⁵⁷ Although community lawyering practices currently exist across a wide variety of practice areas, community lawyering scholarship has historically emphasized individual representation and, more recently, supported social movements through group advocacy.⁵⁸ Transactional lawyers have been largely ignored in community lawyering scholarship because the vast majority of antipoverty lawyering focuses on obtaining substantive and procedural rights under

52. The term “disadvantaged communities” is defined by the California Department of Water Resources as any community where median household income is below eighty percent of the statewide median household income. Many communities without access to safe drinking water are “severely disadvantaged communities,” below sixty percent state median. CAL. PUB. RES. CODE ANN. § 75005(g) (West 2006).

53. See Jonathan M. Metzl & Helena Hansen, *Structural Competency: Theorizing a New Medical Engagement with Stigma and Inequality*, 103 SOC. SCI. MED. 126, 127 (2014) (distinguishing structural competency from cultural competency in the former’s recognition that “variables as race, class, gender, and ethnicity are shaped both by the interactions of two persons in a room, and by the larger structural contexts in which their interactions take place”).

54. López, *Seven Weeks*, *supra* note 10, at 1608.

55. See REBELLIOUS LAWYERING, *supra* note 18, at 189–90.

56. Ancheta, *supra* note 16, at 1389, 1398.

57. Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333, 337, 341–42 (2009).

58. Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645, 1651–52 (2017) [hereinafter, Cummings, *Movement Lawyering*].

federal law⁵⁹ and facilitating community power for local advocacy campaigns and policy reforms.⁶⁰

A unifying theme of community lawyering is “a realization that meaningful systemic change cannot result” from a “representation of poor and working people [that] has been individualized, atomized, depoliticized and divorced from any leadership by real organized constituencies with their own substantive and political goals.”⁶¹ Thus, community lawyers seek to engage in long-term representations of clients whose resolved legal issues could engender fundamental change for larger constituencies and not merely the individual clients.⁶² Moreover, “[c]ommunity lawyering is a model for challenging racial ideologies and empowering both a subordinated community and specific individuals within that community.”⁶³ As marginalized communities and individuals increasingly turn to enterprise and institutional solutions to economic, racial, and environmental issues, transactional lawyers are necessary to advance equity and close the access-to-wealth gap. Community lawyering theorists should therefore recognize the unique contributions of transactional community lawyering.

A. Community Lawyering: Chronological Interventions

Poverty lawyers were not a new phenomenon in the 1980s when progressive scholars began to scrutinize their work. In fact, documented evidence of poverty lawyering in America dates to the late 1800s.⁶⁴ But the growth of legal aid organizations in the 1960s, made possible in part by federal funding⁶⁵ and the raised social consciousness of law students,⁶⁶ ushered in the first mass wave of poverty lawyers entering public interest careers. These “cause lawyers”⁶⁷ worked full-time, employed by

59. See *id.* at 1654 (summarizing contemporary movement lawyering as “a turn away from the vision of lawyering associated with the ‘rights revolution’ of the Warren Court era, which is linked in the scholarly literature to the idea of legal liberalism”).

60. See *id.*; CUMMINGS, AN EQUAL PLACE, *supra* note 26.

61. Charles Elsesser, *Community Lawyering – The Role of Lawyers in the Social Justice Movement*, 14 *LOY. J. PUB. INT. L.* 375, 376 (2013).

62. See *id.* at 385 (“Community lawyering can assist fundamental and long-term change only through supporting grassroots organizing in all its aspects—community education, organizational development, and leadership development. . . . [W]e strongly believe that there is a role for lawyers in social justice movements and we try to develop practices which incorporate that role.”).

63. Ancheta, *supra* note 16, at 1389.

64. DEBORAH L. RHODE, ACCESS TO JUSTICE 47–55 (2004) (discussing the early development of poverty lawyering in the context of criminal defense representation). The Legal Aid Society, for example, was founded in 1876 “to provide legal assistance to low-income German immigrants in New York . . . [as] the first legal office for low-income people in the nation.” 1876: *The Legal Aid Society Is Founded*, LEGAL AID SOC’Y, http://legalaidnyc.org/historical_event/modest-beginnings/ [<http://perma.cc/5YEW-2MLV>] (last visited Apr. 1, 2022).

65. See *Legal Services Corporation Act of 1974*, Pub. L. No. 93-355, 88 Stat. 378 (codified as amended at 42 U.S.C. § 2996–2996l).

66. LAURA KALMAN, YALE LAW SCHOOL AND THE SIXTIES: REVOLT AND REVERBERATIONS 12 (2005) (“At all [law] schools, ‘students were becoming openly hostile to legal education, especially to the case and Socratic methods.’ At the same time, over the decade between 1960 and 1970, entrants ‘became increasingly liberal or radical,’ and their interest in public interest law increased dramatically.”).

67. John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 *FORDHAM L. REV.* 1927, 1928 (1999) (“Broadly speaking, cause

legal aid organizations and poverty law firms, to provide antipoverty lawyering and justice advocacy.⁶⁸

The development of “community lawyering” should be understood as an evolution of the poverty lawyering of the 1960s and 1970s.⁶⁹ “Many of the lawyers working in these [legal aid offices] were young, eager, idealistic but inexperienced. Given the tremendous case load, cases were often handled in a quick, routinized manner.”⁷⁰ The first generation of poverty attorneys were also predominantly white attorneys coming into communities they did not understand,⁷¹ trying to resolve social issues that they did not fully comprehend.⁷² The representation model was that clients would tell the poverty lawyers their problems and the attorneys would tell the clients how to fix the legal aspects of the problems.⁷³ In the urgency to address acute, previously unmet needs, there was no unifying theory to inform this brand of poverty lawyering within low-income communities. This form of well-intentioned yet untheorized poverty lawyering is what López coins as “regnant lawyering.”⁷⁴

Legal scholarship that began to crescendo in the late 1980s and coalesced in the 1990s provided the foundations of a theory of “progressive lawyering” to replace regnant, poverty lawyering.⁷⁵ Most of these legal scholars were former practicing poverty lawyers who maintained close connections with low-income communities of color through years of practice.⁷⁶ These scholars began not only to articulate the deficiencies of this regnant practice for the next generation of poverty lawyers but also to create the theoretical basis for antistatutory lawyering.⁷⁷ The dominant lawyering theory that took form out of this process is broadly referred to in the relevant literature as “community lawyering.”⁷⁸

lawyering encompasses various law-related activities, from rights assertion to legal counseling, that relies on law-related means to achieve social justice for individuals and subordinated or disadvantaged groups. Whether representing individuals or groups, cause-oriented poverty lawyers often adopt an orientation of antistatutory advocacy.”).

68. Austin Sarat & Stuart Scheingold, *What Cause Lawyers Do for, and to, Social Movements: An Introduction*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 9 (Austin Sarat & Stuart A. Scheingold eds., 2006).

69. Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 154 (2000); REBELLIOUS LAWYERING, *supra* note 18, at 1.

70. Marshall, *supra* note 69, at 155.

71. See REBELLIOUS LAWYERING, *supra* note 18, at 1–2 (“Sometimes, they didn’t seem to know very much at all about the local, statewide, and regional institutions with which we presumed they might regularly deal—about the obviously relevant neighborhood organizations and social service agencies.”).

72. See, e.g., Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 21–32 (1990) [hereinafter White, *Sunday Shoes*].

73. See Tremblay, *Regnant Lawyering*, *supra* note 21, at 952 (“Lawyers see clients as persons to be helped, as powerless persons who need to have problems solved through the intervention of the lawyer and her skills. Even if the result of such intervention were good for the client’s material existence, that gain might come at the expense of the client’s sense of control over her life, her self-esteem, her power.”).

74. See López, *Seven Weeks*, *supra* note 10, at 1609–10.

75. Tokarz et al., *The Newest (Oldest) Wave*, *supra* note 14, at 365–67.

76. See *id.*

77. See *id.* at 365 (“Community lawyering scholarship is rooted in the pioneering work of Gary Bellow and the later writing on progressive lawyering of Gerald López and Lucie White.”).

78. See Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 441 (2000) (summarizing the various lawyering theories for poverty lawyering including “critical lawyering theory,” “new

Community lawyering can be understood as the practice of working collaboratively with clients to share power in the working relationship and combine knowledge not only to solve acute, individual problems but ultimately to advance collective social change.⁷⁹ A summary of key foci within the evolution of community lawyering scholarship is explained in more detail in the following Parts: client-centered lawyering, rebellious lawyering, and movement lawyering. These foci are not synonymous with one another, as each intervention is distinct from the previous. However, contemporary use of the umbrella term “community lawyering” is broadly understood to encompass and build on these distinct concepts in the aggregate.

1. Client-Centered Lawyering

In part because of the high volume of cases the conventional poverty lawyer may have to take on, the lawyer may rely on routine methods of resolving the perceived legal issue as opposed to investigating which circumstances and outcomes are most salient for each individual client. Community lawyering theorists argue the need for “client-based empowerment strateg[ies].”⁸⁰ Thus, a significant intervention of community lawyering is the location of the client’s knowledge, decisionmaking, and empowerment at the center of the representation. The term “client-centered lawyering” is used to describe this lawyering theory.⁸¹ The first model for client-centered lawyering was pioneered by clinical law professors David Binder and Susan Price in their 1977 text, *Legal Interviewing and Counseling: A Client-Centered Approach*, which had a distinct and “extraordinary influence of the model within clinical education circles.”⁸²

Client-centered lawyering rests on two theories: (1) that the client has access to facts and information that the lawyer does not; and (2) that the client has to live with the outcome of the matter and, thus, needs to be satisfied with the strategy development that will lead to that outcome.⁸³ In contrast, “the traditional legal counseling model assumes that clients should be passive and delegate decisionmaking responsibility to their lawyers . . . and that professional problems tend to call for technical solutions beyond the ken of laypersons.”⁸⁴ Community lawyers are committed to placing their client’s decisionmaking at the center of the lawyering strategy.⁸⁵ In other words, the client is

poverty law scholarship,” “representational narrative scholarship,” “reconstructive poverty law,” “political lawyering,” “collaborative lawyering,” and “community lawyering”); Gary Bellow, *Steady Work: A Practitioner’s Reflection on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 297 (1996); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, 157 (1994). See generally Ancheta, *supra* note 16 (using the terms “lawyering for social change” and “progressive law practice” interchangeably).

79. See Ancheta *supra* note 16, at 1367–69, 1389–93.

80. See *id.* at 1371.

81. E.g., DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977); DAVID A. BINDER, PAUL BERGMAN, SUSAN C. PRICE & PAUL R. TREMBLAY, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991); Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990).

82. Dinerstein, *supra* note 81, at 504.

83. See Marshall, *supra* note 69, at 160–61.

84. Dinerstein, *supra* note 81, at 506.

85. See Marshall, *supra* note 69, at 159 (“Community members’ knowledge about their neighborhoods, their institutions, their bureaucracies were now valued and clients were asked to participate in the development

encouraged to be an active participant in the attorney-client relationship. Quite literally, the objective is to remove the centrality of the attorney and supplant the perception that only the attorney can resolve the issue.⁸⁶ The subarguments used in support of client-centered lawyering include “the philosophical argument, which sees client-centeredness as enhancing individual client autonomy; the political argument, which views the development of client-centeredness as a means of empowering economically and politically disadvantaged clients; . . . and the argument that client-centeredness produces better results for clients.”⁸⁷

One of the fundamental issues that client-centered lawyering aspires to address is the tendency for lawyers to dominate the attorney-client relationship.⁸⁸ Client-centeredness requires the lawyer not only to consider what they might otherwise deem irrelevant information but also to listen fully and patiently in an effort to understand the nature of the client’s problem and start on the path towards the client resolving that issue.⁸⁹ In doing so, the client-centered lawyer can increase the client’s participation in decisionmaking and problem solving.⁹⁰ The client-centered approach should not, in theory, prevent the attorney from providing the client with guidance and counseling. It may, however, restrain the attorney from providing an opinion or proposed solution before the client relationship is fully formed so as not to chill the development of the client’s participation in the problem-solving process.⁹¹ This commitment challenges traditional lawyering practices by asking the attorney to think critically before interjecting or directing the representation.⁹²

Community lawyering theory diverges from early iterations of client-centered lawyering scholarship in that the latter’s “primar[y] focus[] [was] on the individual lawyer-client relationship and the effective resolution of a particular case or transaction.”⁹³ Community lawyering theory, on the other hand, envisions the lawyer’s role outside of a distinct client matter and as part of a larger movement of social change.⁹⁴ Thus, while community lawyering incorporates many of the skills and techniques

and implementation of the solutions to their problems. . . . At a very fundamental level, poverty lawyers have to learn to listen to their clients.”).

86. See Ancheta, *supra* note 16, at 1371 (“The task of lawyer and client is to determine what the client needs and wants, and to see if the client or others can help make the change.”).

87. Dinerstein, *supra* note 81, at 512.

88. See REBELLIOUS LAWYERING, *supra* note 18, at 102 (“Lawyers dominate non-profit law offices pretty naturally, as part of the raw power most come to exercise as an aspect of who they are and what they do.”).

89. See *id.* at 109–11.

90. See Dinerstein, *supra* note 81, at 504 (“The client-centered or participatory model of counseling, with the client empowered to make decisions for him or herself, is a response to this traditional model.”).

91. See *id.* at 505 (“They see the strict client-centered lawyer’s reticence towards his client—his unwillingness even to suggest what the client ought to do for fear that he will unduly influence the client’s choice—as denying guidance to the clients that need it most. And if, as some argue, one goal of the counseling process is to foster an often contentious dialogue between lawyer and client, the client-centered lawyer’s excessive deference to her client denies important dialogic opportunities and results in an unnecessarily impoverished decisionmaking process.”).

92. See Ancheta, *supra* note 16, at 1363.

93. Ascanio Piomelli, *Rebellious Heroes*, 23 CLINICAL L. REV. 283, 300 (2016) [hereinafter Piomelli, *Rebellious Heroes*].

94. See *id.* at 299–301.

discussed in client-centered lawyering scholarship, the two are not interchangeable.⁹⁵ Client-centered lawyering is informative for community lawyering because the architects of client-centeredness disproportionately represent low-income and other marginalized clients. However, client-centeredness divorced from community lawyering theory can easily become problematic.⁹⁶ Thus, community lawyering theorists temper asocial client autonomy by contextualizing their client representations within the objectives of larger social movements.⁹⁷

2. Rebellious Lawyering

López further explores the relational distance between the client and attorney in his critique of regnant lawyering. Rebellious lawyering is “the process of empowering client communities through advocacy and education.”⁹⁸ López’s seminal work reimagines the role of lawyering from within low-income communities⁹⁹ and presents “richly textured portrayal[s] of lawyering based upon the collaboration of lawyers, clients, and the communities in which they live.”¹⁰⁰ Rebellious lawyering issued a challenge to poverty lawyers to use the law for empowerment of subordinated and marginalized individuals, which was a catalyst to the community lawyering revolution in poverty lawyering.¹⁰¹ “The underlying theory (or implication) of social change was that poor people could transform communities and entrenched legal systems through their assertions of power against bureaucrats and lawyers.”¹⁰²

Using narrative theory, López exposed the interactions between lawyers and clients through a series of vignettes and then theorized best lawyering practices for poverty lawyers in low-income communities of color.¹⁰³ The fact that López focused on lawyering instead of the theory of law was itself revolutionary,¹⁰⁴ as few legal scholars write directly to attorneys involved in the struggle of social justice work.¹⁰⁵ His rebellious

95. See REBELLIOUS LAWYERING, *supra* note 18, at 296–302; see also Piomelli, *Rebellious Heroes*, *supra* note 93.

96. See Robert A. Kagan & Robert Eli Rosen, *On the Social Significance of Large Law Firm Practice*, 37 STAN. L. REV. 399, 418–19 (1985) (describing how an outside corporate lawyer can operate as “a cynical manipulator of the tools made available by a complex legal system” and how the lawyer “takes advantage of the forms and the letter of the law rather than the spirit or intent, to maximize his client’s narrowly defined and essentially asocial goals”).

97. See Robert F. Cochran, Jr., Deborah L. Rhode, Paul R. Tremblay & Thomas L. Shafer, Symposium, *Client Counseling and Moral Responsibility*, 30 PEPP. L. REV. 591, 610–11 (2003).

98. Ancheta, *supra* note 16, at 1365.

99. See Marshall, *supra* note 69, at 147–49, 158–61.

100. Ancheta, *supra* note 16, at 1365.

101. See REBELLIOUS LAWYERING, *supra* note 18, at 28.

102. Ashar, *supra* note 13, at 1906.

103. REBELLIOUS LAWYERING, *supra* note 18, at 164 (“[W]hile each non-profit law office in the country bears the imprint of its own peculiar dramatic tension, all are struggling in some way over exactly how to define their work and their place in the fights that originally gave birth to (and likely still sustain) their very existence.”).

104. See Ancheta, *supra* note 16, at 1366–67.

105. A relatively limited amount of legal scholarship is about the practice of law. See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 35 (1992) (arguing “judges, administrators, legislators, and practitioners have little use for much of the scholarship that is now produced by members of the academy”). Even clinical professors are often writing on doctrine, jurisprudence, or legal education. See Richard A. Boswell, *Keeping the Practice in Clinical Education and*

vision was for lawyers to shed their traditional role as learned advisor to instead partner with clients in problem-solving that not only addresses the mere surface symptoms of oppression but also fundamentally brings to an end the causes of subordination.¹⁰⁶

Clients of color were placed as the leads in López's lawyering narratives as opposed to supporting characters.¹⁰⁷ His repositioning of low-income clients of color is a distinguishing factor of "rebellious lawyering," while its antonym, "regnant lawyering," perpetuates the marginalization of subordinated clients in antipoverty lawyering.

As employed by Gerald López, [regnant lawyering] describes that strain of legal activity characteristic of liberal and progressive lawyers who care about social justice, but who are too enmeshed in their law oriented environment to perceive its limitations and harms. . . . Indeed, regnant lawyering may be perversely dangerous precisely because it is benign and well-intentioned. Its impact upon dependent clients is harder to resist because the subordination happens in a supportive and caring context, and the perpetrator of the subordination is one who the client views as a helper or a champion.¹⁰⁸

López described the regnant lawyer as one who enters a subordinated community resigned to the idea that there is only so much that can be accomplished for the client and that the lawyer is the most informed individual to make the decisions about what those boundaries are.¹⁰⁹ López makes it clear that all lawyers risk regnant lawyering because they are often hired for a discrete purpose as the trained problem solvers in the situation.¹¹⁰ Thus, lawyers from all backgrounds can easily slip into the dominant role of leading the process of finding the solution.¹¹¹ The regnant-rebellious dichotomy is analyzed both in terms of the lawyer's practice and the lawyer's relationship with the client and local community.

López's rebellious lawyers, by contrast, are deeply rooted in the communities in which they live and work. They collaborate with other service agencies and with the clients themselves; they try to educate members of the community about their rights; they explore the possibilities of change and continually reexamine their own work in order to help their clients best. Rebellious lawyering thus redefines the lawyer-client relationship as a cooperative partnership in which knowledge and power are shared, rejecting a relationship limited to an active professional working on behalf of the passive, relatively powerless layperson.¹¹²

Scholarship, 43 HASTINGS. L.J. 1187, 1190–94 (1992) ("Ironically, clinical scholarship is rarely written for those actively engaged in the practice of law or those actively working on behalf of the underrepresented. . . . A more morally emphatic, living scholarship is needed to fill the gap between theory and practice.").

106. Ancheta, *supra* note 16, at 1368–69.

107. See, e.g., Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 1–7 (1989).

108. Tremblay, *Regnant Lawyering*, *supra* note 21, at 953.

109. REBELLIOUS LAWYERING, *supra* note 18, at 23–24.

110. *Id.* at 24–25.

111. See Tremblay, *Regnant Lawyering*, *supra* note 21, at 951 ("Most lawyers dominate lawyer-client interactions with their expertise in technical matters, their use of mysterious legal language, their depersonalization of disputes, and their greater perceived importance.").

112. Ancheta, *supra* note 16, at 1370.

The central theme of rebellious lawyering is working collaboratively with clients towards antisubordination goals that further empower both the client and their broader marginalized community.¹¹³

3. Movement Lawyering

Movement lawyers,¹¹⁴ who are primarily identified as policy advocates, constitute the second wave of community lawyers.¹¹⁵ They achieve social change by working alongside coalitions of organized, marginalized clients to build clients' power.¹¹⁶ The broader objective of community lawyering is to change the legal and institutional constructions that create and perpetuate poverty and other forms of subordination.¹¹⁷ The experience of poverty in the United States extends beyond the lack of economic resources and is one of relational, financial, political, educational, and environmental powerlessness and marginalization.¹¹⁸ Because racism is a root cause of the experience of poverty and powerlessness,¹¹⁹ movement lawyers often work alongside communities of color.¹²⁰ Movement lawyering centralizes the grassroots movement of marginalized

113. *See id.* at 1388–89.

114. In earlier iterations of the relevant scholarship, the terms “cause lawyering” and “political lawyering” are often used. *See* AUSTIN SARAT & STUART SCHEINGOLD, *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 37 (1998) (describing cause lawyering as “any activity that seeks to use law-related means or seeks to change laws or regulations to achieve greater social justice—both for particular individuals (drawing on individualistic ‘helping’ orientations) and for disadvantaged groups”); Bellow, *supra* note 78, at 309 (“Political lawyering, or whatever we choose to call it, simply describes a medium through which some of us with law training chose to respond to the need for change in an unjust world.”); Martha Minow, *Political Lawyering: An Introduction*, 31 HARV. C.R.-C.L. L. REV. 287, 289 (1996) (summarizing “political lawyering” as “deliberate efforts to use law to change society or to alter allocations of power”).

115. *See* CUMMINGS, *AN EQUAL PLACE*, *supra* note 26, at 1.

116. *See* Cummings, *Movement Lawyering*, *supra* note 58, at 1689 (emphasizing two key features of movement lawyering as “the representation of *mobilized clients* and the use of *integrated advocacy*”); Betty Hung, *Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Course*, 23 CLINICAL L. REV. 663, 664 (2017) (defining movement lawyering as “[l]awyering that supports and advances social movements, defined as the building and exercise of collective power, led by the most directly impacted, to achieve systemic institutional and cultural change”).

117. *See* López, *Seven Weeks*, *supra* note 10, at 1608 (“In short, the rebellious idea of lawyering demands that lawyers (and those with whom they work) nurture sensibilities and skills compatible with a collective fight for social change.”); CAUSE LAWYERS AND SOCIAL MOVEMENTS 10 (Austin Sarat & Stuart A. Scheingold eds., 2006).

118. *See* Calmore, *supra* note 67, at 1944, 1947.

119. *See* Scott Seider, Shelby Clark, Daren Graves, Lauren Leigh Kelly, Madora Soutter, Aaliyah El-Amin & Pauline Jennett, *Black and Latinx Adolescents’ Developing Beliefs About Poverty and Associations With Their Awareness of Racism*, 55 DEV. PSYCH. 509, 509 (2019) (“Interpersonal and structural forms of racism contribute to a system of economic stratification in the United States in which children of color are disproportionately likely to be born into poverty and to remain poor as adults.”).

120. *See, e.g.*, Alexi Nunn Freeman & Jim Freeman, *It’s About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 164 (2016) (describing a movement “built from the ground up and led by the low-income communities of color that were most affected by zero tolerance and the school-to-prison pipeline”); Anthony V. Alfieri, *Faith in Community: Representing “Colored Town”*, 95 CAL. L. REV. 1829, 1832 (2007) (presenting three case studies of “race-conscious community lawyering”).

client coalitions in determining how to advance social change.¹²¹ The ethos of movement lawyering is recognizing that “it is organized movements of people, allied with lawyers and other activists, speaking truth to power that changes law; [and] that changing law is just one step in the never-ending struggle to shift power in favor of those who lack it.”¹²²

In contrast to movement lawyering, traditional poverty lawyering fails to consistently centralize advancing social change.¹²³ Early iterations of poverty lawyering focused on individual representation instead of systemic reform.¹²⁴ Moreover, social change and movements often occur outside of the work of legal advocates. In fact, poverty lawyers can at times be at odds with social movements.¹²⁵ Thus, a growing segment of social justice scholarship examines the importance of social movements and the lawyers that support them.¹²⁶

B. Critical Legal Theory in Practice

Community lawyering theory is informed by critical legal theory—a critical analysis of doctrinal law and legal institutions by antistatist scholars to explain how the law both grants and reproduces power to the detriment of minoritized populations.¹²⁷ Community lawyering theory’s intervention into poverty lawyering focuses on disrupting attorney-client power dynamics that maintain the client’s subordination.¹²⁸ In other words, critical legal theory examines the law, while community lawyering theory examines the lawyering. What distinguishes community lawyering from other forms of poverty lawyering is the critical legal theory that underpins it.¹²⁹ Conversely, studying the practice of law and, in particular, community lawyering exposes areas for further theory development and interrogation of doctrinal law.¹³⁰ In

121. See Cummings, *Movement Lawyering*, *supra* note 58, at 1657–58 (explaining that the modern understanding of movement lawyering involves “following the leadership of grassroots actors designing social movement campaigns”).

122. Scott L. Cummings, *Teaching Movements*, 65 J. LEGAL EDUC. 374, 376 (2015) [hereinafter Cummings, *Teaching Movements*].

123. See Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 959–60 (2007).

124. See Ashar, *supra* note 13, at 1904–05 (“Political scientist Stuart Scheingold, laid the basis for this critique with his work *The Politics of Rights* in which he drew on case studies of legal reform movements to conclude that the dependence of progressive movements on incremental rights-based strategies would imperil more fundamental political shifts achievable through collective action.”).

125. See *id.* at 1880 (describing “progressive public interest lawyers” as “the conflicted agents of the legal system, sympathetic to the methods and goals of resistance movements but bound by the forms of the legal establishment”); Crenshaw, *supra* note 47 at 1336 (arguing “the Black community must develop and maintain a distinct political consciousness in order to prevail against the coopting force of legal reform”).

126. Andrias & Sachs, *supra* note 46.

127. See Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 830–31 (1997).

128. See Ashar, *supra* note 13, at 1906 (discussing the shift in poverty lawyering toward strategies centered on community member participation).

129. Michael Diamond, *Community Lawyering: Introductory Thoughts on Theory and Practice*, 22 GEO. J. ON POVERTY L. & POL’Y 395, 403 (2015) (explaining “that without the theory, the [poverty lawyering] practice risks becoming incoherent or even self-opposing”).

130. See, e.g., Eumi K. Lee, *Monetizing Shame: Mugshots, Privacy, and the Right to Access*, 70 RUTGERS L. REV. 557–58 (2018).

this way, community lawyering and critical legal theorists have enjoyed a symbiotic relationship wherein the advancement of one has facilitated the advancement of the other. Because the bodies of critical legal theory and community lawyering scholarship complement each other, this Part briefly examines the former as helpful background to understanding the latter.¹³¹

Critical legal theory—specifically critical legal studies¹³² and critical race theory¹³³—examines social movements and the lived experiences of marginalized populations to understand subordination and to challenge legal structures and institutions that maintain it.¹³⁴ Each critical intervention provides alternative theories of how to transform legal institutions and the law. Critical legal scholars are focused on advancing social causes on a doctrinal level.¹³⁵ Community lawyering, on the other hand, works to support marginalized communities and social movements by attempting to translate critical legal theory into the practice of law. Community lawyering draws out the insights from critical legal theory to transform the practice of law and how lawyers engage with subordinated clients. Figure 1 provides a stylized depiction of the interplay between social movements of the oppressed that informs critical legal theory, critical legal theory that underpins community lawyering, and community lawyering that supports social movements of the oppressed.

131. See Dinerstein, *supra* note 81, at 521 (“Yet when clinical teachers write about clinical education issues today, few stress the political underpinnings of client-centered approaches. Rather, it is Critical Legal Studies adherents and others concerned with developing more explicitly political law practices who have stressed the need for greater client participation in the lawyer-client relationship.”).

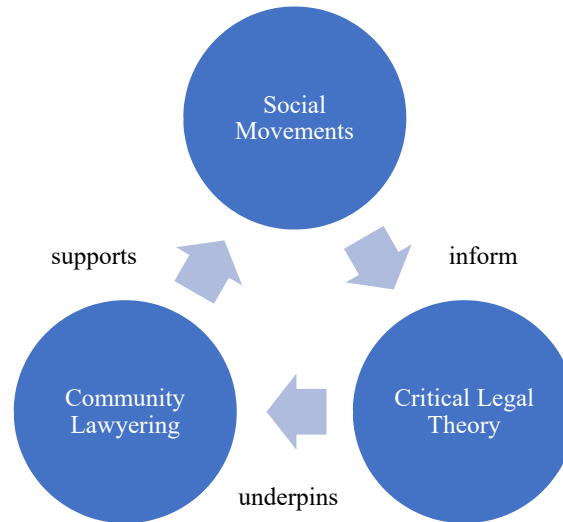
132. Ancheta, *supra* note 16, at 1363–64 (“Critical legal studies, feminist legal theory, and critical race theory—schools of thought that challenge the assumptions that traditional jurisprudence is neutral, determinate, apolitical, and fair—hold the promise of changing the law to accomplish economic and social justice.”).

133. *Id.* at 1373 (“Critical race theorists, for example, argue that existing jurisprudence perpetuates racial subordination by failing to acknowledge racism and by failing to incorporate the insights and experiences of people of color into legal doctrine.”).

134. See Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 509, 826–27 (2021) (“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. . . . Movement law centers itself within this history of critical [legal] thought.”); Ashar, *supra* note 13, at 1904 (“Critical legal scholars, such as Duncan Kennedy and Roberto Unger, spearheaded a critique of adjudication and questioned its centrality in the construction of social systems.”).

135. 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, 515–16 (1984) (challenging critical legal scholars to reconnect their doctrinal analyses to progressive social movements).

FIGURE 1: COMMUNITY LAWYERING—BETWEEN THEORY AND PRACTICE



1. Clinical Education as a Laboratory

Clinical legal education has largely adopted community lawyering as a means of practice¹³⁶ and, as a result, clinical professors substantially contribute to both community lawyering and critical legal theory.¹³⁷ Clinical pedagogy is a method that teaches students substantive areas of law by placing them in the role of an attorney representing clients under the supervision of clinical faculty. That faculty then provides individualized feedback and supports student's throughout the representation.¹³⁸ Community lawyering theory critiques not only the way attorneys practice but also how little exposure to real

136. Tokarz et al., *The Newest (Oldest) Wave*, *supra* note 14, at 359 (“Community lawyering is . . . identified as a goal in clinical legal education.”).

137. Dinerstein, *supra* note 81, at 504 (“Some of the model’s most committed advocates are clinical law teachers, who have adopted it for use in both live-client clinical law programs and simulation courses.”); see David Dominguez, *Community Lawyering in the Juvenile Cellblock: Creative Uses of Legal Problem Solving To Reconcile Competing Narrative on Prosecutorial Abuse, Juvenile Criminality, and Public Safety*, 2007 J. DISP. RESOL. 387, 387–95 (2007) (describing community lawyering in a law school clinic on juvenile criminal defense); Arpeeta S. Mizan, *Community Lawyering or Collaborative Lawyering?: How Far Human Rights Advocacy Strategies Harbour the Theory of Change*, 3 ASIAN J. LEGAL EDUC. 188, 188 (2016) (identifying community lawyering as one of the most widely used human rights advocacy tactics by North American law school clinics); Wendy A. Bach & Sameer M. Ashar, *Critical Theory and Clinical Stance*, 26 CLINICAL L. REV. 81, 82 (2019) (arguing that “over the last several decades, a growing body of . . . [clinical scholarship] (1) is grounded in observation of lived reality and awareness of the operation of interlocking systems, (2) incorporates an innate criticality borne of the activism and advocacy of clinicians, and (3) meaningfully and productively generates and deploys theoretical insights in the wider world”).

138. Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1930 (2002).

people and real problems law students commonly obtain while in law school.¹³⁹ A significant aspect of López's indictment of traditional, regnant lawyering practices is that the practices are indoctrinated through legal education.¹⁴⁰ Clinics are one of the few sites where law students gain exposure to community lawyering theory and real people with legal issues.¹⁴¹ In this way, clinical pedagogy cannot be divorced from community lawyering theory because expanding and professionalizing clinical education is, in many respects, the legal academy's primary response to the critiques of legal education by community lawyering and critical legal theorists.¹⁴²

Moreover, clinical faculty are the dominant voice in community lawyering scholarship. Similar to the relationship between poverty lawyering and community lawyering, clinical education predates clinical pedagogy.¹⁴³ Clinical pedagogy¹⁴⁴ was the intervention into clinical education that provided the methodological approach clinical professors now employ to produce metacognitive awareness in their students and an understanding about the function and construction of law and legal systems.¹⁴⁵ Clinical pedagogy also builds on community lawyering theory to encourage working with low-income clients beyond the resolution of a distinct legal matter and towards achieving a more equitable society.¹⁴⁶ As explained in Part II.B.3, business law clinicians have pioneered transactional community lawyering. Several business law clinicians—learning from civil rights, criminal practice, and public advocacy clinicians before them—are

139. See López, *Seven Weeks*, *supra* note 10, at 1606 (“[L]aw school exposed her to too little interdisciplinary theory, too few skills, and too little of everyday life. And it taught her almost nothing about how to conceive of her own work as a lawyer, much less about how concretely to envision a practice committed in any substantial degree to the fight for fundamental social change.”).

140. REBELLIOUS LAWYERING, *supra* note 18, at 4–5 (describing a law school “that had no idea about, and apparently little interest in, how to design its curriculum to systematically expose students to the complex lives of people like those with whom [López] had grown up”); cf. Tyler Ambrose, Zarinah Mustafa & Sherin Nassar, *Law Schools’ Complicity on Racism Must Be Challenged*, APPEAL (June 24, 2020), <http://theappeal.org/law-schools-racism/> [<http://perma.cc/K5CB-9Y7J>] (“[T]here is an institution guilty of perpetuating racial inequality that we have yet to scrutinize: American law schools. . . . We cannot allow these legal institutions to continue producing race-illiterate lawyers.”); Gerald P. López, *Transform—Don’t Just Tinker With—Legal Education*, 23 CLINICAL L. REV. 471, 493–94 (2017); Duncan Kennedy, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 54, 60–62 (1998).

141. See Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195, 226 (2002) (“The lawyering skills transmitted through the conventional law school courses do not prepare students for this type of community practice.”).

142. Gerald P. López, *Training Future Lawyers To Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305, 323–24 (1989).

143. Brodie, *supra* note 57, at 335 (“Pedagogy was not the focus of these early [clinical] programs, although the value to students of ‘hands on’ work with clients was recognized.”); Jessica Davis, *Social Justice and Legal Education: Mandatory Pro Bono Legal Services*, 1 CHARLESTON L. REV. 85, 88 (2006) (explaining free legal services at law school clinics started three to four decades ago).

144. See Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 PENN ST. INT’L L. REV. 421, 423 (2004) (defining clinical legal education).

145. See Susan Bryant & Elliott S. Milstein, *Rounds: A “Signature Pedagogy” for Clinical Education?*, 14 CLINICAL L. REV. 195, 197–98, 200–01 (2007).

146. See Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 413–14 (2008).

experimenting with community lawyering in their transactional practices and training a cadre of future business lawyers to competently engage in antisubordination work.¹⁴⁷

C. Transactional Lawyering Theory

Seminal scholarship in the community lawyering canon either explicitly rejected¹⁴⁸ or merely failed to consider¹⁴⁹ the possibility of antisubordination transactional lawyering. Although other scholars have discussed community lawyering in nonlitigation contexts,¹⁵⁰ the application to transactional lawyering is still underexplored and undertheorized. There are various reasons for this phenomenon. One contributing factor is that scholars often draw from their own practice experiences.¹⁵¹ Community lawyering scholarship reflects the fact that most community lawyering scholars are individual-representation or group-advocacy lawyers. Not until recently has a critical mass of transactional lawyers prioritized representing low-income clients of color in corporate and transactional matters.¹⁵² Moreover, popular perception of corporate law, and by extension of transactional lawyers (as reinforced by the political economy,¹⁵³ pop

147. See, e.g., *Temple Legal Aid Office*, TEMP. UNIV. JAMES E. BEASLEY SCH. L., <http://sites.temple.edu/tlao/for-our-students/> [<http://perma.cc/2Q4D-888L>] (last visited Apr. 1, 2022) (describing a community lawyering clinic in which students handle transactional matters); *Law Clinics*, L. FOR BLACK LIVES, <http://www.law4blacklives.org/> [<http://perma.cc/A7AX-RJEP>] (last visited Apr. 1, 2022) (compiling a list of law school transactional clinics that incorporate community lawyering practices to achieve anti-poverty and civil rights goals); *Clinic for Law & Entrepreneurship*, VILL. UNIV. CHARLES WIDGER SCH. L., <http://www1.villanova.edu/university/law/experience/clinics-externships/clinics/law-entrepreneurship.html> [<http://perma.cc/NS2Y-KYAV>] (last visited Apr. 1, 2022) (“Each semester, students also work with community organizations to examine how transactional lawyers can support community led systemic change and empowerment.”).

148. See DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* v (1977) (stating explicitly that this theory of client-centeredness applies only in the litigation contexts and not to transactional settings though subsequent publication editions later addressed transactional lawyering).

149. See e.g., Bellow, *supra* note 78, at 300 (describing community lawyering as committed to individual representation); Elsesser, *supra* note 61, at 381 (“Older advocates, myself among them, who grew up in the 1960s and 1970s, were indoctrinated with the idea that lawyers and litigation were the keys to all sorts of social change movements.”).

150. See William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N. U. L. REV. 455, 455–56 (1994) (“The purpose of empowerment lawyering with community organizations is to enable a group of people to gain control of the forces which affect their lives. The substance of this lawyering is primarily the representation of groups rather than individuals.”).

151. See Tremblay, *The Emergence and Influence of Transactional Practice*, *supra* note 35, at 378 (“We write about what we know, and what we do.”); Caprice L. Roberts, *Unpopular Opinions on Legal Scholarship*, 50 LOY. U. CHI. L.J. 365, 369 (2018) (encouraging legal scholars to use their passions as fuel for scholarship).

152. See Smith, *supra* note 8.

153. See Otis B. Grant, *President Ronald Reagan and the African-American Community: Harmful Stereotyping and Games of Choice in Market-Oriented Policy Reform*, 25 T.M. COOLEY L. REV. 57, 71, 76 (2008) (explaining that “Reaganomics was beneficial to Whites as a group regardless of their individual efforts”).

culture,¹⁵⁴ and global financial crises¹⁵⁵), is in direct conflict with social justice movements.¹⁵⁶ Business law facilitates a capitalist economic system, which routinely functions to exploit, exclude, and compound economic inequity.¹⁵⁷ While this is a reasonable summation of how much of business law functions, there is a small (but steadily growing) number of business and transactional lawyers engaged in antipoverty work,¹⁵⁸ which community lawyering theory has yet to fully recognize. This lack of recognition is problematic because it means that scholars have defined and crafted concepts of community lawyering that exclude transactional lawyers. The likely consequences that follow are twofold: (1) transactional lawyers will not engage in social change lawyering; or (2) to the extent that transactional lawyers are attempting to represent marginalized and subordinated clients, they will practice regnant lawyering.

1. Community Economic Development Scholarship

There is a wealth of scholarship on community economic development (CED),¹⁵⁹ which contemplates, but rarely highlights, transactional lawyering.¹⁶⁰ A central occupation of CED is to examine how low-income and other marginalized groups can subject economic forces within their geographic community to democratic control and

154. See ZACK McDERMOTT, GORILLA AND THE BIRD 21 (2017) (“Law school was not only my ticket out of the lower middle class and out of Wichita, but also a chance for me to help keep the disadvantaged out of prison. I grew up on Natty Lights, mac’n’cheese, and Camaro lust; I was never going to be a slick dick corporate lawyer drinking \$17 cocktails after work and slamming my fist on the boardroom table. Researching contracts for the Koch brothers or Exxon held no appeal. No, my mission was to push back against the weight of racial injustice. Get my Malcolm X on.”).

155. See Carl Felsenfeld, *The Savings and Loan Crisis*, 59 FORDHAM L. REV. S7, S7–S8 (1991) (discussing the deregulation efforts that facilitated the savings and loan crisis and its disastrous effect); Steven L. Schwarcz, *Systemic Risk*, 97 GEO L.J. 193, 194–96 (2008).

156. Jennifer Fan, *Woke Capital: The Role of Corporations in Social Movements*, 9 HARV. BUS. L. REV. 441, 443 (2019) (“Historically, corporations were derided as a source of ‘evil’ and ‘a vehicle for the voices and interests of an exceedingly small managerial and financial elite—the notorious [one] percent’; they are synonymous with the status quo.” (citation omitted)).

157. See Mehrsa Baradaran, *Jim Crow Credit*, 9 U.C. IRVINE L. REV. 887, 912–16 (2019) (explaining the limits of civil rights-era policy reforms meant to address the separate and unequal credit market that resulted in the poor paying more for essential consumer products than the wealthy).

158. See, e.g., Etienne C. Toussaint, *Dismantling the Master’s House: Toward a Justice-Based Theory of Community Economic Development*, 53 U. MICH. J.L. REFORM 337, 337 (2019) (discussing the social impact bond model of CED leveraging private financing in social welfare programs within low-income communities).

159. “CED addresses the crisis of poverty through a community-controlled development strategy that shifts the focus from short-term creation or expansion of business activity to democratic influence over the local economy.” Laurie A. Morin, *Legal Services Attorneys as Partners in Community Economic Development: Creating Wealth for Poor Communities Through Cooperative Economics*, 5 D.C. L. REV. 125, 128 (2000). Moreover, CED is “a community-oriented and community-controlled development strategy that utilizes the resources and implements the priorities of residents and institutions in low-income communities.” Brian Glick & Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts To Achieve Economic Justice: The East Brooklyn Experience*, 23 N.Y.U. REV. L. & SOC. CHANGE 105, 107 (1997).

160. See Roger A. Clay & Susan R. Jones, *A Brief History of Community Economic Development*, 18 J. AFFORDABLE HOUS. 257, 258–59 (2009); Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 403–04 (2001).

oversight.¹⁶¹ Accordingly, CED describes a broad spectrum of lawyering techniques that encompasses policy advocacy, fact gathering, legal research, policy analysis, organizing, transactional lawyering, and litigation to advance and enforce community-level participation in economic development.¹⁶²

Because a significant component of CED work requires the lawyer to engage with private enterprise, for the last three decades CED has provided a refuge for transactional lawyers wanting to use their deal work expertise for social good.¹⁶³ There are also several law school clinics titled “community economic development clinics” that prioritize transactional matters for their law students.¹⁶⁴ But the field of CED is much more expansive than transactional lawyering. Moreover, there are now other avenues for transactional lawyers to engage in antipoverty lawyering not connected to a CED practice.¹⁶⁵ Thus, there is a gap in lawyering scholarship that squarely addresses antipoverty transactional lawyering.

2. Transactional Lawyering Scholarship

The representation of entities and organizations, in contrast to individuals, is “one that neither current rules of legal ethics nor current models of lawyer-client interaction adequately illuminate.”¹⁶⁶ Additionally, corporate law scholarship generally undervalues the exploration of transactional lawyering.¹⁶⁷ This Part explains aspects of transactional practice that significantly distinguish it from group advocacy campaigns or individual dispute resolution representation that community lawyering is premised upon.

Business entities are distinct from,¹⁶⁸ and may be better described as even greater than, the sum of their parts.¹⁶⁹ Thus, transactional lawyering cannot be explained merely

161. See WILLIAM H. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY* 55–57 (2001).

162. See Morin, *supra* note 159, at 160–63, 168–71.

163. Barbara Bezdek, *Digging into Democracy: Reflections on CED and Social Change Lawyering After #OWS*, 77 MD. L. REV. ENDNOTES 16, 28–30 (2018) (“CED lawyers, ordinarily operating not in court but rather in framing and forging agreements, find opportunities to express community visions through agreements and adaptations of the full range of private law devices.”).

164. *Ludwig Center for Community & Economic Development*, YALE L. SCH., <http://law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/ludwig-center-community-economic-development> [<http://perma.cc/P9V7-LL32>] (last visited Apr. 1, 2022).

165. See *infra* Part II.B.

166. Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers’ Representation of Groups*, 78 VA. L. REV. 1103, 1104 (1992).

167. See Cathy Hwang, *Value Creation by Transactional Associates*, 88 FORDHAM L. REV. 1649, 1663 (2020) (“Existing legal scholarship fails to adequately explore the crucial question of what transactional associates do.”).

168. See W.W. BUCKLAND, *A TEXT-BOOK OF ROMAN LAW FROM AUGUSTUS TO JUSTINIAN* 175 (The University Press 1932) (explaining that under Roman law, a corporation was a group that possessed a personality distinct from its particular members).

169. See Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 251 (1999) (discussing the corporation, not the collection of shareholder individuals, as the owner of the business assets); Ronald Chen & Jon Hanson, *The Illusion of Law: The Legitimizing Schemas of Modern Policy and Corporate Law*, 103 MICH. L. REV. 1, 141–45 (2004).

by the representation of a group of individuals.¹⁷⁰ Consider, for example, the for-profit corporation as the quintessential business entity. Shareholders, directors, and officers are the significant constituencies of a corporation. While the transactional lawyer may work most closely with and take direction from client officers or general counsel, those officers serve at the discretion of the directors, who must serve in the best interest of the corporation and are elected by the shareholders. Thus, representing a corporation is not merely representing a group of shareholders,¹⁷¹ as some lawyering theorists have previously suggested.¹⁷²

Transactional representation entails many of the complicated challenges of multiple-party individual representation because, at various moments, constituents' interests may diverge. While community lawyering focuses on the attorney's relationship with an individual who is the client,¹⁷³ transactional lawyers have relationships with the entity's representatives but are, in theory, mindful that the objectives of the individual representative may not be what is in the best interest of the corporation.¹⁷⁴ The transactional lawyer may have to review governing documents, applicable regulations, and company contracts to help shape their counsel of what is in the best interest of the entity client.¹⁷⁵

Lawyering theorists posit that goals plus methods determine the outcome of lawyering.¹⁷⁶ In other words, lawyering theory does not simply examine the lawyer's

170. Compare Lyman Johnson & David Millon, *Corporate Law After Hobby Lobby*, 70 BUS. LAW. 1, 8–9 (2015) (“[C]orporations own property, enter into contracts, and commit torts. They can sue and be sued in their own right. They are subject to penalties if they violate applicable criminal laws. They must comply with a vast array of federal and state regulations. . . . [T]hey are subject to income tax liability on the net income generated by their commercial activities. . . . [T]he rights and obligations of corporations are not simply those of their shareholders, officers, directors, employees, or other humans who participate in or are affected by the corporation’s activities.”), with Ellmann, *supra* note 166, at 1105 (“The vast bulk of corporate representation is in a sense the representation of the many individual owners of the corporation’s stock.”).

171. For examples of case law supporting the aggregate theory of corporation, i.e., viewing corporate rights as indistinguishable from shareholders, see *Northwestern National Life Insurance Co. v. Riggs*, 203 U.S. 243, 255 (1906); *Dodge v. Woolsey*, 59 U.S. (18 How.) 331, 364 (1855) (Campbell, J., dissenting) (describing the corporation as an artificial entity that cannot sue or be sued in the courts unless the rights of the members of the corporation can be exercised under the corporate name). See also Ellmann, *supra* note 166.

172. See Margaret M. Blair & Elizabeth Pollman, *The Derivative Nature of Corporate Constitutional Rights*, 56 WM. & MARY L. REV. 1673, 1674 (2015) (arguing that the Court’s characterization as an association of citizens made sense through the nineteenth century, but no longer fits the modern corporate form).

173. See Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5, 13 (2016).

174. See William W. Bratton, *Berle and Means Reconsidered at the Century’s Turn*, 26 J. CORP. L. 737, 734–40 (2001) (describing the Berle-Means Paradigm, which concerns the separation of ownership and control as the central issue corporate law addresses); see also E. Norman Veasey & Christine T. Di Guglielmo, *The Tensions, Stresses, and Professional Responsibilities of the Lawyer for the Corporation*, 62 BUS. LAW. 1, 3 (2006).

175. See Steven M. Bainbridge, *Community and Statism: A Conservative Contractarian Critique of Progressive Corporate Law Scholarship*, 82 CORNELL L. REV. 856, 859 (1997) (describing the corporation as a nexus of contracts generally governed by private ordering and not government regulation).

176. H. RUSSELL BERNARD & GERY W. RYAN, *ANALYZING QUALITATIVE DATA* (Thousand Oaks, Cal.: Sage 2010) (defining theory as a set of details about a specific theme and a tool used to explain, predict, and understand a particular topic).

objectives but also how they reach those ends.¹⁷⁷ Examining the goals and methods of lawyers allows lawyering theorists to construct a system of ideas and principles to explain and improve the practice of law. While lawyering theories abound in the context of community lawyering, scholars have not coalesced around a central theory of transactional lawyering. Community lawyering scholars are not unique in ignoring transactional lawyers. In general, scholars have paid scant attention to the practice of business lawyers.¹⁷⁸ There has been extensive research on doctrinal corporate law, and theories of entity forms abound.¹⁷⁹ Precisely because there are so many salient corporate law theories, no single theory can be identified as underpinning transactional lawyering.

My assertion that transactional lawyering does not have a dominant lawyering theory is not to suggest that there is no theory underpinning conventional transactional lawyering. All areas of law and lawyering are infused with theory or are underwritten by a series of theories, even when that theoretical framework remains unacknowledged.¹⁸⁰ Narratives of conventional transactional lawyering coalesce around a neoliberal law and economics framework, which favors free-market capitalism and private sector control instead of government regulation or public interference in economic and organizational issues. If antipoverty transactional lawyers apply a neoliberal law and economics framework to their representation of marginalized clients, there is a likelihood they would be engaged in regnant lawyering.

II. THE NEXT WAVE: TRANSACTIONAL COMMUNITY LAWYERS

During the last fifty years, community lawyers have assisted marginalized clients in obtaining substantial legal rights and policy reforms. While the struggle for additional legal reform remains, this Section posits that the next wave of social justice lawyers will need private ordering lawyers to create and advise alternative institutions and businesses needed to sustain social movements and propel systemic change.¹⁸¹ Although community lawyering theory is intended to be applicable to various areas of legal practice, as

177. See REBELLIOUS LAWYERING, *supra* note 18, at 5 (discussing “what [lawyers] do and what they hoped to change”).

178. See Therese H. Maynard, *Law Matters. Lawyers Matter*, 76 TUL. L. REV. 1501, 1502 (2002) (“Since I began teaching law twenty years ago, I have become increasingly uncomfortable with the expanding disconnect between, on the one hand, legal scholarship in [the corporate law] field and, on the other hand, the real world of practicing lawyers who must resolve corporate law problems facing their clients.”). *But see* Steven L. Schwarcz, *Explaining the Value of Transactional Lawyering*, 12 STAN. J.L. BUS. & FIN. 486, 486–87, 506–08 (2007) (explaining the misconception of the value creation of transactional lawyers).

179. See, e.g., Herbert Hovenkamp, *The Classical Corporation in American Legal Thought*, 76 GEO. L.J. 1593, 1597–1601, 1605–10 (1988); Carl J. Mayer, *Personalizing the Impersonal: Corporations and the Bill of Rights*, 41 HASTINGS L.J. 577, 580–81 (1990); see also *Bank of the U.S. v. Dandridge*, 25 U.S. (12 Wheat.) 64, 91–92 (1827) (real entity theory); *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 636 (1819) (artificial entity/concession theory); *Bank of the U.S. v. Deveaux*, 9 U.S. (5 Cranch) 61, 86–88, 91 (1809) (aggregate theory).

180. See Cheryl I. Harris, *Critical Race Studies: An Introduction*, 49 UCLA L. REV. 1215, 1216–17 (2002).

181. See Alfred Dennis Mathewson, *Commercial and Corporate Lawyers ‘n the Hood*, 21 U. ARK. LITTLE ROCK L. REV. 769, 770 (1999) (arguing that advancing racial equity will require well-trained corporate and commercial lawyers).

demonstrated above, much of the canon of community lawyering scholarship focuses on advocacy and litigation-based practices.

While illustrative, lawyering theory in the litigation context is not often analogous to transactional lawyering because “doing deals [can be] fundamentally different than litigating.”¹⁸² Relatedly, scholarship focused on community economic development¹⁸³—which encompasses a broad spectrum of lawyering techniques in nonlitigation advocacy, policy analysis, and transactional representation¹⁸⁴—does not often isolate the particularities of transactional lawyering. Both community lawyering scholarship and CED scholarship focus on lawyers using public law¹⁸⁵ to reform policy or resolve disputes. Transactional lawyers, however, rely almost exclusively on private ordering¹⁸⁶ to represent a business entity, facilitating its private deals and transactions. Community lawyering scholarship often fails to consider the impacts entity representation, private ordering, and deals have on a lawyering theory developed in the context of individual representation, dispute resolution, and rights acquisition. Ignoring transactional practices signals that transactional attorneys either *cannot* or *should not* be included among the ranks of community lawyers.¹⁸⁷

This absence in the scholarship is particularly notable given the increasing numbers of transactional lawyers who are assisting marginalized and mission-driven private entities as they harness economic and social capital to leverage collective power and create alternative business models.¹⁸⁸ For example, with the drastic increase of business law clinics at law schools,¹⁸⁹ a growing subset of business law clinics is intentionally

182. Tina L. Stark, *Thinking Like a Deal Lawyer*, 54 J. LEGAL EDUC. 223, 223 (2004); *see also* Karl S. Okamoto, *Teaching Transactional Lawyering*, 1 DREXEL L. REV. 69, 72 (2009) (noting that “the skills required in a transactional practice are often quite different from those required in litigation”).

183. *See infra* Part I.C.1.

184. *See generally* SUSAN D. BENNETT, BRENDA BRATTON BLOM, LOUISE A. HOWELLS & DEBORAH KENN, *COMMUNITY ECONOMIC DEVELOPMENT LAW: A TEXT FOR ENGAGED LEARNING I* (2012).

185. Public law refers to the legal relationships between individuals and the government. Robert H. Mnookin, *Public/Private Dichotomy: Political Disagreement and Academic Repudiation*, 130 U. PA. L. REV. 1429, 1429 (1982) (defining the public sphere as the “clusters of activities . . . where government has a legitimate role” versus “activities that are presumptively outside of the legitimate bounds of government coercion and regulation (the private sphere)”).

186. Steven L. Schwarcz, *Private Ordering*, 97 NW. U. L. REV. 319, 324 (2002) (“Private ordering can be viewed as part of a broad spectrum within which rulemaking is classified by the amount of governmental participation involved.”). Private ordering involves both rules and enforcement processes concerning the rights, duties, and liabilities between private parties. *See* Morton J. Horwitz, *History of the Public/Private Distinction*, 130 U. PA. L. REV. 1423, 1426 (1982) (noting “the conservative ideological foundations of the public/private distinction” and how “it was a sign of legal sophistication to understand the arbitrariness of the division of law into public and private realms”).

187. *See* Bezdek, *supra* note 163 (“Does CED practice hew so closely to establishment legal institutions that it impedes the transformative social justice aspirations of the communities in which we work?”).

188. Diamond, *supra* note 129, at 397–98; *e.g.*, *Our Mission*, SUSTAINABLE ECONS. L. CTR., <http://www.theselc.org/mission> [<http://perma.cc/FVB2-64BC>] (last visited Apr. 1, 2022); *Legal Services for Entrepreneurs*, LAWS. COMM. FOR CIV. RTS. OF S.F. BAY AREA, <http://lccrsf.org/get-assistance/legal-services-for-entrepreneurs/> [<http://perma.cc/WK5Q-5Q25>] (last visited Apr. 1, 2022).

189. Jennifer S. Fan, *Institutionalizing the USPTO Law School Clinic Certification Program for Transactional Law Clinics*, 19 LEWIS & CLARK L. REV. 327, 331 n.14 (2015) (identifying 188 transactional law clinics as of August 1, 2014); *see also* Susan R. Jones & Jacqueline Lainez, *Enriching the Law School*

applying a social justice lens to transactional lawyering.¹⁹⁰ Moreover, within the last two decades, even mainstream law firms have expanded their efforts to represent socially minded businesses impacting poverty issues and pro bono business representations.¹⁹¹ Thus, it is not surprising that more law students and early-career transactional attorneys are articulating their desire to represent small businesses and community groups in cities with large, marginalized populations of color.¹⁹² Morrison & Foerster LLP's Black Venture Accelerator program is just one of several new racial justice initiatives at

Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools, 43 WASH. U. J.L. & POL'Y 85, 92–93 (2013) (noting that in 2013 there were more than 140 transactional clinics at just over 200 American Bar Association approved law schools, which is a 2,700% increase over the 5 transactional clinics reported in 1992).

190. See Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 701 (2015) [hereinafter Ball, *Disruptive Pedagogy*]; Patience A. Crowder, *Transactional Community Lawyering: Introducing Denver Law's New Community Economic Development Clinic*, DENV. L. REV. ONLINE (2011), <http://www.denverlawreview.org/dlr-online-article/2011/4/22/transactional-community-lawyering-introducing-denver-laws-ne.html> [<http://perma.cc/5ETA-FECV>]; see, e.g., *Community Economic Justice Clinic Services*, E. BAY CMTY. L. CTR., <http://ebclc.org/need-services/community-economic-justice-clinic-services/> [<http://perma.cc/F8F8-ZE84>] (last visited Apr. 1, 2022); *Housing Law/Community Economic Development*, GEO. L., <http://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-areas/housing-lawcommunity-economic-development/> [<http://perma.cc/6PDX-ZCKM>] (last visited Apr. 1, 2022).

191. See Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 44 (2004) (“Referral organizations focused on linking transactional business lawyers with nonprofit and small for-profit organizational clients have gained increased attention within the pro bono system.”); Kimberly A. Lowe, *Spotlight on Business Law Pro Bono: How Business Law Lawyers Contribute to Economic Justice*, ABA (Aug. 5, 2015), http://www.americanbar.org/groups/legal_services/publications/dialogue/volume/18/spring-summer-2015/spotlight-on-business-law-pro-bono--how-business-law-lawyers-con/ [<http://perma.cc/W3JP-AEUV>] (posing the question “Who is better equipped than a highly-trained business law lawyer to assist persons of limited means in navigating and succeeding in the economic justice system?”); James L. Baille, *Fulfilling the Promise of Business Law Pro Bono*, 28 WM. MITCHELL L. REV. 1543, 1544 (2002) (“Recent years have seen a dramatic increase in the number of pro bono programs specifically devoted to providing business law services and, correspondingly, a dramatic increase in the amount and variety of those services by volunteer lawyers.”).

192. See Peniel E. Joseph, *Ferguson Has Awakened a Larger Struggle for Racial and Economic Justice in America*, ROOT (Oct. 15, 2014, 3:00 AM), <http://www.theroot.com/ferguson-has-awakened-a-larger-struggle-for-racial-and-1790877369> [<http://perma.cc/DV8N-E86T>] (“Ferguson and St. Louis represent the proverbial tip of the sword of a new movement for racial and economic justice in America; one where young people are . . . boldly confronting the rising inequality, poverty, unemployment and violence that are impacting so many communities of color . . .”); Gene Demby, *The Birth of a New Civil Rights Movement*, POLITICO (Dec. 31, 2014), <http://www.politico.com/magazine/story/2014/12/ferguson-new-civil-rights-movement-113906/> [<http://perma.cc/X5VS-PZF6>] (arguing “[t]hat the nation became riveted to the meta-story of Ferguson—and later the videotaped killing of Eric Garner in New York” because of “the work of a loose but increasingly coordinated network of millennial activists who had been beating the drum for the past few years”); *NYU Law Student Organizations Take Hard Look at Economic Inequality*, NYU L. NEWS (Mar. 28, 2016), <http://www.law.nyu.edu/news/BALSA-Law-Women-economic-inequality-racial-gender-wage-gap-discrimination> [<http://perma.cc/ZEN6-D7ZP>].

corporate law firms.¹⁹³ The Law Firm Antiracism Alliance¹⁹⁴—spearheaded by Skadden, Arps, Slate, Meagher & Flom LLP¹⁹⁵ following the murder of George Floyd¹⁹⁶ and the racially disparate impact of COVID-19 on Native American, Black, and Latino populations¹⁹⁷—facilitates large-scale pro bono projects. Given this influx of antipoverty transactional lawyers and the need for their private ordering expertise in low-income communities of color, there needs to be a theoretical framework to deepen and increase the efficacy of antipoverty transactional lawyering.¹⁹⁸ Even as he wrote his groundbreaking book focusing on individual representation, López understood that rebellious lawyering would need to be continuously examined and the underlying theories further refined.¹⁹⁹ Expanding community lawyering theory to explicitly recognize antipoverty transactional lawyering is consistent with the theory’s purpose.

Drawing on decades of community lawyering scholarship, this Section illustrates the potential of transactional community lawyering. Acknowledging the possibility of

193. See, e.g., *Impact America Fund Raises \$55 Million To Invest in Startups Focused on Overlooked Communities*, COOLEY (Nov. 19, 2020), <http://www.cooley.com/news/coverage/2020/2020-11-19-impact-america-fund-raises-55-million-to-invest-in-startups> [<http://perma.cc/2C4N-7PJS>].

194. For more information on the Law Firm Antiracism Alliance, which totals more than 300 law firm participants as of December 2021, see *Alliance Firms*, L. FIRM ANTIRACISM ALL., <http://www.lawfirmantiracismalliance.org/lfaacharter/alliance-firms-list> [<http://perma.cc/5NZN-QNQ3>] (last visited Apr. 1, 2022).

195. See Patrick Smith, *Over 125 Firms Have Joined the Law Firm Antiracism Alliance*, LAW.COM: AM. LAW. (June 24, 2020, 11:14 AM), <http://www.law.com/americanlawyer/2020/06/24/over-125-firms-have-joined-the-law-firm-antiracism-alliance/?sreturn=20220102225302> [<http://perma.cc/UM6G-LD2G>] (discussing the Law Firm Antiracism Alliance and use of pro bono attorneys to affect systemic change and racial justice).

196. See Merry Neitlich, *A Watershed Moment: Can Law Firms Be the Change and Lead the Nation?*, JD SUPRA (Apr. 22, 2021), <http://www.jdsupra.com/legalnews/a-watershed-moment-can-law-firms-be-the-1037958/> [<http://perma.cc/RU9N-JQTU>] (reporting commitments from law firms to counter systemic racism); Dylan Jackson, *‘We Want a Movement, Not a Moment’: Despite Skepticism, Law Firms Haven’t Relented on Racial Justice*, LAW.COM: AM. LAW. (Aug. 21, 2020, 5:00 AM), <http://www.law.com/americanlawyer/2020/08/21/we-want-a-movement-not-a-moment-despite-skepticism-law-firms-havent-relented-on-racial-justice/> [<http://perma.cc/4LWC-ELAG>].

197. See Jeff Bendix, *COVID-19’s Disparate Impact on Americans of Color: Experts Identify 10 Key Takeaways*, MED. ECON. (Jan. 28, 2021), <http://www.medicaleconomics.com/view/covid-19-s-disparate-impact-on-americans-of-color-experts-identify-10-key-takeaways> [<http://perma.cc/ZZS7-9Q64>] (“According to data from APM Research Lab, as of early January 2021, Indigenous Americans had experienced the highest death rate from COVID, at 168.4 deaths per 100,000 population. That was followed by Black Americans (136.5), Pacific Islanders (112.0), Latinos (99.7), Whites [97.2], and Asian-Americans (59.9).”); Ruqaiyah Yearby, *Protecting Workers that Provide Essential Services*, in ASSESSING LEGAL RESPONSES TO COVID-19, at 193 (2020), <http://scholarshare.temple.edu/handle/20.500.12613/6255> [<http://perma.cc/3PPR-D3VB>] (discussing that the majority of essential workers are low-wage women and people of color who lack employment stability and safety protections).

198. Tremblay, *Regnant Lawyering*, *supra* note 21, at 953–54 (“A significant contribution of the rebellious literature is its insight for practicing lawyers into the subtly counterproductive impact of their traditional activity.”).

199. See REBELLIOUS LAWYERING, *supra* note 18, at 165 (“We need to more completely understand that non-profit law offices should amend themselves over time, that they should fit within a larger yet related vision of politics at work.”).

regnant transactional lawyering,²⁰⁰ this Section moves beyond the good intentions of antipoverty transactional lawyers to envision how they can achieve antistatization by applying community lawyering theory to their practice.²⁰¹

A. Defining Transactional Community Lawyering

There is a profound need for antipoverty transactional lawyers in social justice movements. But without incorporating the tenets of community lawyering, antipoverty transactional lawyers are vulnerable to regnant lawyering—lawyering that disempowers and further subordinates clients.²⁰² The likelihood of regnant transactional lawyering is high precisely because transactional lawyers are repeat players in transactions whereas clients may be participating in the transaction for the first and only time. Transaction complexity may also inhibit entity clients from exercising decisionmaking control because of limited technical knowledge. Thus, similar to litigators, transactional lawyers often play an outsized role in resolving transactional matters.

Transactional community lawyering would not only entail representing modest means clients, such as low-income entrepreneurs, but also intentionally using that practice to advance racial and economic justice.²⁰³ Community lawyers are characterized as having a “sensibility” or orientation to their work and a social change theory that their lawyering seeks to advance.²⁰⁴ Antipoverty transactional lawyers thus raise an important question: Can business law be redeemed for social justice ends, or is it too intertwined in neoliberalist theory that it renders an antistatization transactional practice impracticable?²⁰⁵ Antipoverty transactional lawyering is not unique in posing this question.²⁰⁶ Indeed, this paradox is at the heart of progressive lawyering generally,²⁰⁷ not merely antipoverty transactional lawyering.

The inherent contradiction of progressive law practice is perceiving the world in a certain way, trying to change the world through problem solving, and then realizing that you cannot do very much because the problems are too large and the people you are trying to persuade do not perceive that there is any problem

200. See López, *Seven Weeks*, *supra* note 10, at 1612 (describing the unconscious pitfalls of regnant lawyering).

201. See William H. Simon, *Visions of Practice in Legal Thought*, 36 STAN. L. REV. 469, 475–76 (1984) (discussing how lawyers reconstruct their clients’ interest even as they innocently attempt to solicit those interests).

202. See Ancheta, *supra* note 16, at 1367 (“[R]egnant lawyering is a dominating and powerful occupation.”).

203. Diamond, *supra* note 129, at 401–02 (“There is more to being a community lawyer than merely working and accepting clients from a community.”).

204. *Id.* at 396–97.

205. See Bezdek, *supra* note 163 (“Does CED practice hew so closely to establishment legal institutions that it impedes the transformative social justice aspirations of the communities in which we work?”).

206. See Ancheta, *supra* note 16, at 1388–98 (“Can rebellious lawyering help bring about the shifts in *institutional* power that are also necessary to construct a social reality that alleviates subordination? . . . “[E]ven if progressive lawyers adopt rebellious lawyering in their day-to-day practices, it is not at all clear that rebellious lawyering can usher in the transformations needed to address systemic subordination.”).

207. See Richard Delgado, *Rodrigo’s Equation: Race, Capitalism, and the Search for Reform*, 49 WAKE FOREST L. REV. 87, 93 (2014) (arguing that law and capitalism are intrinsically linked and that “law is not a promising path” to reform capitalism).

at all. In other words, advocating for change under a system of laws and legal institutions that disfavors change and limit possibilities for change is the dilemma with which progressive lawyers and legal workers struggle every day.²⁰⁸

Skepticism about the viability of transactional community lawyering is warranted given the close connection between corporate law,²⁰⁹ capitalism,²¹⁰ and exploitive practices²¹¹ that often perpetuate and exacerbate marginalization.²¹² First, marginalized clients generally have less bargaining power than government agencies and, thus, individual contractual arrangements between private parties are prone to reproduce structural inequality.²¹³ Second, even in the event that an entity client can negotiate equitable terms, business transaction terms do not inherently establish precedent for subsequent parties, as may be the outcome of a successful advocacy campaign or public law reform. However, it is precisely for these reasons that antipoverty transactional lawyers should be conscious in combatting the pitfalls of regnant lawyering by affirmatively incorporating community lawyering theory into their practice.²¹⁴

A rich body of literature expounds and explains the tenets central to community lawyering theory. The following Parts explore three overarching values recognized as uniting community lawyers in the context of transactional practice: (1) prioritization of a social justice mission, (2) a core commitment to community, and (3) flexible lawyering.²¹⁵ Cumulatively, the following three Parts demonstrate the adaptability of community lawyering theory to transactional law.²¹⁶

1. Theory of Social Change

The first of the three values of community lawyering is “the straightforward prioritization of a social justice mission in [the practice] design.”²¹⁷ The community lawyer is intentionally engaged in a social justice movement involving a disempowered

208. Ancheta, *supra* note 16, at 1397.

209. See ADAM WINKLER, *WE THE CORPORATION* (2018).

210. See Matthew Desmond, *In Order To Understand the Brutality of American Capitalism, You Have To Start on the Plantation*, N.Y. TIMES MAG. (Aug. 14, 2019), <http://www.nytimes.com/interactive/2019/08/14/magazine/slavery-capitalism.html> [<http://perma.cc/YF3U-3DYG>].

211. See Mitchell F. Crusto, *Obama's Moral Capitalism: Resuscitating the American Dream*, 63 U. MIAMI L. REV. 1011, 1015–1019 (2009) (discussing the need for moral capitalism, which is “the constitutional principle of regulating capitalism to protect citizens from predation and to redress economic exploitation due to one’s class or economic condition”).

212. See Nick J. Sciullo, *Social Justice in Turbulent Times: Critical Race Theory & Occupy Wall Street*, 69 NAT’L LAWS. GUILD REV. 225, 228 (2012).

213. See *id.* at 225 (“Occupy Wall Street and other Occupy movements have coalesced around feelings of powerlessness, contempt, and anger in the face of corporate violence – a violence that is all too real for not only wage laborers and the working poor, but also for the growing numbers of middle class workers.”).

214. Andrias & Sachs, *supra* note 46, at 556 (“And although law has frequently been a tool of oppression, rather than of empowerment, of power and working-class people and movements, alternative legal regimes that encourage the growth of and the exercise of power by social-movement organizations of the poor and working class are possible.”).

215. See Brodie, *supra* note 57, at 335, 342–45.

216. See Diamond, *supra* note 129 **Error! Bookmark not defined.**, at 396, 399.

217. Brodie, *supra* note 57, at 343.

group.²¹⁸ The social justice commitment is the foundational principle of community lawyering.²¹⁹ Community lawyering “also involves the lawyer having a theory of how to engage with clients and of the ends toward which the practice is oriented.”²²⁰ This requires “a particular type of relationship with the client” and “a theory of action, which has both legal and political features, with a goal of improving for its residents the physical and social environment of the community.”²²¹ The theory of social change also guides the community lawyer’s client selection.²²²

Transactional lawyers can, for example, ground their theory of change in collective power building and wealth acquisition for deployment by marginalized communities and social movements. The transactional community lawyer understands that society is systematically unjust²²³ and that injustice manifests in the client’s legal and business issues. Their collective power-building objective becomes the prism through which the transactional community lawyer seeks to make society more just, informing their client selections and lawyering strategies.

2. Defined Community

The second principle of community lawyering is an articulated commitment to a defined community.²²⁴ The community element of community lawyering is defined both on a geographical and an ideological component.²²⁵ While the geography of the community provides necessary context, merely working within a specific geographic boundary is not sufficient.²²⁶ Community lawyering recognizes clients within a geographic community as members of a socially cognizable and systemically disadvantaged group.²²⁷ To community lawyers, the appropriate scale of response to the economic or social disadvantage is not merely at the client level but also necessarily at the community level.²²⁸

218. Group examples could include the poor, immigrants, people of color or a specific ethnicity, individuals with criminal records, students with disabilities, etc.

219. Brodie, *supra* note 57, at 344.

220. Diamond, *supra* note 129, at 401.

221. *Id.* at 397.

222. *Id.* at 398 (“Given the wide range of issues and strategies, some in competition with others as to goals and/or priorities, the community lawyer must be very careful about the projects he or she chooses to work on. To be effective, these projects ought to be complementary of a clearly delineated set of goals. Thus, the case-selection process is critical to implementing the coherent theory . . . essential . . . [to] community lawyering.”).

223. See Piomelli, *Rebellious Heroes*, *supra* note 93, at 299–300.

224. Brodie, *supra* note 57, at 334–35, 343.

225. Paula A. Franzese, *Does It Take a Village? Privatization, Patterns of Restrictiveness and the Demise of Community*, 47 VILL. L. REV. 553, 565–66 (2002) (discussing “community of place” and “community of interest”).

226. Diamond, *supra* note 129, at 396 (“[T]he concept of a community lawyer must mean more than [a lawyer who works in a geographically bounded area and takes their clients from that area] because if it does not, most practicing lawyers in the United States would be community lawyers.”).

227. See *id.* at 401.

228. Piomelli, *Rebellious Heroes*, *supra* note 93, at 300–01 (“Rebellious lawyers view and treat clients as connected (or connectable) members of communities with shared experiences.”).

The community lawyer does not just work within the geographic community;²²⁹ they also have “a knowledge of the community” in which they work.²³⁰ When lawyers get out of their offices, they stand to realize how much information they do not know.²³¹ Moreover, the attorney’s presence and participation in the community engenders trust and is the foundation for establishing new attorney-client relationships. Professor Michael Diamond writes, “[t]his level of participation is unusual for the typical lawyer but essential for one who aspires to be a community lawyer.”²³²

The concept of community has relevance to the lawyering strategies and the lawyer’s theory of change.²³³

[L]awyers working for low income legal services clients approached their clients’ problems as individual cases to be resolved on an individual basis. At any given time [the lawyer’s] focus was on the problems of an individual client or client group, not on the problems of a neighborhood or community divorced from a specific client with a discrete set of problems.

...

...

. . . The new poverty lawyer was to work with the community to promote holistic, not just individual, solutions.²³⁴

The community lawyer’s connection to and participation in the community also facilitate accountability to the social justice commitment.

3. Flexible Lawyering

The “expansive view of the role of a lawyer”²³⁵ is not only a necessary element of community lawyering but also a key characteristic of transactional lawyering. “Community lawyering [is] characterized by a self-conscious responsiveness to changing community conditions and priorities, which demand nimbleness and a willingness to shift gears and tread on new ground.”²³⁶ A commitment to flexibility also requires the lawyer to remain open to vulnerability.²³⁷ Transactional lawyers work with business clients at various stages from the business inception to acquisition or exit strategy. Representing a business client through various points in its lifecycle requires

229. Brodie, *supra* note 57, at 344 (“Community lawyering [practices] are committed to the judgment that a dedicated, strategic, local response is the principled way to address [the] injustice.”).

230. Diamond, *supra* note 129, at 397.

231. See BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* 12 (2014) (“Proximity to the condemned and incarcerated made the question of each person’s humanity more urgent and meaningful, including my own. I went back to law school with an intense desire to understand the laws and doctrine that sanctioned the death penalty and extreme punishments.”).

232. Diamond, *supra* note 129, at 400.

233. Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 661–63, 665 (1987) (describing how the collective force of clients acting together in local, state, and national political alliances may bring about change).

234. Marshall, *supra* note 69, at 158–59.

235. Diamond, *supra* note 129, at 397.

236. Brodie, *supra* note 57, at 345.

237. Cummings, *Teaching Movements*, *supra* note 122, at 377 (“[C]onfronting the fact that law does not always work but that we nonetheless have to continue to fight to demand that it does—requires walking outside the space of comfort into . . . vulnerability.”).

the transactional lawyer to be adaptable and flexible, working with various subject matter specialists and across business industries. Transactional lawyers are referred to as “generalists” because of the breadth of expertise required to advise business clients.²³⁸

Transactional lawyers take on an expansive view of their role and are often required to adopt novel strategies to respond to client or transaction conditions. Flexible lawyering requires lawyers to have a problem-solving orientation to the unfamiliar client issues they inevitably encounter. Similar to the description of the community lawyer stretching herself (within the bounds of reason and professional competence) to participate meaningfully,²³⁹ transactional lawyers are called on to document transactions for which little precedent exists, to act as a sounding board on new business plans, and to engage with legal and nonlegal specialists on cutting-edge matters. Transactional lawyers are required to be flexible in their lawyering, even taking on nonlegal responsibilities because the client matter demands it.

B. Applications of Transactional Community Lawyering

The absence of prevailing narratives of antipoverty transactional lawyers raises questions of what transactional community lawyering looks like and where it might be implemented. There are already forums where transactional community lawyering would have immediate application and impact. The following examples provide a nonexhaustive description of antipoverty transactional practices that would benefit from community lawyering theory.

In each iteration, the transactional lawyers in these practices are either providing pro bono services or, as is the case for social enterprise lawyers, are among a limited number of attorneys with a certain subject matter expertise. Thus, it is also important to recognize that conventional incentives and indicators are not likely available to measure or track lawyer performance in these antipoverty transactional practices. Traditional measurements of lawyer performance are tied to case budgets, holdback fees, bonuses, and compensation.²⁴⁰ Transactional community lawyering would address this dearth in lawyer performance mechanisms by not only providing antipoverty transactional lawyers with a framework for advancing antisubordination but also providing a framework for clients to determine how to strategically use various antipoverty transactional lawyers based on their adherence to the community lawyering paradigm.²⁴¹

238. See *Exactly What Does a Corporate Lawyer Do?*, FIRSTHAND (Oct. 10, 2016), <http://firsthand.co/blogs/vaults-law-blog-legal-careers-and-industry-news/exactly-what-does-a-corporate-lawyer-do> [<http://perma.cc/DR3U-XL8M>] (“Attorneys who call themselves corporate lawyers are usually corporate generalists, lawyers who advise businesses on their legal obligations, rights, and responsibilities, provide advice on business structures and evaluate ventures.”).

239. See Diamond, *supra* note 129, at 397.

240. See William H. Simon, *Where Is the “Quality Movement” in Law Practice?*, 2012 WIS. L. REV. 387, 399–400 (2012) (“Firms use business metrics, such as hours billed in relation to hours worked, revenues in relation to billings (realization rates), and profits [as performance measurements]. They aggregate supervisor, peer, and client judgments of the quality of work and of results. . . . Firms use such judgments for promotion, compensation, and training decisions. Business clients use them to decide how to allocate their work.”).

241. JAMES M. JASPER, *PROTEST: A CULTURAL INTRODUCTION TO SOCIAL MOVEMENTS* 43 (2014) (“With a label, they can be recognized, measured, and perhaps monitored.”).

1. Social Enterprise Lawyering

The growth of the social enterprise sector,²⁴² sustainable business strategy,²⁴³ and the solidarity economy²⁴⁴ provides fertile ground for implementing transactional community lawyering. Social enterprises involve businesses using market-based strategies to achieve a social mission or environmental purpose.²⁴⁵ Social enterprises span entity forms, including, but not limited to, traditional for-profits, nonprofits, limited liability companies, and partnerships.²⁴⁶ Social enterprises have gained significant attention in the last decade with the proliferation of social enterprise statutes providing off-the-shelf, for-profit entity forms²⁴⁷ that require a commitment to a social mission.²⁴⁸

The legislative action on these “hybrid entities”—for-profit corporations with the public benefit of a nonprofit—has prompted prominent law firms to start promoting their expertise in social enterprise law. Moreover, some law schools now offer social enterprise law courses and transactional clinics that allow students opportunities to represent social enterprises clients.²⁴⁹ Inexpensive technology solutions and customer appetite for mission-driven businesses allows social enterprises to scale and compete within traditional industries. Relatedly, social enterprises are also involved in the “solidarity economy movement”²⁵⁰ to transform the dominant capitalist system into one that centers people, planet, and purpose above profits.

This burgeoning socially minded business sector creates new demand for “social enterprise lawyers”—transactional lawyers who not only understand the conventional business law needs of socially and environmentally minded business clients but can also

242. Page & Katz, *supra* note 33, at 1353, 1361 (describing the impact of the “social enterprise movement” with conventional business industries).

243. Ioannis Ioannou & George Serafeim, *Yes, Sustainability Can Be a Strategy*, HARV. BUS. REV. (Feb. 11, 2019), <http://hbr.org/2019/02/yes-sustainability-can-be-a-strategy> [<http://perma.cc/UJY4-8WNG>]; Larry Fink, *A Fundamental Reshaping of Finance*, BLACKROCK (2020), <http://www.blackrock.com/corporate/investor-relations/2020-larry-fink-ceo-letter> [<http://perma.cc/D6GF-8BTD>].

244. VISHWAS SATAGAR, *THE SOLIDARITY ECONOMY ALTERNATIVE: EMERGING THEORY AND PRACTICE* 51 (2014) (defining solidarity economy as “an alternative society that seeks to overcome capitalism through a democratic, pluralist process of worker and population control of the means of production, distribution, and consumption”).

245. See Alina Ball, *Social Enterprise Lawyering*, 88 UMKC L. REV. 803, 803 (2020) [hereinafter Ball, *Social Enterprise Lawyering*].

246. *Id.*

247. Also known as hybrid entities in the relevant literature. *Id.* at 807.

248. See J. Haskell Murray, *The Social Enterprise Law Market*, 75 MD. L. REV. 541 (2016).

249. See *Social Enterprise & Economic Empowerment Clinic*, UC HASTINGS COLL. L., <http://www.uchastings.edu/academics/experiential-learning-opportunities/clinical-programs/social-enterprise-and-economic-empowerment-clinic/> [<http://perma.cc/EN74-SXV9>] (last visited Apr. 1, 2022); *Social Enterprise and Nonprofit Clinic*, GEO. UNIV. L. CTR., <http://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/social-enterprise-and-nonprofit-clinic/> [<http://perma.cc/38EQ-DS2C>] (last visited Apr. 1, 2022).

250. Renee Hatcher, *Solidarity Economy Lawyering*, 8 TENN. J. RACE, GENDER, & SOC. JUST. 23, 28–29 (2019) (explaining the core values of the “solidarity economy” are (1) moving from extraction to sustainable and regenerative resources, (2) moving power from concentrated to democratic, (3) moving from exploitation to solidarity labor practices, and (4) becoming equity conscious on all dimensions of identity such as race, gender, and ability).

intuit how their nonpecuniary objectives impact those needs.²⁵¹ As business entities, these enterprises need transactional lawyers. But socially and environmentally minded enterprises also need transactional lawyers as thought partners, helping them determine how transactions and decisions impact their social mission and intersect with their theory of change.

Social enterprises often articulate their mission as sustainable development goals, among which ending poverty is often a priority.²⁵² The company's mission and theory of change explain the social enterprise's goals for social change and their strategies for achieving those goals. The sum of all the company's business decisions and transactions determines whether a particular theory of change is ultimately implemented. Thus, to successfully represent their clients, social enterprise lawyers need a deep understanding of sustainable development goals, intersections of persistent social issues, structural inequities, and theories of change to adequately advise their social enterprise clients.

Transactional community lawyering could become a unifying lawyering theory for social enterprise lawyers. Social entrepreneurship theory is distinct from other branches of business theory because it emphasizes methods and means of equitable business as opposed to focusing solely on furthering profit goals. Yet, currently, there is no corollary lawyering theory that informs how social enterprise lawyers practice. Social enterprise lawyers are neither transactional lawyers working in a particular industry, nor are they poverty lawyers working with entity clients. As transactional community lawyers, social enterprise lawyers would epitomize the hybrid characteristics of their social enterprise clients.

2. Pro Bono Business Law Programs

In terms of quantity, pro bono lawyers²⁵³ contribute the largest number of hours and make up the largest contingency of lawyers working on poverty law matters. Pro bono lawyers often contribute only a fraction of their practice to representing pro bono clients, but the sheer number of pro bono lawyers means their accumulative hours account for the majority of private public interest lawyering. Among pro bono programs, there is a growing attention to business and transactional legal matters.²⁵⁴ Although the specific definition of a pro bono business client may be contested,²⁵⁵ it is well established in practice that nonprofits with limited means and small, for-profit businesses working within low-income communities or owned by low-income entrepreneurs qualify for pro bono representation.²⁵⁶ Small businesses that qualify for pro bono representation are

251. Ball, *Social Enterprise Lawyering*, *supra* note 245, at 805.

252. *See id.* at 815.

253. Russell G. Pearce, *The Lawyer and Public Service*, 9 AM. U. J. GENDER SOC. POL'Y & L. 171, 175 (2001) (defining pro bono lawyers as "lawyers who for no fee donate a limited amount of their work to public service").

254. *See* PRO BONO INST., LAW FIRM PRO BONO CHALLENGE: COMMENTARY TO STATEMENT OF PRINCIPLES (2016), <http://www.probonoinst.org/wpps/wp-content/uploads/Law-Firm-Challenge-Commentary-2016.pdf> [<http://perma.cc/H57K-656L>].

255. *See* Tremblay, *Regnant Lawyering*, *supra* note 21, at 947, 961.

256. *See* *Pro Bono Committee*, ABA, http://www.americanbar.org/groups/business_law/committees/pro_bono/ [<http://perma.cc/FLB5-XSLC>] (last

particularly vulnerable²⁵⁷ and precisely the types of businesses society should have a vested interest in ensuring access to quality transactional representation.²⁵⁸ Given their reach, transactional community lawyering could have a wide-spanning impact in supporting small businesses in low-income areas if adopted by pro bono business lawyers.

There are currently very few qualitative assessments of pro bono legal services programs,²⁵⁹ and several structural aspects of pro bono business representation make it unlikely that most pro bono attorneys could effectively practice community lawyering. Many law firms are in major cities and are, therefore, in close geographic proximity to low-income communities. Law firms encourage their associates and partners—who overwhelmingly self-identify as white²⁶⁰—to participate in pro bono representations. While there is a growing number of transactional and corporate pro bono matters for business attorneys, there is no consensus metric on how to conduct these representations effectively. The assumption that any legal services are better than none is not fully supported by empirical data.²⁶¹ It cannot be assumed that pro bono business lawyers are doing effective antipoverty work merely because of their noble intentions to represent underserved business clients.²⁶² However, even if the transactional community lawyering framework were only adopted by a portion of pro bono business lawyers, because of the

visited Apr. 1, 2022); PRO BONO INST., *supra* note 254; Kimberly A. Lowe, *Business Law Pro Bono: How Business Law Lawyers Contribute to Economic Justice*, ABA CTR. FOR PRO BONO EXCH. (July 6, 2015), <http://centerforprobono.wordpress.com/2015/07/06/business-law-pro-bono-how-business-law-lawyers-contribute-to-economic-justice/> [<http://perma.cc/Y5XS-XVET>] (“The business law section [of the ABA] created its own pro bono committee in 1993. . . . [T]he recipients of [pro bono business law] services can, for the most part, be divided into two broad categories: nonprofits and microenterprises.”).

257. See Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 HOFSTRA L. REV. 839, 859–61 (2014) (arguing that successful entrepreneurship requires both financial and social capital, resources that are inevitably scarce in communities where poverty is most prevalent).

258. See Dana Thompson, *L3Cs: An Innovative Choice for Urban Entrepreneurs and Urban Revitalization*, 2 AM. U. BUS. L. REV. 115, 121 (2012) (“Small businesses are a critical part of a healthy economy. They play a vital role in the United States’ economic system by creating the most net new jobs, by bringing innovative products and services to the market, and by providing much needed tax revenues to local and state municipalities.”).

259. Scott L. Cummings & Rebecca L. Sandefur, *Beyond the Numbers: What We Know—and Should Know—About American Pro Bono*, 7 HARV. L. & POL’Y REV. 83, 105 (2013).

260. See ABA, ABA PROFILE OF THE LEGAL PROFESSION 37 (2020), <http://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> [<http://perma.cc/Z7PD-CZKN>] (documenting that ninety percent of lawyers in U.S. law firms are white, a decline from ninety-four percent in 2009).

261. Compare Ingrid V. Eagly and Steven Shafer, A National Study of Access to Counsel in Immigration Court, 164 U. PA. L. REV. 1, 22 (2015), with Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. ON POVERTY L. & POL’Y 453, 471 n.82 (2011) (finding that in a study of unbundled legal services in landlord-tenant matters, such services reduced default by tenants but did not ultimately improve possession outcomes). See also Colleen F. Shanahan, Anna E. Carpenter, & Alyx Mark, *Can a Little Representation Be a Dangerous Thing?*, 67 HAST. L.J. 1367, 1370–1371 (2016) (comparing various studies of client outcomes and satisfaction rates by lawyer and nonlawyers).

262. See Scott L. Cummings, *Community Economic Development as Progressive Politics: Towards A Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 433–35 (2001).

quantity of pro bono business lawyers across the country, there could be substantial impact given how many businesses law firms can take on as clients.

3. Business Law Clinical Programs

Business law clinicians are pioneering transactional community lawyering.²⁶³ At present, they are forced to cobble together applications of community lawyering to apply to their transactional practice because most community lawyering scholarship does not adequately reflect them or their clients. Given the interconnectedness of clinical pedagogy and community lawyering theory, business law clinics are an ideal locale to further develop and implement transactional community lawyering.

While CED clinics have been part of the academy since the 1990s, there has been a proliferation of business law clinics in the last decade.²⁶⁴ These business law clinics²⁶⁵ are distinct from their predecessor CED clinics, which historically used a variety of lawyering tools to serve mobilized clients with clear social justice objectives.²⁶⁶ In contrast to CED clinics, business law clinics emphasize teaching law students lawyering skills through representing for-profit business clients and entrepreneurs.²⁶⁷ Some business law clinics even explicitly state they do not have a social mission.²⁶⁸ Business law clinical pedagogy is still in a state of evolution, and there is no dominant approach to these clinical courses.²⁶⁹ Developing a theory-based clinical program is particularly important when working with law students because it provides clinical professors theory-based responses for explaining best practices. The number and diversity of business law clinics across the country provide an opportunity for business law clinicians not only to refine transactional community lawyering but also to make a significant contribution to community lawyering theory generally.

Business law clinicians could also make strategic clinic design decisions using transactional community lawyering theory. For example, I established the Social Enterprise & Economic Empowerment Clinic at University of California, Hastings College of the Law (the “Social Enterprise Clinic”) with a commitment to community lawyering. This commitment impacts every significant decision about how we run and

263. See Patience A. Crowder, *What’s Art Got To Do With It?: A Rebellious Lawyer Mindset in Transactional Practice*, 23 CLINICAL L. REV. 53, 72–80 (2016).

264. Ball, *Disruptive Pedagogy*, *supra* note 190, at 10.

265. Often referred to as entrepreneurial clinics as well. See, e.g., *Entrepreneurship and Innovation Clinic*, YALE L. SCH., <http://law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/entrepreneurship-and-innovation-clinic> [<http://perma.cc/5VXB-DCTB>] (last visited Apr. 1, 2022).

266. BENNETT ET AL., *supra* note 184.

267. See YALE L. SCH., *Entrepreneurship and Innovation Clinic*, *supra* note 265; Julie Lawton, *Teaching Social Justice in Law Schools: Whose Morality Is It?*, 50 IND. L. REV. 813, 847 (2017).

268. See YALE L. SCH., *Entrepreneurship and Innovation Clinic*, *supra* note 265; Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J.L. & SOC. JUS. 331, 334–36 (2012).

269. See Lynnise Pantin, *The Economic Justice Imperative for Transactional Law Clinics*, 62 VILL. L. REV. 175, 180 (2017) (“While business law clinics have become quite popular, transactional pedagogy and transactional clinical pedagogy have not developed a clear methodology for incorporating economic and social justice into their teaching.”); Alicia E. Plerhoples, *Representing Social Enterprise*, 20 CLINICAL L. REV. 215, 265 (2013) (providing a pedagogical framework for representing social enterprises in a business law clinic).

structure the program. Centering the business law clinic on community lawyering theory allows the Social Enterprise Clinic to prioritize representing business clients on various transactional matters over the course of a long-term relationship. While clients can terminate the representation at any time, the Social Enterprise Clinic does not engage with a client unless we see the potential to develop a long-term relationship.

By providing transactional representation contextualized by years of previous representations, the Social Enterprise Clinic is able to help its clients plan strategically around building institutional power and advancing social change, which often takes years to accomplish. While the Social Enterprise Clinic is not unique in its commitment to long-term business representation,²⁷⁰ this unfortunately is not the norm for business law clinics. Moreover, the client selection process is informed by community lawyering theory. The Social Enterprise Clinic is strategic in selecting clients who have a social mission and are already connected to larger social movements. If community lawyering theory were to explicitly address transactional practice, future business law clinics could design their programs accordingly.

If transactional community lawyering underpinned business law clinical pedagogy, business law clinics would be a training ground for future transactional lawyers advancing racial and economic justice.²⁷¹ Although business law clinics are not pedagogically designed to scale and grow,²⁷² they still reach a substantial segment of future transactional lawyers. Business law clinics would model for students not only best practices for community lawyering but for using the law in race-, class-, and documentation-conscious ways.²⁷³ Transactional community lawyering could, therefore, revolutionize how business law clinicians train transactional lawyers and, in turn, how transactional lawyers work to advance racial and economic justice.

III. A BRIDGE OVER TROUBLED WATERS: TRANSACTIONAL LAWYERING FROM RIGHTS TO REALITIES

There is great potential for transactional lawyers to make a meaningful impact using community lawyering theory. This Section provides a narrative description of

270. Diamond, *supra* note 129, at 400 (“Our model of practice is to be heavily engaged with our client’s activities. Thus, we participate in the client’s planning meetings and strategy sessions over a range of topics that go beyond the identified legal issues. For example, we help our client with the real estate development process, including the examination of project feasibility, financing, and setting ultimate carrying charge (the co-op equivalent to rent).”); see GEO. L., *supra* note 190. The Ludwig Center for Community & Economic Development at Yale Law School has also continuously represented some of its clients for more than a decade as outside general counsel. See YALE L. SCH., *Ludwig Center for Community & Economic Development*, *supra* note 164.

271. See L. FOR BLACK LIVES, *supra* note 147.

272. Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 *FORDHAM L. REV.* 997, 999 (2005) (“In order to use clients’ cases for teaching, [clinicians have] to take smaller caseloads and spend more time examining, preparing, reflecting, and in other ways using clients’ cases as teaching ‘texts.’”).

273. See Robert Granfield & Philp Veliz, *Good Lawyering and Lawyering for the Good: Lawyers’ Reflections on Mandatory Pro Bono in Law School*, in *PRIVATE LAWYERS AND THE PUBLIC INTEREST: THE EVOLVING ROLE OF PRO BONO IN THE LEGAL PROFESSION* 53, 67 (Robert Granfield & Lynn Mather eds., 2009) (demonstrating empirically that when students develop narratives of pro bono around *good lawyering* it has greater salience for the students than *lawyering for the good*).

transactional community lawyering and then uses that narrative to theorize an expanded vision of community lawyering that explicitly acknowledges transactional practice. In 2015, the Social Enterprise Clinic, an in-house transactional law clinic at UC Hastings College of the Law, began representing a housing cooperative created by low-income farmworker families in the Salinas Valley, California (the “Cooperative”). Using the tradition of community lawyering theorists,²⁷⁴ this Section gleans insights from this client representation narrative of the Cooperative’s quest to acquire ownership of their local water system. The racial, political, and economic contexts of the Cooperative’s client matters²⁷⁵ also illustrate nuances of transactional lawyering that must be included in an evolved community lawyering theory—including an understanding of structural competency, creating strategic alliances and partnerships as complements to subject matter expertise, and expanding the geographic limitation of community lawyering.

A. Community Resilience and Mobilization in the Central West Coast

“We could live offa the fatta the lan’.”²⁷⁶

The Salinas Valley in California is one of the most productive agricultural regions in the nation.²⁷⁷ Agricultural businesses began to flourish in the mid-1800s and today continue to be the region’s major industry.²⁷⁸ The “green gold” of the Salinas Valley²⁷⁹ significantly contributes to Monterey County’s multibillion-dollar agricultural industry,²⁸⁰ making it the fourth highest producing region in California.²⁸¹ Salinas Valley, however, is also home to extreme wealth inequality.²⁸² The tributaries of injustice

274. See, e.g., Kim Lane Schepple, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073 (1989); REBELLIOUS LAWYERING, *supra* note 18; White, *Sunday Shoes*, *supra* note 72; Alfieri, *supra* note 15; Symposium, *Speeches from the Emperor’s Old Prose: Reexamining the Language of Law*, 77 CORNELL L. REV. 1233 (1992) (examining approaches to lawyering and the translation of stories into legal discourse).

275. See REBELLIOUS LAWYERING, *supra* note 18, at 9 (describing his decision to focus the book on people, groups, and institution involved in actual struggles because “[t]hese people carry much of the burden of everyday progressive work, however much their efforts go unnoticed and unstudied”).

276. JOHN STEINBECK, *OF MICE AND MEN* 57 (1937).

277. *Salinas History*, CITY OF SALINAS, <http://www.cityofsalinas.org/visitors/salinas-history> [<http://perma.cc/VPZ4-GHQW>] (last visited Apr. 1, 2022) (explaining that the Salinas Valley is responsible for eighty percent of the country’s lettuce and artichokes, among other crops).

278. *A Look at Salinas, California, Farm-Rich but Unaffordable*, AP NEWS (Oct. 17, 2018), <http://apnews.com/article/north-america-us-news-ca-state-wire-salinas-john-steinbeck-fb56cfd54e77453ca2b46e30f08a0054> [<http://perma.cc/3A4X-H2U4>] (“Agriculture is the major industry in Salinas, which sits at the north end of the Salinas Valley producing most of the world’s lettuce and other leafy green vegetables.”).

279. Gabriella M. Petrick, “*Like Ribbons of Green and Gold*”: *Industrializing Lettuce and the Quest for Quality in the Salinas Valley, 1920–1965*, 80 AGRIC. HIST. 269, 275 (2006) (discussing the tensions between technology and nature in industrializing crops in the Salinas Valley).

280. *Facts, Figures & FAQs*, FARM BUREAU MONTEREY, <http://montereycfb.com/index.php?page=facts-figures-faqs> [<http://perma.cc/UD7S-7VJP>] (last visited Apr. 1, 2022) (“Agriculture contributes over \$3.9 billion per year to Monterey County’s economic output, with a total estimated impact of over \$11.7 billion on the local economy.”).

281. *Salinas-Monterey Area Agriculture*, VEGETABLE RSCH. & INFO. CTR., http://vric.ucdavis.edu/virtual_tour/salinas.htm [<http://perma.cc/ZW85-X69Z>] (last visited Apr. 1, 2022).

282. Joe Mathews, *If You Care About California, Then You Should Care About Salinas*, ZÓCALO PUB. SQUARE (July 28, 2015), <http://www.zocalopublicsquare.org/2015/07/28/if-you-care-about-california-then-you-should-care-about-salina>

that flow into the raging waters of poverty in the Salinas Valley are illustrative of the challenges experienced across rural California. Perhaps no natural resource exemplifies the inequality in rural California more than the access to potable water.

The Cooperative owns a parcel of land on the outskirts of Salinas, California, composed of approximately seventy homes and 350 residents. In representing the Cooperative, the Social Enterprise Clinic seeks to honor its sacrifices, ingenuity, and self-initiated resistance culture.²⁸³ The following Part provides a brief narrative of the history of the Cooperative and its leadership as a foundation to explaining the Social Enterprise Clinic's current representation.²⁸⁴ This client narrative also provides a richly textured description of transactional community lawyering advancing racial and economic justice.

1. Fortified Resistance to Racial Subordination

The inception of the Cooperative began in the late 1960s with a group of farmworkers, affiliated with the United Farm Workers, who organized and operated their own strike against a local agricultural company.²⁸⁵ The company retaliated against the striking farmworkers by threatening to evict them from the labor camp where most of their homes were located and their families resided.²⁸⁶ As a means of having the farmworkers removed from the labor camp, the company sold the camp to a new owner who had the farmworkers evicted. The police arrived in the early morning and forced the remaining farmworker families to leave the labor camp, allowing the families to take only the few belongings they could carry. Approximately thirty-two of the evicted families set up tents, built makeshift cardboard shacks, and converted their cars into sleeping quarters. They used their homelessness as another act of defiance, remaining visible to the local community.

After several weeks on the streets, the evicted families moved into the barracks of an abandoned government labor camp the county owned.²⁸⁷ Although city and county

[s/ideas/connecting-california/](http://ideas/connecting-california/) [<http://perma.cc/LM72-973H>] (identifying Salinas as one of "the richest poor" cities in California).

283. Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CALIF. L. REV. 741, 763–64 (1994) (citing EDWARD W. SAID, *CULTURE AND IMPERIALISM* 209–20 (1993) (defining "resistance culture" as including both the reconstitution of the culture and identity of a subordinated population and an intervention into the dominant culture in efforts to transform it)).

284. Several of the facts and details have been withheld to protect the client's identity.

285. See *Cesar Chavez Released From Salinas Jail*, DIVA: BAY AREA TELEVISION ARCHIVE (Dec. 24, 1970), <http://diva.sfsu.edu/collections/sfbatv/bundles/190205> [<http://perma.cc/W2EU-ZEZ2>] (comparing his experience in Monterey County jail to the conditions in the local labor camps); Miriam Pawel, *Cesar Chavez Gave Salinas a Sense of Its Own Power*, ZÓCALO PUB. SQUARE (July 28, 2015), <http://www.zocalopublicsquare.org/2015/07/28/cesar-chavez-gave-salinas-a-sense-of-its-own-power/ideas/nexus/> [<http://perma.cc/8HDR-J7GT>].

286. See RONALD L. MIZE, *THE INVISIBLE WORKER OF THE U.S.-MEXICO BRACERO PROGRAM: OBREROS OLVIDADOS* 20 (2016) ("One of the key means of securing a high degree of social isolation and racial segregation was the institutionalized practice of housing Braceros in labor camps. The labor camps were often located on growers' private property but there were other means of housing workers away from local communities or nearby small towns.").

287. *Id.* ("During the Great Depression, labor camps were built and maintained by the federal government under the aegis of the New Deal unemployment-alleviation measures. . . . The federal labor camps housed [Bracero] labor for grower associations or even larger agribusiness entities."). Moreover, the Bracero Program

officials initially arranged for the evicted families to utilize the barracks as a temporary shelter, the families recognized the possibility of converting the barracks into permanent, affordable homes.²⁸⁸ The evicted families refused relocation and defied government deadlines to vacate the barracks because they had nowhere to relocate. The living conditions in the dilapidated barracks were harsh. Even as the farmworker families eventually moved out of the barracks, they remained active in problem-solving around long-term housing solutions for Latinos in the Salinas Valley. When only a few families remained in the barracks, the county sold the labor camp to a private entrepreneur, who purchased the land to sell off the wood from the barrack structures. The farmworker families negotiated directly with the new landowner and convinced him to self-finance the real estate acquisition of the labor camp by the evicted families instead.²⁸⁹

2. Mobilization and Institution Building

In the 1970s, cooperative farmworker housing was a new housing model that various government agencies were unfamiliar with funding or approving. The Cooperative blazed a new trail through difficult and sometimes hostile political terrain to transform the labor camp into permanent affordable housing units. The evicted families hired the Central Coast County Development Corporation to form a housing cooperative that would hold their newly acquired land. Membership into the cooperative would consist of money payments as well as hours of community service to reduce the real estate development costs. Farmworker wages were extremely low and could not cover a home mortgage. The community service hours significantly lowered the costs of entry into the Cooperative for families who could not otherwise afford homeownership.

With assistance from California Rural Legal Assistance (CRLA),²⁹⁰ the Central Coast County Development Corporation and the evicted families fought a lengthy public support battle against the local school district and growers who opposed the establishment of permanent farmworker housing on the land. The evicted families conducted an extensive outreach campaign that eventually persuaded civic and public leaders to support the formation of a housing cooperative and approve its permit to

and its racially segregated labor camps cannot be divorced from the internment of Japanese and Japanese Americans during World War II, which, among other things, created a shortage of agricultural labor in rural California and magnified xenophobia in the region. DEBORAH COHEN, *BRACEROS: MIGRANT CITIZENS AND TRANSACTIONAL SUBJECTS IN THE POSTWAR UNITED STATE* 55 (2011).

288. See MARIO T. GARCÍA, *MEXICAN AMERICANS: LEADERSHIP, IDEOLOGY, AND IDENTITY, 1930–1960*, at 94 (1989) (“Most Mexican-Americans lived in de facto segregated tracts, but after World War II many, especially returning veterans attempted to purchase homes in new residential areas. Some realtors and developers, however, refused to . . . negotiate with them, insisting that if [homes were sold] to Mexicans, the Anglo residents of the tract would cancel their contracts and leave.”).

289. See EDWARD F. MONCRIEF, *RAISING THE BLACKBIRD* 150–198, 225–267, 285–324, 357–362, 394 (2016).

290. Jose R. Padilla, *California Rural Legal Assistance: The Struggles and Continued Survival of a Poverty Law Practice*, 30 *CHICANA/O-LATINA/O L. REV.* 163, 166 (2011) (“[T]he bulk of Legal Aid work, including that of CRLA, has never been legal reform but rather addressing the day-to-day problems that burden all poor people; for example, access to public benefit, unlawful eviction, and domestic violence. In practice, CRLA has sought to do both, combining legal reform with individualized service work.”).

transform the former labor camp into a permanently affordable housing institution.²⁹¹ The evicted families secured development rights and federal agency funding in the mid-1970s and incorporated the Cooperative in the late 1970s.

3. Organizing for Water Justice

Having existed for nearly two decades, the Cooperative members first noticed issues with their water supply in the 1990s, when reports provided by the private water company showed that elevated nitrate levels in two of the wells were too high for human consumption. By the early 2000s, there was only one operational well, and it, too, was documented to have high levels of nitrate. The Cooperative residents were consistently getting sick and made several attempts to inform the county officials that something was seriously wrong with their water supply. When leadership within the Cooperative began meeting with the county to address the water system issues, they were warned that the Cooperative could lose its permit for permanent residential housing without access to safe drinking water.

The Cooperative reengaged CLRA and began working with the Environmental Justice Coalition for Water (EJCW) to strategize an advocacy campaign for safe water. With pro bono medical services and outside laboratory studies conducted, the Cooperative eventually had sufficient documentation demonstrating their water supply was not safe for use. The persistent organizing by the Cooperative's leadership led to the installation of a filtration system for the last active well in the Cooperative and, ultimately, allowed the county to secure the funding for the construction of a new, deeper well for the Cooperative.

Despite now having access to safe water from the new well, some Cooperative residents were paying nearly a fifth of their fixed monthly income on their water bills, which had increased dramatically to cover the costs of the new well. Moreover, residents still experience deep trauma from the ailments they and their families suffered from years of contaminated water use. For the original Cooperative members, the indignity of contaminated water harkens back to the 1960s and 1970s, serving as yet another example of the inhumanity low-income Latino residents have endured in the region.

* * *

Even this brief history of the Cooperative illustrates important points about the role of lawyers, which, while necessary, were not central in this quest for dignity. The Cooperative members identified the issues, engaged in collaborative problem solving with various resources, sought out medical and environmental expertise, and found lawyers with a demonstrated commitment to antisubordination work to represent them. With this historical context, the community lawyer can acknowledge, "the client's fight did not start with my representation, I am not at the center of this work, and yet I have an important role to play."

291. CAL. COAL. FOR RURAL HOUS., CALIFORNIA'S FARMWORKER HOUSING COOPERATIVES: LESSONS ON FARMWORKER OWNERSHIP AND MANAGEMENT 67 (2002), <http://cccd.coop/sites/default/files/resources/CA%27s%20Farmworker%20Housing%20Housing%20Cooperatives%20%28Case%20Studies%29%20Bandy%202002.pdf> [<http://perma.cc/F6Y2-MGSM>] (case studies).

4. Transactional Lawyers in Acquiring Power

After a decade of safe but expensive drinking water, the Cooperative learned that the county was planning to sell the Cooperative's water system. At the time, the Social Enterprise Clinic was working with EJCW and CRLA (two other legal services organizations with offices in the Salinas Valley) to promote community-driven solutions to unsafe drinking water in the area. EJCW and CRLA have distinguished histories of working alongside marginalized communities in the Salinas Valley to promote environmental justice. EJCW and CRLA introduced the Cooperative to the Social Enterprise Clinic to discuss its options given the county's plan to sell the water system. While the legal matters posed myriad transactional and water law issues, the Cooperative's ultimate goal was to "consciously build organizational power and community leadership."²⁹² In other words, the Cooperative engaged the Social Enterprise Clinic because it wanted transactional community lawyers who would represent its interests in building and sustaining a member-run water company as an alternative to the private company that allowed residents to be poisoned or the public agency that failed to provide affordable safe water.

While COVID-19 placed conversations of economic inequity in the national spotlight,²⁹³ income inequity and the day-to-day indignities that flow from it are perpetual issues in the Salinas Valley that predate—and, unfortunately, will likely outlive—these cyclical national conversations. With the 2012 passage of Assembly Bill 685,²⁹⁴ California became the first state in the country to legislatively recognize the human right to safe water.²⁹⁵ But a decade later, unincorporated communities, which are disproportionately communities of color,²⁹⁶ face nitrate and other toxic contamination of already limited available groundwater.²⁹⁷ Access to safe drinking water is not only a

292. Elssesser, *supra* note 61, at 377.

293. See Zia Qureshi, *Tackling the Inequality Pandemic: Is There a Cure?*, BROOKINGS INST. (Nov. 17, 2020), <http://www.brookings.edu/research/tackling-the-inequality-pandemic-is-there-a-cure/> [<http://perma.cc/4LU3-JRX9>] ("Inequality was bad, and the COVID-19 pandemic is making it worse. The immediate priority is to protect the disadvantaged and the vulnerable from the health and economic impacts of the crisis. But policies must also address the deeper, structural drivers of the rise in inequality.")

294. Ch. 524, 2012 Cal. Stat. 91 (codified at CAL. WATER CODE § 106.3 (West 2012)).

295. CAL. WATER CODE § 106.3 (recognizing that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes").

296. See POLICYLINK, CALIFORNIA UNINCORPORATED: MAPPING DISADVANTAGED COMMUNITIES IN THE SAN JOAQUIN VALLEY 9 (2013), http://www.policylink.org/sites/default/files/CA%20UNINCORPORATED_FINAL.pdf [<http://perma.cc/QC6W-RDRR>] (finding people of color were disproportionately represented in disadvantaged, unincorporated communities with sixty-five percent of the population people of color); UCLA WATER RESOURCES GROUP AND UCLA LUSKIN CENTER FOR INNOVATION, THE HUMAN RIGHT TO WATER IN POOR COMMUNITIES OF COLOR: URBAN DISADVANTAGED COMMUNITY WATER SYSTEMS IN SOUTHERN LOS ANGELES COUNTY viii (Jan 19, 2021), <http://www.ioes.ucla.edu/wp-content/uploads/2021/01/human-right-to-water-in-poor-communities-of-color.pdf> [<http://perma.cc/3YBS-29X7>] (finding that within the largest populated areas in southern Los Angeles County, disadvantaged communities were largely communities color).

297. See Molly Peterson, *Time's Up on Groundwater Plans: One of the Most Important New California Water Laws in 50 Years Explained*, KQED (Jan. 20, 2020), <http://www.kqed.org/science/1955916/times-up-on-groundwater-plans-one-of-the-most-important-new-california-water-laws-in-50-years-explained> [<http://perma.cc/V9HP-KRVS>].

basic human right²⁹⁸ but also a critical component of agricultural business and, thus, livelihood in the Salinas Valley.²⁹⁹ California's recent water insecurity³⁰⁰ has exacerbated rural communities' struggle for access to safe drinking water because many disadvantaged communities,³⁰¹ like the Cooperative, rely on well water.³⁰² For example, in 2012, more than one-third of all tested wells in the Salinas Valley were positive for maximum nitrate contaminant levels.³⁰³ Nitrate contamination is widespread in the Salinas Valley due to the region's vast agricultural operations.³⁰⁴ Therefore, communities in agricultural areas must regularly treat their groundwater supply to maintain safe drinking water. These water treatments are expensive, and, without an incorporated entity, communities are not eligible for state and federal financing.

The Cooperative engaged the Social Enterprise Clinic to conduct due diligence on its water system's financing, which the Cooperative used in its advocacy strategy with county and state government agencies. The clinic reviewed and advised the Cooperative on the terms and provisions of those complicated financing documents. Once the Cooperative secured county support for its purchase of the water system, the Social Enterprise Clinic advised the Cooperative in completing technical, managerial, and financial capacity requirements for purchasing the water system. This included revising the Cooperative's charter and governance documents to bring them into compliance with current state laws. We regularly attend board and member meetings to advise on governing law, including the Cooperative's governance documents. Additionally, the Social Enterprise Clinic provided liability, tax, and formation counsel regarding the

298. See *UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, U.N. HUM. RTS. OFF. HIGH COMM'R, <http://sr-watersanitation.ohchr.org/> [<http://perma.cc/VRE6-RLA2>] (last visited Apr. 1, 2022).

299. See PAC. INST., *THE HUMAN COSTS OF NITRATE-CONTAMINATED DRINKING WATER IN THE SAN JOAQUIN VALLEY* 9–11 (2011), http://pacinst.org/wp-content/uploads/sites/21/2013/02/nitrate_contamination3.pdf [<http://perma.cc/TT4R-J364>] (documenting the significant economic impact of unsafe drinking water on low-income residents in the San Joaquin Valley).

300. See Somini Sengupta, *It's Some of America's Richest Farmland. But What Is It Without Water?*, N.Y. TIMES (Oct. 21, 2021), <http://www.nytimes.com/2021/06/28/climate/california-drought-farming.html?action=click&module=Top%20Stories&pgtype=Homepage> [<http://perma.cc/SED5-AY72>] (“In America’s fruit and nut basket, water is now the most precious crop of all. . . . Millions of dollars are being spent on replenishing the aquifer that has been depleted for so long.”).

301. The term “disadvantaged communities” is defined by the California Department of Water Resources as any community where median household income is below eighty percent of the statewide median household income. CAL CODE ANN. § 75005(g). Many communities without access to safe drinking water are “[s]everely disadvantaged communit[ies],” earning below sixty percent state median income. *Id.*

302. Joby Warrick, *West's Historic Drought Stokes Fears of Water Crisis*, WASH. POST (Aug. 17, 2014), http://www.washingtonpost.com/national/health-science/wests-historic-drought-stokes-fears-of-water-crisis/2014/08/17/d5c84934-240c-11e4-958c-268a320a60ce_story.html [<http://perma.cc/45RT-D3AB>].

303. See CTR. FOR WATERSHED SCIS., U.C. DAVIS, *ADDRESSING NITRATE IN CALIFORNIA DRINKING WATER: WITH A FOCUS ON TULARE LAKE BASIN AND SALINAS VALLEY GROUNDWATER 5* (2012), <http://groundwater-nitrate.ucdavis.edu/files/138956.pdf> [<http://perma.cc/52EP-DPVX>].

304. See U.C. Davis Ctr. for Watershed Scis., *California's Groundwater Problems and Prospects*, CAL. WATER BLOG (Jan. 30, 2013), <http://californiawaterblog.com/2013/01/30/californias-groundwater-problems-and-prospects/> [<http://perma.cc/MU29-C4C7>].

mutual water company that would own and operate the water system upon completion of the asset purchase deal between the Cooperative and the county. During this multiyear representation, the Social Enterprise Clinic has gained deep insight into the Cooperative through various interactions with its members, executive director, board of directors, and its auxiliary enterprise on a variety of different yet related client matters.

B. Evolving Community Lawyering

The Cooperative's transactional representation illuminates specific areas where community lawyering theory currently fails to capture the essence of what antisubordination transactional lawyers strive to do. Though Part III.A describes the lawyering completed on behalf of the Cooperative, I have repeatedly observed these insights across multiple antisubordination transactional representations. Lawyering is always context specific³⁰⁵ and, thus, the Cooperative representation can only be generalized so far.³⁰⁶ Nevertheless, I posit that these lawyering insights are generally applicable to antisubordination transactional lawyering and should be incorporated into community lawyering theory.

Community lawyering's emphasis on the role of the lawyer and its potential lawyer domination of client needs remains salient in transactional community lawyering, but representing the Cooperative reveals these considerations alone are insufficient. The antisubordination transactional lawyer needs a deep understanding of the relevant structural inequities, subject matter expertise augmented by strong community partnerships, and digital technology fluency to minimize geographic distance between the client and lawyer. An overarching struggle of transactional community lawyering is to infuse into the often-dehumanizing practice of corporate law the humanity of the subordinated populations the entity client seeks to promote. Community lawyering theory stands to improve its efficacy by reflecting on antisubordination transactional lawyers in practice.

1. Developing Structural Competency

Professors Susan Bryant and Jean Koh Peters's groundbreaking work in developing a process to increase cultural competency for lawyers³⁰⁷ has made a significant impact in community lawyering practices. Cultural competency is a heightened awareness of cognitive biases, different experiences, and varied perspectives. Cultural competency interrupts assumptions and tendencies that would otherwise impede effective communication across cultural and situational differences. Building on this, cross-cultural lawyering scholarship regularly defaults to contemplating white lawyers interacting with predominately African American clients, often in the context of civil

305. See Ashar, *supra* note 13, at 1916.

306. See Mark Neal Aaronson, *Judgment-Based Lawyering: Working in Coalition*, 27 J. AFFORDABLE HOUS. 549, 557 (2019) (explaining that "it is risky to generalize from specific incidents of group representation. . . . [because] much depends on particular conditions and players").

307. Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001).

litigation legal matters.³⁰⁸ While cultural competency practices may improve interactions between a transactional lawyer and a client representative, antisubordination transactional lawyering also requires a deep understanding of the relevant structural inequities.

By 1993, there were so few farmers in the United States that the U.S. Census stopped counting the number of Americans who reside on farms.³⁰⁹ But in the Salinas Valley, farming is a dominant livelihood.³¹⁰ Although the Salinas Valley is only ninety miles outside of San Francisco and merely fifty miles south of the Santa Clara Valley (otherwise known as Silicon Valley), traveling there can make one feel like they are being transported to another state.³¹¹ In other words, there is a significant cultural divide between the Social Enterprise Clinic's faculty and law students and the Cooperative members. Cultural competency scholarship instructs that the lawyer needs to recognize and acknowledge the cultural context of the Cooperative members to adequately address the legal issues that arise.

However, transactional lawyers do not represent individuals or even groups of individuals; they represent business entities. A business entity existing not only as a core business but within a broader industry that functions within an ecosystem and exists as part of the even larger economic system. Transactional lawyers often envision their entity clients as actors within larger structural systems that are constantly engaging with other entities. In other words, transactional lawyers must consistently think of their clients as systemic players working in relation to larger systemic actors and pressures.

Transactional community lawyering demands an even more nuanced view of entity clients. The transactional community lawyer's entity client is, by selection, marginalized. The client faces disadvantages within the business ecosystem and larger economic system that traditional business entities do not: investors refusing to invest in their

308. See REBELLIOUS LAWYERING, *supra* note 18, at 1 (“They all seemed to be outsiders—white and male. And they all appeared to dress, speak, and act alike—or at least to dress, speak, and act not at all like us.”).

309. *Too Few Farmers Left To Count, Agency Says*, ASSOCIATED PRESS (Oct. 10, 1993), <http://www.nytimes.com/1993/10/10/us/too-few-farmers-left-to-count-agency-says.html> [<http://perma.cc/46XL-7DV4>].

310. See Evelyn Nieves, *Two Farmworkers Come into Their Own, Escaping Low Pay*, INSIDE CLIMATE NEWS (July 28, 2020), <http://insideclimatenews.org/news/28072020/farmworkers-california-covid-19-agriculture-climate-change/> [<http://perma.cc/HC3U-QAWT>] (identifying “more than 90,000 [farmworkers] in the Monterey Bay area, 600,000 in California and 2.4 million across the country”).

311. See CAL. RSCH. BUREAU, CAL. STATE LIBR., FARMWORKERS IN CALIFORNIA: A BRIEF INTRODUCTION 2 (2013), <http://latinocaucus.legislature.ca.gov/sites/latinocaucus.legislature.ca.gov/files/CRB%20Report%20on%20Farmworkers%20in%20CA%20S-13-017.pdf> [<http://perma.cc/C56R-XSBW>] (identifying Monterey County as one of the three counties with the largest number of farmworkers in the state (regardless of population) and the Bay Area as one of the counties with the lowest proportions of farmworkers).

companies,³¹² regulatory agencies not designed to support their business development,³¹³ competitor companies with longer runway financing, supply chain providers refusing to extend credit, business customers requiring harsh contractual terms, and so on. The transactional lawyer needs to be able to map the broader power structures³¹⁴ within which the entity client operates so that they can better locate structural disadvantages that need to be addressed or taken into consideration for the entity client. Medical practitioners have pioneered the practice of examining client issues within structural oppression and coined the term “structural competency.”³¹⁵

There are a host of economic and political conditions and institutions that exist outside of the interpersonal experience impacting marginalized entity clients.³¹⁶ Applied to the legal field, structural competency requires the lawyer to (1) recognize the structural influences on client outcomes; (2) develop language to describe those structural influences; (3) rearticulate “cultural” formulations in structural terms; (4) imagine structural interventions to obtain client outcomes; and (5) develop structural humility, such that the lawyer is on a continuous journey of enlightenment.³¹⁷ Structural competency would allow lawyers to move beyond individual experiences and community-specific oppression to mapping structural subordination. Structural competency would build on the power-mapping habits that community lawyering scholarship has advocated poverty lawyers to use.³¹⁸

Antisubordination transactional lawyers are well-positioned to advance and develop a structural-competency approach to community lawyering. Transactional lawyers must regularly advise entity clients on their relational position to other institutions, parties, and structures. In other words, transactional lawyers contextualize their counseling to the structural position of their entity client. Applying a community lawyering approach, the transactional community lawyer would, for example, devise terms and provisions meant to address the structural inequities of the transaction or embedded within the industry.

312. Kevin Henderson, *Don't Let VCs Be the Gatekeepers of Your Success*, TECHCRUNCH (July 22, 2020, 3:40 PM), <http://techcrunch.com/2020/07/22/dont-let-vc-be-the-gatekeepers-of-your-success/> [<http://perma.cc/XE97-KNDF>] (“The odds of winning a venture round are low for everyone, but Black founders have a better chance playing pro sports than they do landing venture investments.”).

313. Stephen Clowney, *Invisible Businessman: Undermining Black Enterprise with Land Use Rules*, 2009 U. ILL. L. REV. 1061, 1064 (2009) (arguing that zoning regulations constraint the development of Black owned businesses).

314. See Marshall, *supra* note 69, at 150.

315. *New Medicine for the Inequalities that Are Making Us Sick*, STRUCTURAL COMPETENCY: ABOUT, <http://structuralcompetency.org/about-2/> [<http://perma.cc/BD3E-V33H>] (last visited Apr. 1, 2022). Not currently defined in the legal field, the medical field has been discussing the need for structural competency for more than a decade. Metzl & Hansen, *supra* note 53, at 126 (“Competency, in this formulation, implies the trained ability to identify cross-cultural expressions of illness and health, and to thus counteract the marginalization of patients by race, ethnicity, social class, religion, sexual orientation, or other markers of difference.”).

316. See Marshall, *supra* note 69, at 159 (“In part lawyers needed to gain a greater understanding of the community’s organizations, its places of worship, its institutions, its bureaucracies.”).

317. See Metzl & Hansen, *supra* note 53, at 128–31.

318. See Ascanio Piomelli, *Foucault’s Approach to Power: Its Allure and Limits for Collaborative Lawyering*, 2004 UTAH L. REV. 395, 457, 480–82 (2004).

As the Cooperative's narrative exemplifies, understanding structural oppression requires an understanding of the role of race in the creation and maintenance of institutional power. In regnant lawyering, race may play no role in how a lawyer approaches her work.³¹⁹ Community lawyers, in contrast, are committed to "challeng[ing] racial ideology wherever and whenever they find it."³²⁰ Notwithstanding, there is little guidance in community lawyering scholarship for identifying and mapping structural racism and other forms of discrimination.³²¹ Structural competency—which transactional community lawyers would be particularly skilled at developing, given they are training as professional system thinkers³²²—would better prepare future community lawyers for dismantling racism and other forms of oppression because structural competency appropriately places attention on disrupting systemic power, policies, and outcomes instead of individual actions or perspectives.³²³ In this way, interrogating transactional community lawyering can better inform future iterations of community lawyering.

2. Strategic Alliances To Define Subject Matter Expertise

Transactional lawyers are generalists who represent their entity clients through a wide variety of legal matters;³²⁴ thus, they reflect the lawyering flexibility that is a core tenet of community lawyering.³²⁵ That said, there are boundaries to the transactional lawyer's subject matter expertise beyond which they are not likely to represent a client. Community lawyering theory emphasizes the need to decentralize lawyer expertise.³²⁶ However, this is at tension with professional responsibilities that inhibit lawyers from client representations outside of their professional competency.³²⁷

319. Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 *FORDHAM L. REV.* 2081, 2089–90 (2005) ("Not only should race play no role in how a lawyer approaches her work, but with few exceptions it will play no role. White lawyers who follow the dominant approach will actually believe that this is an accurate account and that they themselves are neutral as to race.").

320. Ancheta, *supra* note 16, at 1393.

321. *See id.* at 1389 ("Advocacy, education, and organizing, no matter how collaborative, must work not only to empower clients within the lawyer-client relationship, but to dispel the myths of racial superiority and inferiority that can exist in the lawyer-client relationship and in all other relationships where power flows between individuals, groups, and institutions.").

322. *See* Tomar Pierson-Brown, *(Systems) Thinking Like a Lawyer*, 26 *CLINICAL L. REV.* 515, 518 (2020) (identifying "systems thinking" as "an approach that identifies all outcomes as the product of discernable, interconnected systems").

323. *See* IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 18 (2019) ("'Institutional racism' and 'structural racism' and 'system racism' are redundant. Racism itself is institutional, structural, and systemic.").

324. *See supra* Part II.A.3.

325. *See* Elsesser, *supra* note 61, at 388 ("Unfortunately, organizations involved in social change generally do not have an agenda that corresponds to a narrow legal specialty. . . . If lawyers are to be helpful, powerful community organizations need legal assistance (as well as all other types of assistance) that will follow them seamlessly through various stages of a campaign and will not be limited by narrow substantive specialties or geography.").

326. *See* REBELLIOUS LAWYERING, *supra* note 18, at 110 (noting that lawyers may adhere "closely to technical legal issues to maintain control over both the boundaries of her relationship with a client and her overall workload").

327. *See* MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS'N 1983); Cal. R. Prof'l Conduct 1.1.

To balance the tension between decentralizing the role of the attorney³²⁸ and maintaining competent representation, the following illustrates how the Social Enterprise Clinic has cultivated a network of strategic relationships and community partners to support the Cooperative's legal and nonlegal needs outside of the clinic's areas of expertise.³²⁹ As the number of community lawyers continues to grow and their areas of expertise continue to diversify, community lawyering will likely shift from earlier ambidextrous models of lawyering to various community lawyers working in collaboration across practice areas to support common clients. The benefit of examining transactional community lawyering is that it illuminates issues of subject matter expertise boundaries, and yet, at its core is a flexible and collaborative approach to client representation. In this way, observing transactional community lawyers, who build local networks of community partners and organizers to support client problem-solving, is a useful model for contemporary community lawyering in general.

a. Traditional Community Lawyering Model

Working alongside community partners in the Salinas Valley has required the Social Enterprise Clinic to alter our lawyering styles. In November 2014, California passed Proposition 1 ("Prop 1"),³³⁰ authorizing more than \$7 billion in bonds for various water projects around the state, including to disadvantaged communities like the Cooperative.³³¹ The State Water Board, responsible for administering Prop 1 funds,³³² proposed a network of technical assistance providers who could receive funding under Prop 1 that included data collection, engineering, water system management, and project coordination, but no funding for applicants to hire transactional lawyers. In part, this oversight existed because many of the environmental justice advocates were not familiar with the corporate law issues in water system transactions.

Our community partners quickly identified that the Social Enterprise Clinic could offer valuable insight on the necessity of transactional lawyers in water system transactions. Thus, the Social Enterprise Clinic participated in strategic planning calls with the State Water Board explaining this oversight and why funding for transactional lawyers was essential to the success of these water projects, a position the State Water Board adopted.³³³ While transactional lawyers do not typically participate in advocacy campaigns, the clinic's unique insight and opportunity to support its community partners justified its limited involvement in this advocacy work. This example is consistent with narratives of community lawyers adjusting their practice to meet community needs.

328. See Tremblay, *Regnant Lawyering*, *supra* note 21, at 951 ("Most lawyers dominate lawyer-client interactions with their expertise in technical matters, their use of mysterious legal language, their depersonalization of disputes, and their greater perceived importance.").

329. See Ancheta, *supra* note 16, at 1386 ("Client empowerment often requires grassroots mobilization, either to supplement or to replace appeals through legal channels.").

330. CAL. SEC'Y OF STATE DEBRA BOWEN, STATEMENT OF VOTE: NOVEMBER 4, 2014, GENERAL ELECTION 14 (2014).

331. See *Financial Assistance Funding - Grants and Loans: Proposition 1*, CA.GOV, http://www.waterboards.ca.gov/water_issues/programs/grants_loans/proposition1.shtml [<http://perma.cc/MY3J-SP3R>] (last visited Apr. 1, 2022).

332. ASSEMB. B. 1471, 2014 Leg. (Cal. 2014), *codified in relevant part at* CAL. WATER CODE §§ 79720–79725.

333. See Prop 1 Comment Letter (on file at the Social Enterprise Clinic).

b. Spotting Issues Outside of Expertise

While the Social Enterprise Clinic maintains a commitment to being flexible in responding to client needs, with few exceptions, the client matters it takes on are corporate or transactional matters. However, in those devastating days immediately after the Trump 2016 election,³³⁴ the Social Enterprise Clinic asked the Cooperative explicitly what, if any, issues the new administration's hostile stance to undocumented status³³⁵ (and, in particular, immigration from Latin America)³³⁶ raised for the Cooperative and its membership. As a result, the Cooperative asked us to research the implications of having members with undocumented residency status. The documentation status of the individual members had never come up in previous client conversations. Even with the clinic raising the topic, the Cooperative may have felt too vulnerable to discuss immigration status implications without the level of trust and collegiality that developed through having spent months working together. That said, the Social Enterprise Clinic did not represent any individual immigration or documentation status issues. Examining transactional community lawyering would add to the canon of community lawyering scholarship in how lawyers help their clients identify legal issues beyond the lawyer's area of expertise and then refer the client to strategic partners competent to address the issues at hand. Issue spotting and referral is another means of flexible lawyering that studying transactional community lawyering would illustrate.

c. Building Organizer and Strategic Partner Relationships

Community lawyers work alongside and do not attempt to replace community organizers.³³⁷ Community organizing³³⁸ is a distinct skillset and, when done well, a full-time job.³³⁹ Although community lawyering scholarship recognizes the need for

334. See Jonathan Menjivar, *Los Angeles*, THIS AM. LIFE (Nov. 11, 2016), <http://www.thisamericanlife.org/602/the-sun-comes-up/act-four> [<http://perma.cc/6RJW-S37F>].

335. See Gregory Korte & Alan Gomez, *Trump Ramps Up Rhetoric on Undocumented Immigrants: 'These Aren't People. These Are Animals.'*, USA TODAY (May 17, 2018, 10:03 AM), <http://www.usatoday.com/story/news/politics/2018/05/16/trump-immigrants-animals-mexico-democrats-sanctuary-cities/617252002/> [<http://perma.cc/6ARR-9XPM>].

336. Eugene Scott, *Trump's Most Insulting – and Violent – Language Is Often Reserved for Immigrants*, WASH. POST (Oct. 2, 2019), <http://www.washingtonpost.com/politics/2019/10/02/trumps-most-insulting-violent-language-is-often-reserved-immigrants/> [<http://perma.cc/9Z97-53N9>].

337. See Amna A. Akbar, *Law's Exposure: The Movement and the Legal Academy*, 65 J. LEGAL EDUC. 352, 353–54 (2015) (describing the Ohio Student Association organizers as “radiant in their embodiment of possibility and their grounding in history” and characterizing movements as “messy and multifaceted experiments in motion, full of big personalities and foot soldiers, excitement and turmoil, conflict, love, and hope”).

338. Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 34 (2011) (defining “organizing” as “those processes by which power is created from multiple relationships—a phenomenon of energy release that civil rights organizer Bob Moses likened to nuclear fusion”).

339. See Elsesser, *supra* note 61, at 387 (“But, more importantly, the roles of a lawyer and an organizer in an organizing campaign are very different.”).

community lawyers and organizers to work collaboratively,³⁴⁰ the canon would benefit from more models of building effective working relationships with organizers and strategic partners. While community lawyers and organizers have common goals to advance social change, there may also be shared skepticism about working together.³⁴¹ Moreover, the lawyer's duty of confidentiality places limitations on the substance of the communications³⁴² between organizers and lawyers that can create challenges and frustrations³⁴³ in developing the working relationship.³⁴⁴ Freely sharing information is foundational to relationship building. Thus, while necessary, professional responsibilities also create a burden on client representatives who may feel caught in between the legal and organizing teams. This is particularly true if client matters are moving at a rapid pace, providing limited opportunity for organizers and strategic partners to provide feedback.

Transactional lawyers are accustomed to regularly working on dynamic teams in concert with other service providers—accountants, investment banks, venture capitalists, tax lawyers, employment lawyers, antitrust lawyers, etc.—to achieve the business client's goal. Thus, transactional community lawyering would be a particularly useful laboratory for effective models of working with organizers and building strategic partnerships. The Social Enterprise Clinic was first connected to the Cooperative by CRLA and EJCW, local community partners in the Salinas Valley. The clinic continues to work with local organizers, grant writers, and community organizations in representing the Cooperative. A key distinction in working with organizers as a community lawyer and collaborating with other subject matter experts as a transactional lawyer is that organizers also serve an accountability function in maintaining cohesion within social movements. Interactions with organizers and strategic partners should be informing the community lawyer's consciousness, which at an extreme may lead the community lawyer to withdraw from the representation if the client's decisions are to the detriment of the broader social movement.

3. Digital Technology's Impact on Geographic Distance

Perhaps the most distinguishing advancements since the genesis of community lawyering theory in the 1990s are the technology innovations that have changed our society and dramatically altered the legal profession. Digital natives³⁴⁵—people about

340. Marshall, *supra* note 69, at 159 (“The community lawyer was encouraged to use her legal expertise to help create opportunities for community members to come together around common problems.”); Ashar, *supra* note 13, at 1921.

341. Ashar, *supra* note 13, at 1894 (describing the workers' rights organizers use of lawyers as conditional and experimental “partly due to this shared skepticism about how law might undermine collective action”).

342. *Id.* at 1910; MODEL RULES OF PRO. CONDUCT r. 1.6 (AM. BAR ASS'N 1983); Cal. R. Prof'l Conduct 1.6.

343. Ashar, *supra* note 13, at 1925 (“There is tension and stress in these relationships, as is to be expected in any partnership between hard-headed and driven actors operating within a set of firmly established constraints.”).

344. *Id.* at 1910 (“[W]e could either reject the influence of the organizers or learn to discern the boundaries between lawyer-client, lawyer-organizer, and client-organizer decision making.”).

345. See JOHN PALFREY & URS GASSER, BORN DIGITAL: UNDERSTANDING THE FIRST GENERATION OF DIGITAL NATIVES 1 (2008) (defining “Digital Natives” as those born after 1980).

forty years old or younger—constitute forty-three percent of lawyers at private law firms, and in the next decade they are projected to be seventy-five percent of lawyers.³⁴⁶ Thus, community lawyering theory needs to meaningfully engage with this sea change and transactional community lawyering provides a useful petri dish.

Community lawyering theory emphasizes the benefits of the community lawyer's constant presence within the community they represent.³⁴⁷ The quintessential community lawyer lives within the community where she represents clients and understands the legal and social issues on an intimate level.³⁴⁸ Geographic proximity provides community knowledge, access to social capital, and accessibility so that the lawyer can be responsive to the client's needs.³⁴⁹ Community lawyering theory currently does not address how the lawyer can mitigate the geographic distance of the lawyer and the client. The physical distance between the Social Enterprise Clinic and the Cooperative has complicated the representation. Given the traffic in the San Francisco Bay Area, it takes about five hours round trip to drive ninety miles to the Salinas Valley. However, there are few legal offices, and no law schools, located within the Salinas Valley.

There remains no local viable alternative to the Cooperative engaging the clinic on this research intensive, multidimensional, long-term pro bono representation. For these reasons, I decided that the Social Enterprise Clinic could not let the geographic distance keep us from working with this incredible entity client. To mitigate the depth of understanding and connection loss given the geographic distance, the clinic has committed to regular phone and Zoom conversations with the primary client representative, a long-term client representation, cultivating on-the-ground strategic partnerships, and participating in regular in-person visits interacting with various client constituents.

Digital technologies have dramatically impacted social interactions and, thus, many clients have definitions of community and connectivity not contemplated in the canon of community lawyering. COVID-19's disruption to legal practice provides an opportunity for community lawyers to learn how to better serve clients without physical proximity.³⁵⁰ The pandemic challenges of working remotely have forced lawyers to gain a new fluency in virtual representation³⁵¹ that community lawyers should be applying to increase access

346. Amanda Robert, *Millennials Are Poised To Take Over: How Will the Legal Industry Need To Change?*, ABA (Mar. 1, 2019, 4:25 PM), <http://www.abajournal.com/news/article/millennials-are-a-dominant-force> [http://perma.cc/P54J-UHN4].

347. Ancheta, *supra* note 16, at 1370 (“López’s rebellious lawyers . . . are deeply rooted in the communities in which they live and work.”).

348. Elsesser, *supra* note 61, at 387 (“[C]ommunity lawyering demands a very close relationship with the community in order to locate and relate to the indigenous community leaders/organizers.”).

349. Diamond, *supra* note 129, at 398 (“[T]he lawyer will need to get out into the street (actually or virtually) and talk to residents in order to get the sense of the physical and political conditions, the community groups that are active and the issues with which they are concerned, the conflicting goals and strategies, the personalities of the leaders, and the degree of support for the different groups and their leaders.”).

350. See AM. BAR ASS'N, *PRACTICING LAW IN THE PANDEMIC AND MOVING FORWARD: RESULTS AND BEST PRACTICES FROM A NATIONWIDE SURVEY OF THE LEGAL PROFESSION* (2021), <http://www.americanbar.org/content/dam/aba/administrative/digital-engagement/practice-forward/practice-forward-survey.pdf> [http://perma.cc/YCE8-WNG5].

351. Madison Alder & Holly Barker, *Lawyers Fine-Tune Virtual Court Setups, Skills for Post-Pandemic*, BLOOMBERG L. (Dec. 22, 2020, 4:45 AM),

to justice for low-income clients for which in-person meetings are burdensome. This would include rural clients, like the Cooperative, located in a “justice desert.”³⁵²

Undoubtedly, there are insights and experiences that are not likely to be replicated without substantial physical interaction within the client’s geographic location. For instance, it was during our in-person visits to the Salinas Valley that the impact of racism and xenophobia became overwhelmingly clear in explaining why the Cooperative had an unsafe private water system for so many years.³⁵³ The disadvantaged communities we spoke with experiencing water insecurity were overwhelmingly Latino communities located adjacent to historically white incorporated neighborhoods. Making an analytical connection is distinct from witnessing the effects on communities of color because experiencing it brings another level of saliency to the issues. Thus, digital technologies are not likely to recreate knowledge pertaining to living in a community with low-income, marginalized clients.

However, regular communication and collaboration with strategic partners outside of specific client relationships further helps bridge the geographic distance between the lawyer and client. Many transactional community lawyers rely on digital technology to bridge geographic distances because it is what most business clients already use.³⁵⁴ Therefore, transactional community lawyers can significantly contribute to an evolved community lawyering theory integrating digital technologies and an expanded definition of community.

CONCLUSION

Transactional lawyers have a critical role to play in harnessing private ordering expertise to assist in marginalized community power building, as well as individual access to financial security. Unfortunately, community lawyering theory, the dominant model for social change lawyering,³⁵⁵ largely ignores transactional lawyering in its construction and analysis. Given this current gap in theory and praxis, this Article demonstrates the need to recognize “transactional community lawyering”—the intentional incorporation of community lawyering tenets in the representation of entity and enterprise clients. The emergence of social enterprise lawyering, drastic expansion of pro bono business law programs, and institutionalization of business law clinics are

<http://news.bloomberglaw.com/us-law-week/lawyers-fine-tune-virtual-court-setups-skills-for-post-pandemic> [<http://perma.cc/Z3A9-Z75U>] (noting that pandemics change culture).

352. Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15, 19 (2018) (explaining that three-quarters of America’s low-income rural residents faced a least one civil legal problem in 2017 but only fourteen percent received adequate legal assistance).

353. See Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931 (2010); Pannu, *supra* note 51, at 259 (discussing “the decades-long relationship between industrial development (and later collapse), disinvestment, racial exclusion, and economic vulnerability” involved in the formation and maintenance of disadvantaged unincorporated communities).

354. DELOITTE, *CONNECTING SMALL BUSINESSES IN THE US* 3 (2018), <http://www2.deloitte.com/us/en/pages/technology-media-and-telecommunications/articles/connected-small-businesses.html> [<http://perma.cc/GH4U-7JQA>] (click “Download PDF” under “Connecting small businesses in the United States, 2018”) (summarizing that 82% of small businesses, which constitute 99.7% of all U.S. businesses, use at least intermediate level digital tools).

355. See Elsesser, *supra* note 61, at 404.

current sites of antipoverty transactional lawyering that would benefit from community lawyering theory. However, antipoverty transactional lawyers need a social change lawyering theory that speaks to the nuances of transactional representation.

While business law clinicians are pioneering transactional community lawyering models, to be transformative, transactional community lawyering cannot be siloed within a few clinical programs. Professor López's groundbreaking interventions into poverty lawyering in the 1990s centered on acknowledging clients as real individuals instead of as tropes, examining the limitations of traditional lawyering, and then investigating the relationship between the two to envision a more equitable reality. This Article adapts this approach in the context of transactional lawyering to acknowledge the uniqueness of entity client representation, examine antipoverty transactional representation, and prescribe necessary advancements for community lawyering theory to be accessible to transactional lawyers.

Community lawyering theory emerged in the 1990s and is informed by nearly thirty years of reflections upon regnant lawyering³⁵⁶ in litigation and advocacy settings. Transactional lawyering for economic justice efforts need not experience thirty years of regnant transactional lawyering in low-income communities before learning to adapt community lawyering theory to transactional practices. To advance social change through transactional representation, theorists need to evolve community lawyering to explicitly address transactional lawyers. Examining antistatutory transactional lawyering also demonstrates the need for community lawyering theory to incorporate structural competence to address systemic inequities, strategic partnership building to supplement the lawyer's subject-matter expertise, and digital technologies to minimize geographic distance. Not only could transactional community lawyering immediately improve social enterprise lawyering, pro bono business lawyering, and business law clinic pedagogy but it would also communicate to future cohorts of socially conscious transactional lawyers that they have a place in advancing economic and racial justice in low-income communities, which is desperately needed.

356. REBELLIOUS LAWYERING, *supra* note 18, at 24 (defining regnant lawyering as dominating where lawyers consider themselves the preeminent problem solvers in addressing society's injustices); Ashar, *supra* note 13, at 1906 n.113.