MAINSTREAMING COMMUNITY DEVELOPMENT: BUSINESS STRATEGIES AS RADICAL APPROACHES TO COMMUNITY REPRESENTATION

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Cover Page Footnote
Daniel S. Shah is counsel for the Center for Community Non-profit Organizations at Beasley School of Law at Temple University. I would like to give special thanks to the participants in the Mid-Atlantic Clinical Theory and Practice Workshop of December 15, 2000; Spencer Rand; and especially Alison Mackenzie for their insightful comments and guidance.

This article is available in Fordham Urban Law Journal: https://ir.lawnet.fordham.edu/ulj/vol29/iss4/12
This article is based on a case study of a Philadelphia Community Development Credit Union ("CDCU"). It argues that law school clinics are sites for change in the practice of community development. This article analyzes my community development clinic's representation of an organization seeking to set up a CDCU to ask whether techniques used to improve business efficiency in the mainstream economic sector can provide a radical new approach to counseling a community-based organization.

The case study of the CDCU prompts an in-depth analysis of the role of technical assistance providers such as community development lawyers and clinics in perpetuating an economic development market structure at odds with consumer demand. Most technical assistance providers exist in a direct dialogue with the project funding stream. Either foundations and government funders are paying them to provide services that implement their agendas, or the clients are paying them to help their organizations get financing from...
those funders. This critique of the role of technical assistance in the community development marketplace focuses on the disempowering consequences of implementing top-down policy agendas.2

Because of their academic settings, community development clinics at law schools are uniquely positioned to step outside the current market structure. Clinics tend to fall into a very small group of technical assistance providers that are not dependent on community development project money. Instead, they rely on independent support from sources like the National Association of Public Interest Law and Interest of Lawyers’ Trust Accounts and law school funding.3 For this reason, they can implement agendas that differ from those of most community development technical assistance providers.4 For example, clinics are in a unique position to contribute to client growth and early development of products. They also are able to work with clients who do not appear to have a product that meets existing funding criteria, but nonetheless does meet consumer demand. Clinics can “mainstream” community development practice by applying demand-side business practices that are standard in American for-profit business.

My premise is that community development clinics are not obligated to work with organizations that offer prescribed community development products. I argue that our clients benefit if we break

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2. See Daniel S. Shah, Lawyering for Empowerment: Community Development and Social Change, 6 CLIN. L. REV. 217 (1999) (examining the role of policymakers, mediators, and communities in a historical framework and concluding that lawyers providing technical assistance contribute to the disempowerment accompanying the implementation of these policy agendas).

3. In an informal survey, I found that the vast majority of funding for community development clinics came from law schools. I asked for a breakdown of funding along the lines of the following categories to enable me to reach a conclusion: law school; foundation; corporate and government funding for legal services, including the National Association of Public Interest Law and Interest of Lawyers’ Trust Accounts; and fee for service. Respondants gave the approximate percentage make-up of these or similar categories or simply a breakdown by sources for which their clients are eligible in comparison to non-client-eligible sources. Of the twelve respondents, nine had 100% law school funding; one was funded by IOLTA money controlled by the law school; one had fifty percent funding from the law school; and one was entirely non-law school funded. In sum, eighty-eight percent of the funding was from law schools or money controlled by law schools. Although sources of past and anticipated funding varied slightly from the present, they did not differ markedly.

4. These differences suggest that clinics need not emulate their technical assistance counterparts—not because they cannot compete, but because they can provide alternatives. Peter Pitegoff, Law School Initiatives in Housing and Community Development, 4 B.U. PUB. INT. L.J. 275, 287 (1995) (opining that development clinics cannot compete with public interest law firms in pursuing the goal of local community development).
the mold of standard technical assistance providers. I conclude that as long as there are educationally rich opportunities for students assisting community development clinics, there is a means of providing representation designed to meet consumer demand.

I. MARKETS, BUSINESS, AND THE CDCU

Community economic development was designed as an alternative to the mainstream capitalist market that disempowered inner city communities. Yet, the effectiveness of community develop-

5. Community economic development can refer to a broad range of activities carried out by Community Development Corporations and similar non-profits. A narrow definition of economic development, however, would include only those activities designed to create jobs and deliver commercial services. Michael H. Schill, Assessing the Role of Community Development Corporations in Inner City Economic Development, 22 N.Y.U. REV. L. & SOC. CHANGE 753, 754 (1996—97). Although this paper centers on a case study of commercial services delivery, it also addresses market conditions affecting activities such as affordable housing development. For that reason I use the broader term community economic development.

6. Inspired by local group-centered leadership, as well as by the more radical Black Nationalist movement, communities began to form voluntary, non-governmental institutions that eventually became the primary players in the community development movement. Anita Hodgekiss, Petitioning and the Empowerment Theory of Practice, 96 YALE L.J. 569, 582 (1987) (describing the development of local group-centered leadership in the context of civil rights protests by the Student Non-Violent Coordinating Committee); see also ROBERT L. ALLEN, BLACK AWAKENING IN CAPITALIST AMERICA 222-23 (1967) (arguing that corporate capitalism and black self-determination are antithetical because black self-determination upsets the manipulation of black consumers necessary for corporate control of supply and labor). These community development corporations began as bottom-up, neighborhood initiatives, organizing around an ideology of community empowerment designed to challenge power, racism, and large urban bureaucracies. Thomas F. Jackson, The State, the Movement and the Urban Poor: The War on Poverty and Political Mobilization in the 1960s, in THE "UNDERCLASS" DEBATE 403, 408 (Michael B. Katz ed., 1993). Using group empowerment theory, and community-based strategy, the War on Poverty helped to establish the principal that low income people have the right and ability to control their communities. See also Schill, supra note 5, at 766 (describing the origins of community-based economic development as being rooted in residents' desire for economic enterprise in their neighborhoods).

7. A combination of racial and economic segregation at the macroeconomic level has led to the deindustrialization and economic segregation that characterizes inner city poverty. PAUL A. JARGOWSKY, POVERTY AND PLACE (1997) (using econometric models to show that metropolitan area income levels and neighborhood sorting are the most significant variables determining variance in ghetto poverty. Secondary factors include deindustrialization and, especially, deunionization, which works in conjunction with the poor quality of inner city schools, employment deconcentration, and racial segregation to foster ghetto poverty); THOMAS SUGRUE, THE ORIGINS OF THE URBAN CRISIS (1996) (tracing the origins of violent racial cleavages in 1960s Detroit, as well as the progression from the economic disintegration of inner city Detroit to the workplace and residential discrimination of the early post-war period); Anthony Downs, The Challenge of Our Declining Big Cities, 8 HOUSING POL'Y DEBATE 359, 384 (1997) (describing concentrated inner-city poverty as due to the immobility of
ment is usually measured in social more than economic terms. It can only be understood by analyzing the markets in which projects are produced through a complex network of professionals, including non-profit staff and boards of directors; foundation managers; government bureaucrats; and lawyers and other consultants.

Two distinct markets unite the development and distribution of community development projects. One market is driven by non-profit funders, the other by inner city communities. The community development funding market is one of limited supply: competition is fierce amongst community based organizations for getting financial support from funders to carry out community development projects. Consequently, funders have the economic power to determine community development social agendas and set the requirements that community-based organizations must meet to bring development projects into their neighborhoods. On the other hand, the inner city is a market of near monopoly: com-

8. See Schill, supra note 5, at 768 (describing the central purpose of community development corporations as to build the social fabric and institutions of distressed neighborhoods, in part by creating economic opportunities and jobs).

9. Over the last few decades, there has been a steady decline in the Department of Housing and Urban Development's budgetary authority, which shrank from providing 434 units in 1976 to only forty-two in 1995. Nat'l Low Income Hous. Coalition, Meeting America's Housing Needs (MAHN): A Habitat II Follow-Up Project 4 (1998), http://www.nlihc.org/MAHN/supply.htm. Meanwhile, from 1988 to 1998 the total of tax-exempt, charitable, religious, educational, scientific and literary organizations in the United States, including those engaged in community development, grew seventy-four percent. Charities, Nonprofits Escalate in Number, Christian Century, Aug. 1-Aug. 8, 2001, at 14. Since I began to represent organizations engaged in community development, this change has become palpable, with fewer and fewer pots of money available to carry out this type of work, while more and more organizations seek to get established in the field, including public housing authorities. The enactment of HOPE VI, Department of Veterans and Housing and Urban Development, and Independent Agencies Appropriations Act of 1993, Pub. L. No. 102-389, 106 Stat. 1579 (1992), allows for private ownership for developing public housing, enabling these projects to tap into and use up a considerable portion of the available allocations in Pennsylvania under the Low Income Housing Tax Credit Program, Tax Reform Act of 1986, Pub. L. No. 99-514, § 252, 100 Stat. 2085 (codified at I.R.C. §42(a), (h), (s) (1988). With fewer subsidies and tax credits, and more entities qualified to receive them, funding for such projects has become highly competitive.
Community based organizations face no real competition in the neighborhoods for their services and products. This is no coincidence. In fact, funders have in essence defined the inner city community market as being one of low competition. From an economic perspective, the very intention of community development, to address underserved and excluded neighborhoods, demands that this market of extreme competition be linked to one of extreme scarcity. The result is that funders have the economic power to predetermine community development agendas and determine the types of projects which community-based organizations can bring to their neighborhoods. Thus, despite community empowerment goals, the top-down economic pressure to satisfy funders' social goals creates serious disincentives for the consideration of local neighborhood initiatives and solutions.

The CDCU is useful to examine because it highlights the general problems with the community development market structure and role of professionals. While a CDCU is a non-profit entity that competes for funding with other non-profit community development projects, it differs from most community development projects in that the services it provides have real competition. In the financial services market, there are options, even in low-income inner city neighborhoods. If a community development credit union is to succeed, it must compare favorably with its competition for financial services, which in most cases includes check cashing outlets and a few mainstream banks. Sadly, but predictably, CDCUs have an extraordinary high failure rate.  

When a new community-based organization sought to develop a CDCU, we saw this as a particularly fruitful opportunity to test a new technical assistance role that would employ standard, non-community development business strategies. I was confident that the CDCU could succeed if it could counter the high cost of check

10 Of the eleven community development credit unions active in the early 1980s, only three remain. Telephone interview with Terry Trudeau, Former President of the Philadelphia Credit Union Program and Director of the Germantown Federal Credit Union (Sept. 13, 2001). During its formulative stage, a recently established community development credit union client did not consider market preferences for financial services beyond perfunctory surveys similar to the one that PBDC had conducted. Considering the many for-profit financial services that posed an immediate and obvious threat to the success of these proposed credit unions, one can only speculate how much more unlikely it is that a non-profit would conduct market research in a non-competitive field. Regardless, the fact that the kind of research described in this article is novel, even among credit unions, shows that the simple desire to serve the constituency does not motivate providers to consider constituency preferences.
cashing outlets. But it was also clear that the CDCU had to thoroughly understand consumer demand for financial services. This highly competitive setting provided fertile testing ground for an alternative framework prioritizing local demand.

The client, Port Baker Development Corporation ("PBDC"), was planning to start a credit union and was already using standard community development methods of assuring the funders' required "community input": assembling the beginnings of a board and making contacts with community residents and organizations. No one on the board had any direct experience with running credit unions, but some had expertise in the community development funding market, including writing grant applications. The initial board members included an executive director of a successful (i.e., funded) organization, an executive director of another smaller organization, and an entrepreneur who was informed about and supportive of credit unions. It was unclear, however, whether PBDC had enough information to prove that a credit union would succeed in the neighborhood, especially in light of the high failure rate of Philadelphia credit unions due to under-capitalization.

Before engaging the clinic's counsel, the client had prepared and distributed a survey designed to gauge neighborhood support for a new credit union. The survey put forth a predetermined product

11. Woodstock Inst., Tools for Survival: An Analysis of Financial Literacy Programs for Lower-Income Families (2000) (documenting how low-income people are exploited by segments of the financial service sector); see also Gregory Squires, Fringe Banking in Milwaukee: The Rise of Check-Cashing Businesses and the Emergence of a Two-Tiered Banking System, 1 Urb. Affairs Rev. 126, 128 (1998). Most CCOs demand high fees for cashing checks. Id. at 127 (citing J.P. Caskey, Fringe Banking: Check-Cashing Outlets, Pawnshops, and the Poor (1994)). These fees are usually higher than the fees imposed by banks. For example, in Milwaukee, customers pay anywhere from a three percent fee plus a transaction fee, to a ten percent flat fee for cashing a personal check of fifty dollars. Several banks, however, charged no fee. Id. at 130. It is estimated that twenty-eight percent of U.S. households use the payroll check cashing industry. The Check Cashing Business, at http://www.smartcashatm.com/check_cashing_business.htm. Currently, only about half of the states cap the amount CCOs may charge.

12. Shah, supra note 2, at 240-46 (1999) (describing the problem of obtaining grassroots input through the procedures municipalities have developed for Empowerment Zones, Omnibus Budget and Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 543 (1993) (codified at I.R.C. § 1391 (1998), which are highly process oriented, with multi-meeting consensus required for community decisions. Those decisions, however, were still subject to review of the city. With the city veto, lack of leadership opportunities, and an overly drawn out process, there is no meaningful role for the community.)

13. Later the executive director of an organization who had sat on the board of a credit union that failed joined the board and was considerably more skeptical about the credit union's viability.
The primary question was, “Do you or do you not want a new credit union in this neighborhood?” From a business development perspective, questions of this type are highly problematic. This framework provides no opportunity for respondents to indicate the nature of their financial service problems or the desired shape of potential solutions. Even a “yes” is ambiguous support—perhaps they do not want a new credit union. A survey like this offers no way to verify whether there is genuine demand for a credit union because respondents have no opportunity to indicate preference for an alternative.

This issue of demand led the clinic to consider methods of generating information to determine whether a credit union should be organized, and, if so, in what form. At a meeting between PBDC and their business consultants, we presented a means of documenting and meaningfully using a collective constituent voice on financial services issues. We suggested that the clinic could help create a “feedback loop,” a process wherein information is channeled back and forth between two entities: the client and the constituency. By documenting neighborhood concerns, we could enable our client to determine whether constituents prioritized the same issues that mainstream financial service users consider critical: saving money by using a credit union instead of a check cashing service. If this was not the predominant concern among check cashing service users, then expecting them to change their behavior based on cost savings alone would not be realistic. By tying their proposed consumers’ preferences to their financial service product, PBCD could increase the likelihood of the project’s success, while being responsive to a local articulation of priorities.

The client, however, was not predisposed to explore consumer demand. The client expected that my students and I would provide the standard community development technical assistance required to develop a CDCU. This service might have included the clinic working with the client to move the project forward after incorporation; helping with loan policies; guiding the organization through the process of obtaining National Credit Union Association insurance; and possibly helping to obtain Community Development Financial Institution (“CDFI”) certification so that the credit union could qualify for CDFI funding. When we presented

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14. For legal representation in non-profit project development, exploring consumer demand is a substantial deviation from the norm. The norm is to limit the method of getting community input to community meetings describing projects already funded or underway.
detailed evidence regarding our concerns about their established competitors, however, the clients agreed that further investigation of financial service usage and preferences would be useful.

In order to assess constituency preferences we held focus groups designed to inform us about the specific features the constituency might be looking for in a credit union. The focus group is a fashionable collective that is notorious in politics as a tool for creating campaign sound bites. By serving that purpose, it has lost the generative intent of its designer. A true focus group is a small, representative sample of a community brought together to answer open-ended questions on a specific topic. The results can be grouped into common themes for later analysis and interpretation. In this case, we needed market research in order to develop constituency-friendly financial services product. Collaborating with a professor from the Political Science Department enabled us to pay twenty dollars to each participant who attended. This small incentive helped guarantee full attendance and conveyed to the focus group participants the importance of their participation.

National research on financial services framed our questions about what would constitute an ideal financial institution for the community. Based on research analyzing national low-income financial services, we highlighted several key issues—hours, loca-

15. The focus group developed in response to dissatisfaction with polling techniques and as an extension of the group therapy methods employed by psychiatrists. SUCCESSFUL FOCUS GROUPS: ADVANCING THE STATE OF THE ART 29 (David L. Morgan ed., 1993). It is a research technique that involves a moderator who interviews people and keeps the respondents "focused" on a particular topic. Id. The focus group is generally conducted for applied purposes and can be classified as a pretextual vehicle in that it is typically used as a bridge to further research. Id. at 30. The evident success of focus groups as a marketing tool in the private sector eventually led public sector organizations to use focus groups for their own marketing purposes, such as assessing the impact of health education campaigns. MICHAEL BLOOR ET AL., FOCUS GROUPS IN SOCIAL RESEARCH 3 (2001).


17. The fact that the funding for this research came from a foundation is troubling for the same reasons described infra text accompanying notes 26-32, which discuss tendencies to support the foundation agenda when compensation is given. However, the researcher had not applied for funding for focus groups, and no report to the foundation was made specifically justifying this use of the compensating funds.

18. JOHN P. CASKEY, BEYOND CASH-AND-CARRY: FINANCIAL SAVINGS, FINANCIAL SERVICES, AND LOW-INCOME HOUSEHOLDS IN TWO COMMUNITIES, REPORT FOR THE CONSUMER FEDERATION OF AMERICA AND THE FORD FOUNDATION (1997); JOHN P. CASKEY, LOWER INCOME AMERICANS, HIGHER INCOME FINANCIAL SERVICES (1997); JOHN P. CASKEY & DAVID B. HUMPHREY, CREDIT UNIONS AND ASSET ACCUMULATION BY LOWER-INCOME HOUSEHOLDS, PRELIMINARY DRAFT STUDY FOR THE FILENE RESEARCH INSTITUTE (1999); Squires, supra note 11.
tion, pricing, desired benefits, and products in demand, such as unsecured short-term loans. With the help of the Business School, we developed questions and a methodology for the focus groups. To achieve maximum diversity, we had three separate groups. Still, this only approximated the community’s diversity in residence, race, income, and age. Unlike our client’s original survey, our questions were not about credit unions, specifically, but rather about financial practice. They were designed to elicit detailed information about household money flows and financial institution usage. We asked about constituent experience with those institutions, including preferred services, and support for those services. Additional time was reserved for participants to discuss a topic of their choosing.

The insights gained from these initial focus groups shaped the character of the credit union project. The focus groups consisted of ten people being questioned on November 16, 1999 and November 18, 1999, and eight on December 2, 1999. At least seven themes emerged, covering everything from the delivery of service to the important details of existing products. Of those seven themes, three were paramount: business culture, access, and financial literacy.

The groups provided interesting perspectives on the success of check cashing outlets. While participants in the first group were aware of the high fees charged by check cashing outlets, they continued to use a local pharmacist who delivered money orders to their doors along with prescriptions. Participants contrasted mainstream banking culture with the personal relationships to check cashing outlets, which knew their customers’ spending habits and needs. The participants in the third group indicated the importance of their rapport with the staff of a check-cashing outlet; they appreciated that other check cashing outlets did not require customers to show identification, in contrast to a bank’s treating customers “like machines.”

On the other hand, the indifference or hostility the participants felt toward banks could have been attributed to negative experiences as bank customers. In the second group, one participant

19. These trends included the following: significant reliance on ATMs; a preference for avoiding surcharges for this usage, and safe sites accessible outside of normal banking hours; low- or no-cost access to savings; personalized financial service; education about using financial institutions, such as credit counseling, loan approval processes, fees, basic banking, and lifetime planning; conveniently located branches; high usage of specialty savings plans, such as vacation and Christmas earmarked accounts; and competitively priced money order, bill paying, and similar services.
complained about how much banks charged for ATM transactions and bounced check fees. While participants noted that check cashing outlets charge fees both “coming and going” for money orders and check cashing, they felt that “nothing is free.” They also felt that bank fees, on the whole, were more than check cashing outlets fees, which ran counter to research. One participant in the third focus group felt that the bank tellers had a racist attitude toward him. Another participant noted that bank branches in minority areas had bulletproof glass and that banks in white areas did not. Everyone also agreed that banks are “thieves.”

Individuals in each groups also expressed a desire for access to a financial institution in their particular section of the neighborhood and to safe ATMs with no surcharge. Safe ATMs encourage many to choose large downtown banks, which often have free ATMs in their customers’ communities. It is difficult for new CDCUs to meet these standards.

The subject of financial “literacy” also came up in each group. Prompted by questions about household money flow, a protracted discussion ensued in the first group about bank overdraw fees, monthly fees, and charges for checks. Likewise, the second focus group discussed what an ideal financial institution would offer, including financial education. A participant who was already using a bank expressed an interest in money management and financial planning seminars. Finally, the third focus group discussed the demand for financial literacy training. In this last discussion, a participant who had never used a bank was surprised by another participant’s statement that it was possible to write a check for any amount. She indicated that, based on this information, she would be interested in learning how to use a checking account.

As the focus groups indicated, a credit union would have to establish personal relationships with potential customers to compete for their business. Particularly striking was the critical role personality played in shaping customers’ use of financial services. Participants in all three groups mentioned the deep bonds they had developed with employees of check cashing outlets. This helps explain why check cashing outlets have succeeded and what services

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20. James H. Carr & Jenny Schuetz, Financial Services in Distressed Communities: Framing the Issue, Finding Solutions (2001), http://www.fanniemaefoundation.org/programs/financial.PDF (stating that a household earning $20,000 a year would pay $86-500 in fees annually using alternative financial services as opposed to $30-60 in fees using a conventional bank); see also Woodstock Inst., supra note 11.
a credit union would have to provide to succeed. While these concerns could easily be incorporated into a mission statement, we were concerned more with the issue of access. A community development credit union would probably not have its own ATMs initially and would not be able to provide access to any surcharge-free ATMs without a business relationship with a major bank. Furthermore, on a start-up budget, the credit union could have only one location.

Our client also found customers' strong desire for education about budgeting, checking accounts, direct deposit, and ATM usage extremely useful. Literacy was a surprising request: educational programs are not standard features of community development credit unions. Realizing the strong demand for these services, however, the client embraced financial literacy as a key component of the proposed credit union's financial service. Since the standard CDCU does not provide responses to these concerns, we spent months with the client developing a unique and creative solution to meet these demands.

The client decided to develop a roving community development credit union with bank branches administered in partnership with a large Philadelphia-based bank. This means it can provide ATM access in multiple locations, while encompassing the positive features of cash checking outlets. Several bank offices located in well-known community centers would be established so that Port Baker customers could transact business locally. The bank offices would be simple: they might combine an information kiosk built with an ATM, or simply constitute a desk and a meeting space for loan and credit counseling meetings. The focus would be on access to information and personalized service. As the focus groups had shown, free access to an ATM at each location would dramatically improve customer service.

The key to implementing this design was convincing a number of community-based organizations to provide marketing for the roving "branches," since community-based organizations had preexisting relationships with the credit union's potential customers. Our client would recruit these organizations—from established community development centers and community associations—to assist with locations, character references, loan packaging, and word-of-mouth marketing. The participation of these established businesses would help keep the culture personal, casual, and not corporate-bureaucratic. The supporting bank would provide products, services, and a "floating" loan officer. It would also pay rent to the
community-based organizations that house it, and a portion of revenues gathered through the joint venture would be reinvested in the local community. This joint venture would promote its bank’s image by improving financial literacy and credit counseling and by encouraging community reinvestment.

The clinic helped the client successfully incorporate the needs and interests of the constituency into the credit union product design. In the business world, this is the first phase of a business strategy called the “cross-functional team approach.” In this approach, trainers, front-line service delivery personnel, and consumers all participate in the product development. The key to this approach is customer participation and front-line personnel input at an early stage. The results are increased efficiency and effectiveness, as exemplified by successes in the for-profit sector. The Ford Motor Company, for example, reduced its investments in new car development from $4 billion to $2 billion while reducing the development timeline from prototype to factory from 6 to 3.5 years by incorporating consumer and factory worker interests into new car development.

To compare community development credit union with the Ford Motor Company seems almost ludicrous, but the extremes of business culture must be recognized as analogous if we are to empower inner-city neighborhoods.

The client continued with this cross-functional approach and developed a feedback loop—a critical feature of the cross-functional approach—by presenting the focus group results to the constituency in an attempt to develop consensus about efficient program design. Despite a genuine attempt to incorporate the concerns expressed in the focus groups, the client’s community meetings were far less animated. The cross-functional team approach seemed to be slipping from their hands. To find out why, we examined whether a mainstream business technique, such as a focus group, could be too radical an alteration of traditional community development practice.

22. Id. at 61-62.
II. CULTURE, ECONOMICS, AND POVERTY

Poverty falls under a world-view of difference enacted through federal programs such as welfare\(^2\) and public housing\(^4\) and community development initiatives, in which low-income people are expected to accept what mainstream, "functioning" society decides to offer them. Because America treats its poverty stricken urban neighborhoods as the "other,"\(^2\) community development nonprofits are often viewed as charities bringing mainstream values and culture to "the ghetto." Yet the irony is that the structure of traditional community development programs actually prevents these programs' recipients from participating in their growth in the same way as mainstream society participates in its development. Low-income "communities" are imagined to be monolithic and static recipients, while mainstream society is composed of engaged and demanding consumers.

Because community development organizations depend heavily on substantial outside funding from foundations, the government, or for-profit investors, project funders play a significant role in

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\(^4\) United States v. 121 Nostrand Avenue, 760 F. Supp. 1015 (1991) (upholding forfeiture of leaseholder’s granddaughter’s property right in public housing apartment based on allegations of illegal drug activity in apartment under the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, Stat. 4181 (codified at 21 U.S.C. § 881). To rebut a presumption of eviction-worthy activity after the government has presented compelling evidence that drug activity has occurred on the premises, a resident can establish an innocent owner defense only if he can show that he took reasonable investigatory steps to learn about the activity—to show lack of knowledge—and that he did all that he reasonably could do to prevent the activity once aware of it—to show lack of consent.

\(^2\) Michael B. Katz, "Underclass" as Metaphor, in The "Underclass" Debate 3 (Michael B. Katz ed., 1993) (describing the historical antecedents of the perception of the poor as undeserving); see also Michael B. Katz, Reframing the Debate, in The "Underclass" Debate, supra, at 466-77 (describing American poverty discourse as tainted by the notion of a second America of the poor, which is less worthy, and cut off from the rest of the country because of its own failings and describing the misguided concentration on family pathology of the urban poor in the debate about the "underclass").
shaping programming.\textsuperscript{26} I have argued elsewhere that this tends to drown-out resident input.\textsuperscript{27} In addition, most foundations that fund community development work discourage competition in the neighborhoods in which they invest. For example, a subsidized supermarket that is built in a low-income neighborhood would provide a funder with conclusive evidence of local access to quality food and rule out further funding for another, competitive food center project. As a result, clientele do not cause community development organizations to go out of business. Therefore, most community development organizations that provide community-based housing, educational, or arts services need not be responsive to their clients to receive support.\textsuperscript{28}

This accountability to funders instead of to constituents, however, is rooted in cultural perceptions and is not inherent in being a non-profit, charitable organization.\textsuperscript{29} It is not surprising that financial supporters of non-profits such as symphonies, while contributing to what the IRS defines as “charitable organizations,”\textsuperscript{30} do not presume to know what works best for the constituency. Other non-profits such as YMCAs, for example, face stiff competition for their customers’ time and money and must cater to them.\textsuperscript{31} The YMCA integrates extensive client contact into their process of generating ideas for program development because they compete with other health clubs and educational centers.\textsuperscript{32}

Non-profit organizations located in low-income urban communities differ from organizations in mainstream urban centers because low-income consumers lack economic resources and have limited options of choosing among business products. As a consequence, unlike the rest of the non-profit sector, community development non-profits lack consumer accountability. That this rift is not adequately counteracted by community development regulatory re-

\textsuperscript{26} Shah,\textit{ supra} note 2, at 238.
\textsuperscript{27} Id. at 234-40.
\textsuperscript{28} Id. at 238.
\textsuperscript{29} See I.R.C. § 501(c) (3) (2002) for what activity is tax exempt as “charitable.”
\textsuperscript{30} A symphony may qualify as a charity under § 501 (c)(3) of the Internal Revenue Code when access to music is provided to all people who can afford, \textit{Treas. Reg.} § 1.501(c)(3)-1(a) (2002), however, organizations promoting community development must demonstrate that they provide needed services to worthy subjects of charity. \textit{Treas. Reg.} § 1.501(c)(3)-1(d)(2) (2002) (defining the term “charitable” as including the promotion of social welfare by organizations designed to relieve the poor and distressed or the underprivileged, to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.)
\textsuperscript{31} For an example of services offered by the YMCA, see the YMCA for San Diego County website at \href{http://www.ymca.org}{http://www.ymca.org}.
\textsuperscript{32} \textit{Letts et al.},\textit{ supra} note 21, at 71.
quirements exemplifies how policy-makers and the general public define poverty in cultural terms.

This next section considers how community based organizations are constrained and how these constraints shape the relationship between funding supply and inner city neighborhood demand. It considers how funders; mediating entities, such as lawyers; and community building organizations work within a supply—rather than a demand—driven market. Because clientele do not pay market value for the services or products and community based organization boards are viewed as representative of inner city demand, these organizations are perceived as adequately meeting consumer demand. In supplying from the top, however, funders actually displace consumers, much like a bureaucracy dispensing services or products. Mediating entities, such as lawyers, negotiate between organizations and the funders and help satisfy bureaucratic requirements rather than ensuring that constituency needs are met.

III. MARKET VS. BUREAUCRACY

Funders have attempted to link their programs with the community, but the bureaucratic measures they use to assess “community” interests are far inferior to those used to assess market forces driving demand in mainstream business.33 These foundations and community development funders stand at the top of the community development hierarchy. They set the criteria for fundable projects based on their policy research.

Since the 1960s, foundations have set their own social justice implementation policies.34 Because foundations influence the direction of government programs, they have far-reaching impact on establishing and narrowing national community development policy. Foundations set and follow national trends—the trends that dictate which projects will receive funding in any given period.35 The recent succession of trends toward supporting community-based arts organizations, entering strategic alliances and joint ventures, and fighting predatory lending, were shaped by fashions of foundation agendas.36 Both federal government and foundation

33. Id. at 31-35.
35. Id. at 2-7.
36. E.g., Donna Harkness, Predatory Lending Prevention Project: Prescribing a Cure for the Home Equity Loss Ailing the Elderly, 10 B.U. Pub. Int. L.J. 1, 11 (dis-
funding have a tremendous impact on the community development non-profit sector, especially among organizations with no endowments and little fee-for-service income.\(^\text{37}\)

In defining the parameters of community development practice, foundations define America’s urban poor as a monolithic category that can be identified by numerous social conditions—material decay, poor educational options, a lack of businesses, and so on.\(^\text{38}\) While circumstances for all the post-industrial America urban poor are similar, funders assume that they can make the leap from similar-looking problems to endlessly replicable solutions. This problem highlights one of the fundamental issues in community development: the failure of nonprofits to consider grassroots concerns hinges on funding competition with organizations outside the nonprofits’ neighborhoods. Policy research is done by funders, which means that their agendas surmount local concerns.

Community development funders have made the community meeting the standard forum for discussing community development projects. Community meetings, however, are held at the end of the planning phase. Their very timing assures that they rarely shape the outcome of community development projects. Furthermore, community meetings are notorious for lacking protocol or mandates for garnering constituency input and not getting that input early enough in the process to make a difference in the outcome. Community meetings need not stifle the collective

\(^{37}\) Carl Milofsky, \textit{Community Self-Help Organizations}, in \textit{Community Organizations: Studies in Resource Mobilization and Exchange} 204-05 (Carl Milofsky ed., 1988) (describing how through the influence of market signaling systems that govern how local groups should contact regional or national funding sources and how proposals should be prepared, single funding arenas steer self-help organizations to be more bureaucratic and concerned about raising money and threaten their democratic, participatory nature. A funding arena is a type of funding source representing a distinct institutional system); \textit{see also} Carl Milofsky, \textit{Funding Arenas for Neighborhood Based Organizations}, in \textit{Community Organizations: Studies in Resource Mobilization and Exchange}, supra, at 238 (using regresional analysis to conclude that neighborhood-based organizations generally draw funding from single funding arenas); Carl Milofsky, \textit{Community Self-Help Organizations}, in \textit{Community Organizations: Studies in Resource Mobilization and Exchange}, supra, at 204-05 (describing how larger organizations' (like the YMCA) diversity of funding allows them to have more control over their policies, in contrast to community self-help organizations, which react to public sponsorship by becoming more like bureaucracies and redefining their goals to fit more closely with national policy interests).

\(^{38}\) Katz, \textit{supra} note 25.
constituency voice by occurring late in the project’s planning process and lacking a mechanism for including constituency input. Yet they often do, simply because funders do not demand the meetings be a key aspect of early project development.

Funders use community meetings to elicit “community” feedback. The ambiguity of this goal, however, allows community meeting organizers to satisfy funder requirements by holding meetings late in the process and without a mechanism for including meeting revelations. As a result, resident input is unlikely to have much of an effect on the project. One foundation insider characterized the nature of community participation in agenda setting through a mock dialogue:

Project Director: “We are convening the stakeholders in the community so they can select an action plan.”
Foundation Officer: “But what will their action plan be?”
Project Director: “We won’t know until they finish their community-wide discussions.”
Foundation Officer: “But we can’t let them decide. That’s our responsibility.”

The fact that a top-down power dynamic drives the community development market is not lost on the neighborhood residents who attend these meetings. They realize that these meetings often fail to put residents at the creative center of a community development project or provide a forum to negotiate a collective stance on community problems and possible solutions. Residents know that their input at meetings is unlikely to make a difference, making them reluctant to participate at all.

One community meeting run by a very successful Philadelphia community development organization exemplifies how such meetings fail as constituency research. Rather than asking open-ended questions or presenting several plans for revitalizing a neighborhood and then eliciting resident feedback, the consultant merely presented his recommendations, disregarding the residents’ response. His ideas for addressing crime through streetscape development were met with little resident interest, and a politician’s suggestion that a town watch be formed was met with equal skepticism.

By contrast, one resident commented that many would be reluctant to throw relatives, or friends’ relatives, at the mercy of the criminal justice system. This insight was met with nods of approval

39. Dowie, supra note 34, at 259 (quoting foundation insider Mark Gerzon).
throughout the audience. The night’s only overwhelmingly positive response followed a resident’s suggestion that the neighborhood’s predominant problem was police corruption. The convenors and the consultant ignored this assertion of consensus, and, as a result, the meeting failed to address what appeared to be the deepest resident concern—how to fight police misconduct. Had this issue been further nurtured, it might have germinated effective neighborhood based crime reduction strategies.

Like most community meetings, this one was a token gesture. There was no mandate for constituency input that reflected negatively on the streetscape improvement initiative—an initiative that was already funded and would be implemented regardless of residents’ enthusiasm. Community based organizations discard constituency input for many reasons—often tied to funding and cost constraints. Disturbingly, however, even some successful organizations consistently discard all information that does not support the plan that the organization intends to take to a funder.

While there are bureaucratic requirements for community input in projects, funders have decided that it is not research and dialogue at the product development level, but community representation at the organizational level through which the community “voice” is to be included. Federal funding for community development frequently requires community participation in the governing body of the community-based organization carrying out the development work. For example, the HOME Investment Partnerships Act\(^40\) provides a fifteen-percent set-aside of its funds for entities classified as Community Housing Development Organizations.\(^41\) As is frequently the case with federal funding,\(^42\) Community Housing Development Organizations must maintain “accountability” to low-income community residents by having one-third of the organization’s governing body consist of some combination of elected

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42. HOME policy’s goal is maximum feasible participation of the poor, the standard of citizen participation established by the Office of Economic Opportunity in 1967. More currently, Community Based Development Organization designation also requires community control through board participation. In order to use Block Grant funds for “special purposes” like neighborhood revitalization through new construction, these activities must be carried out by Community Based Development Organizations. Community Based Development Organizations are required to have more than fifty-one percent of their governing bodies be low- or moderate-income residents from the area of operation, or representatives of businesses or institutions located in that area. 24 C.F.R. § 570.204(c)(1)(iv) (2001).
representatives of low-income neighborhood organizations, residents of low-income neighborhoods, or other low-income community residents.\textsuperscript{43} Here, again, the notion that a few representatives of the “other” may speak for the diversity of interests within a poor neighborhood appears a strategy guided by the idea of difference between the “mainstream” and the “community.” Board quotas do not ensure that the wide ranges of constituency interests are represented. As I have previously argued, low-income board members are systematically overpowered by project complexity and the professional sophistication of their colleagues on the board.\textsuperscript{44} In short, what funders consider adequate “community participation” is a function of numbers, not actual input. Quota systems make it easy for community-based organizations to fulfill low-income board membership requirements, typically with middle-income individuals who own businesses or control institutions like churches and other non-profit organizations located in the neighborhood.\textsuperscript{45} Because the other two-thirds of its governing body might be made exclusively of a combination of government appointees or appointees of a private parent entity, this requirement for community board participation does little to empower neighborhood representatives.\textsuperscript{46} This is especially true when other program requirements, calling for private sector investment, stifle the input of residents to shape or control the programs and policies of the organization.\textsuperscript{47} Typically, the dominant involvement of outsiders, as exemplified by HOME’s other statutory mandate, “maxim[um] participation by the private sector,”\textsuperscript{48} overrides the ability of residents to control the ideas implemented by community development organizations.\textsuperscript{49} Nevertheless, from the funders’ pro-

\begin{itemize}
\item \textsuperscript{43} 24 C.F.R. § 92.2 (2001).
\item \textsuperscript{44} Shah, \textit{supra} note 2, at 234-40.
\item \textsuperscript{45} A number of my clients fit this description, with empowered, middle-income church or political leaders from the community dominating the board.
\item \textsuperscript{46} \textit{E.g.}, \textit{supra} note 44 and accompanying text.
\item \textsuperscript{47} Shah, \textit{supra} note 2, at 234-40.
\item \textsuperscript{48} 42 U.S.C. § 12751 (2001).
\item \textsuperscript{49} Since the 1980s, the complicated nature of projects that garner for-profit investment in, and governmental control over, sponsored community development programs—tax credit transactions (under the Low Income Housing Tax Credit program Tax Reform Act of 1986, Pub. L. No. 99-514, § 252, 100 Stat. 2085 (1986) (codified at I.R.C. § 42(a), (h) (1988); and Empowerment Zones, Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 543 (1993) (codified at I.R.C. § 1391 (2001)), for example—have become either too complicated or too bureaucratic for meaningful participation by low-income residents. The vast majority of community development transactions are so complex that resident participation at the board level is little more than a rubber stamp. Shah, \textit{supra} note 2, at 240.
\end{itemize}
spective, adequate community participation is assumed if the community organization has "community" representatives serving on the board. Board service becomes the banner through which the community development declares the integration of the community into the project, often eliminating the need for any further inquiry into constituency desires.

If funders show little interest in incorporating constituency ideas, might they instead look for a constituency response to projects? While funders express an interest in linking policy priorities to constituency assessment of organization effectiveness,\textsuperscript{50} they do not back up their purported interest with evaluation funding.\textsuperscript{51} Ironically, additional investing to insure that community needs are met puts the organization at a competitive disadvantage in the funding market, because low overhead and administrative costs are a high priority for funders.\textsuperscript{52}

Evaluations are frequently required or requested as part of foundation funding proposals, but the ends limit the means.\textsuperscript{53} One manual, recommending a "program logic model" evaluation for comprehensive community initiatives\textsuperscript{54} frankly emphasizes that project sustainability is a major concern for the foundation requesting the evaluation. Again, the funders' role is more important than an inquiry into the project's effectiveness.\textsuperscript{55} The same evaluation manual suggests that the evaluation team include "stakeholders," which are defined as those interested in the project, including funders, project staff and administrators, project participants, customers, community leaders, and others.\textsuperscript{56} Staff and community are included in the evaluation process, however, not to facilitate open-ended discussion of constituency needs and the incorporation of those needs into the product design, but to ensure that funder recommendations are "accepted by a broader constituency."\textsuperscript{57} As currently conducted, even if evaluations assess interest from local


\textsuperscript{51} The total allotment for program evaluations is .9\% of all foundation funding, http://fdncenter.org/research/trends-analysis/index.html.

\textsuperscript{52} \textit{LETTS ET AL.}, supra note 26, at 75.

\textsuperscript{53} These are required by the Philadelphia Foundation as well as the W.K. Kellogg Foundation, Pew Charitable Trust, and William Penn.


\textsuperscript{55} \textit{Id.} at 43.

\textsuperscript{56} \textit{Id.} at 48.

\textsuperscript{57} \textit{Id.} at 49.
clientele, they will be evaluated from the standpoint of proving to
the funder that the current program is sustainable, not from the
standpoint of assessing constituency interest in creating new ones.58
Evaluations have the potential to play a crucial role in program
development; however, their current purpose is not to foster genu-
ine dialogue.

Funder agendas do not include community-based organization
business plans, marketing research, or product development.59
Furthermore, to satisfy funders, these nonprofits are encouraged to
maintain tight budgets. With foundation grants for general operat-
ing support averaging about eleven percent,60 organizations have
little flexibility in running programs. Other options for additional
operating support include raising unrestricted funds through indi-
vidual contributions, or, for large organizations, drawing on an
endowment.61 Even when an organization can raise additional funds,
the desire to minimize overhead and persistent shortfalls in pro-
gram income militate against funding initiatives that would enable
the program to effectively serve the clientele. In other words, or-
ganizations cannot easily engage in “extras,” such as program
development, that may run counter to funder priorities. As a result,
funders have structured a limited role with specific moments for
constituency input; the stiff competition for funding that commu-
nity-based organizations face makes them a captive audience to
their funders. Constituencies are denied any real opportunity to
participate actively in project development.

Because it is assumed that the “community” is involved in pro-
ject development via board quotas, research on local concerns does
not qualify for funding. Technical assistance from consultants,
however, does qualify. Funders want their money spent on project
implementation—what they perceive to be community develop-
ment “itself.”62 Thus, unlike community issues research, technical
assistance for community development is highly fundable, and law-

58. But see Dowie, supra note 34 at 260 (describing certain foundations such as
Ashoka, New World, Tides, the Flow Fund, Thresholds, Vanguard, and Haymaket
which genuinely seek input from communities by creating advisory boards comprised
of ordinary citizens).
59. Supra notes 42-54 and accompanying text.
60. THE FOUNDATION CENTER, FOUNDATION GIVING TRENDS (2001), http://
fdncenter.org/learn/classroom/ft_tutorial/fig09.pdf.
61. People’s Emergency Center, a typical community development organization
providing transitional and long-term housing, information regarding homeownership,
and job training, spends only a meager five percent on administration and the rest on
programs, leaving little for program development.
62. Letts et al., supra note 21, at 75.
yers providing this technical assistance are often well-funded. Multiple consultants—from grantwriters and greenway experts to project developers and lawyers—often appear as line items on development project budgets.

Technical assistance providers ensure sustainability. If they charge a fee for their services, they are expected to produce either access to, or a component of the services necessary for access to, a funding source. Often, the fee is covered by the funding source, not unlike contingency fee litigation where compensation is a percentage of the client's award. For example, a tax lawyers' fee for a tax credit deal would be incorporated into the budget presented to the funders. Technical assistance providers are the key to maintaining the hierarchy sustaining the funder driven market for community development.

Funding for mediating entities, however, is available only for the purpose of implementing a funder's agenda. If, for example, a community development organization sought technical assistance in organizing a credit union, a legal consultant might help the client qualify for funding from the Community Development Financial Institution. The consultant might assist the credit union obtain certification as a Community Development Credit Union, as well as help the project obtain National Credit Union Association insurance. The consultant might also help design loan policies and loan documents and negotiate agreements with non-members of the credit union. Although the neighborhood's needs might be better met by something other than a credit union, the funder requires that particular organizational form, and a technical assistance provider's role is to help the client fit the program.

Positioned between the client and the funder, technical assistance providers primarily help distribute grants and implement

64. In each of the affordable housing transactions in which I have participated under the Low Income Housing Tax Credit program, Tax Reform Act of 1986, Pub. L. No. 99-514, § 252, 100 Stat. 2085 (1986) (codified at I.R.C. §42 (a), (h) (1988), tax lawyers' fees appeared as separate line items on the project budget.
65. Another example is a Philadelphia provider of operational and technical assistance which presented a popular series of seminars on community development "best practices" to CBOs. In this case, community development non-profit participation was easy to generate because nearly all of the practices it covered—such as retail commercial development and charter school development—translated directly into methods to access current streams of funding.
66. Milofsky, supra note 37, at 207-08 (describing the role of technical assistance providers).
funder-driven policy. Technical assistance providers often draw their fees from the same sources as their clients. If, for example, the project is developing low-income housing, the technical assistance provider is likely to be funded by the same groups that ensure the funding stream for housing. Thus, they are often directly subject to incentives to advance national funders' agendas.

Community development clinics are essentially technical assistance providers. Although they need not charge fees or apply for grants, they serve the same general function: helping clients meet funder notions of proper community development products. Clinics play typical technical assistance roles—helping the client achieve legal status, doing legal work, fulfilling due diligence requirements, creating a strong infrastructure, obtaining financing, understanding the project development process—all of which help implement the funder's blanket policy designs.

I have argued that community input at the product development stage is more useful than token participation in organizational governance. For a variety of reasons, governance participation seldom translates into actual control over the organization or the organization's products and services. Furthermore, even when community participation in governance does result in some control by constituents, that power does not necessarily reflect constituency consensus about the role of the organization. Moreover, it does not increase the organization's ability to fulfill the needs of its clientele.

This analysis shows why participants at my client's community meetings reacted blandly to the roving community development credit union proposal. It also makes clear my argument that clinics have the power to promote the direct engagement in low-income neighborhoods, and, by doing so, to mainstream community development. As we have seen, the community development market sys-

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68. For instance, Regional Housing Legal Services relies on funding from the William Penn Foundation.
70. Id.
71. Supra notes 40-49 and accompanying text.
tem depends on three tiers of entities: funders, mediating entities, and client organizations. By linking national policy with local actors, mediating entities work to bring the top and the bottom of the market together. The mediating entity role is especially important for revenue-starved local organizations competing with one another for scarce funding from entities dictating programs without having conducted local research. The technical assistance provider's role is to navigate a circular funding stream: either funders pay them to provide services that fulfill their agenda or clients pay them to get money from funders. Either way, technical assistance providers have incentives to adopt funder agendas. In Port Baker, however, the clinic was able to step away from this role and adopt marketing concepts that tied the community development credit union to the constituency.

IV. THE CDCU, THE FEEDBACK LOOP, AND THE COMMUNITY DEVELOPMENT MARKET

Frustrated with a system that perpetuates disempowerment, I approached the counseling of PBDC as a means of examining community representation in the community development non-profit world. Community development credit unions sit on the border of two distinct business cultures. They face competition for clientele from major for-profit businesses like banks and check cashing outlets. At the same time a community development credit union is a non-profit relying on community development funders. The PBDC case study shows how the top-down hierarchy of traditional community development can be toppled by a simple shift in the technical assistance provider's role.

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72. This oversimplifies the role of the technical assistance provider in facilitating the implementation of funder-driven policy. See supra Part II for a discussion of funder driven policy. Milofsky finds that “We do not know much about what mediating structures do.” What we know is that “These are ‘secondary organizations’ that link together primary institutions of society,” but not “what makes them more or less influential, or what it might mean to improve managerial effectiveness.” Milofsky, supra note 67, at 5 (citing W.L. Warner & P.G. Lunt, The Status System of a Modern Community (1942)). “A general impression is that mediating structures are generally weak and ineffectual.” Milofsky, supra note 37, at 207-08 (describing how even those technical assistance providers who support community organizations tend to impose a national agenda on local organizations seeking complex expertise, which usually comes with only token community participation).

73. See supra notes 39-61 and accompanying text for a discussion of the absence of local research in guiding funder determinations about which programs to fund.

74. Milofsky, supra note 37, at 207-08 (describing the growth of the type of funding that requires the involvement of professional technical assistance providers, which also results in the imposition of a national agenda on local organizations.)
In order to help our client overcome funder-driven constraints, the clinic had to position itself so as to make the ideological jump from the political and social notion of "community" to the economic idea of "constituency"—a jump that would change the project's focus to addressing the needs of an identified group of people.\textsuperscript{75} The change, ironically, was set in motion by the adoption of test marketing ideas, which are better suited to using resident input than community meetings. The weakness of "community" involvement aside, marketing tools proved a proper basis for positioning the clinic to help the client better serve the constituency. Defining the constituency and devising a method of implementing their ideas enabled the client to comfortably distance itself from programmatic agendas.

Client autonomy can be measured by its ability to resist engaging in traditional funding agendas, such as the Treasury Department’s CDFI Fund agenda of establishing community development credit unions. Rather than serve the traditional technical assistance provider role—helping the client implement the CDFI agenda—the clinic used market research to establish links to the Port Baker constituency. With our help, the organization chose to set up a community-linked, roving bank branch that offered financial literacy training, among other bank products, rather than to set up an undercapitalized credit union.

It may surprise those interested in affecting social change that managerial product development theory could be so effective in reintroducing grassroots priorities into community development clinical services. After all, corporate business is the enemy—the very cause of inner city economic marginalization. Such thinking, however, fails to recognize the cultural world-view that attempts to perpetuate the separateness of poverty from the mainstream economy. In such a system crossovers between mainstream and "other" are both radical and necessary. And when given the chance, the residents of Port Baker had no trouble adopting the role of mainstream consumers with high expectations and demands.

Just as for mainstream non-profits, staff and consumer input at the development stage allows community development to em-

\textsuperscript{75} John Emmeus Davis, Contested Ground 12 (1991) (describing the “biases, ambiguities, and confusions attendant upon the sociological use of ‘community’”). "Constituency" is preferable to "community" because it emphasizes the relationship between organizations and individuals in a way that "community" does not. "Community" is too self-referential; people belong to many different communities. Moreover, a geographic community may not meaningfully correspond to a vital social network, as does a "constituency."
power the constituency. Engaging the constituency in the process of both creating and implementing programs is the key to the operation of the most successful organizations. Examples include the Vera Institute of Justice, which used “institute meetings” that engaged the board, project directors, planners, researchers, and key administrative officers to shape development of an effective community supervision program for those slated for deportation hearings.

These organizations stand out because they are not concerned with preserving scarce resources, can draw on diversified revenue streams, and are unwilling to implement programs that do not satisfy local needs. Furthermore, such non-profits let constituency input shape programs, which, in turn, makes the programs appealing to clients. Consequently, the organizations are viewed as “trailblazers,” even when all they are really doing is becoming more effective organizations. Non-profits that can afford an investment in program development can capitalize on client and staff innovations. For those who cannot, law school clinics are an important resource.

76. LETTS ET AL., supra note 21, at 79.

77. Id. at 69-70. See also STEVEN MARANS, THE POLICE-MENTAL HEALTH PARTNERSHIP 105-09 (1995) (describing a similar approach that would include front-line personnel in the idea generating process for service development in the non-profit sector). This program exemplified improved service delivery in an attempt to coordinate different actors responding to community violence in New Haven. Id. The Child Development-Community Policing Program focuses on a team approach, linking police officers with mental health professionals to help the officers cope with chronic exposure to violence and to pay better attention to the emotional responses of involved children. Id. The partnership link provided police with training in basic principals of child development, made available follow-up consultation with mental health professionals, and, in general, allowed for closer collaboration of services and program development. Id. Additional collaborative efforts included reviewing juvenile offender cases to better provide more immediate access to treatment intervention and providing follow-up and assessment of children who witness drug raids. Id. As a result of the collaboration, police officers formerly overwhelmed by violence began taking a more active role in the healing process by helping to reestablish stability for the victims' children and families. This, of course, led to a more positive relationship between the police and the community. Id.

78. Milofsky, supra note 37, at 205 (describing how diversity of funding allows larger organizations like the YMCA to better control their policies).

79. LETTS ET AL., supra note 21, at 74-77. A few exceptional organizations alternatively have managed to overcome market forces that freeze innovation and curtail adaptation to local circumstances solely because of charismatic leadership, rather than investment in developing programs. Id. However, for most organizations, like PBDC, integration of grassroots input is the most realistic means of strengthening organizational effectiveness. Id.; Milofsky, supra note 37, at 204-05 (describing how diversity of funding allows larger organizations like the YMCA to better control their policies).
Freed of national funder mandates, clinicians can direct clinics to pursue their ideological preferences. By using focus groups to structure program development, we hope to shift influence from top-down to grassroots and extricate ourselves from the position of middlemen between funder and our client. With this new power dynamic, the clinic becomes a support organization that will enable clients to engage in program development and step away from funders’ programmatic agendas.

V. Pedagogical Benefits

The education-based setting of the clinic enabled the experimentation, emphasis on empowerment, and focus on constituency input of the Port Baker model. Clinical education, however, is in turn affected by this model of representation. Clinical programs must justify transactional practice that deviates from an established technical assistance role with an accounting of the pedagogical benefits. The accepted educational benefits of clinical programs, such as reflective lawyering, egalitarian lawyer-client relationships, and client self-sufficiency, are only the beginning. 80

The political framework for my community development clinic is to get students to move beyond problem into management, solution, and local knowledge; it relates back to breaking down the barrier between poverty and mainstream culture and markets. The arena of solution and local knowledge stimulates students and clinics to move beyond policy-driven top-down agendas, which purport to fix similar problems with similar solutions. Students found that many residents were already self-sufficient, as they encouraged the residents to create their own solutions to becoming economically empowered. Furthermore, the focus groups enabled individuals to

80. Diamond, supra note 69, at 123-27; Richard D. Marsico, Working for Social Change and Preserving Client Autonomy: Is There a Role for “Facilitative” Lawyering?, 1 CLINICAL L. REV. 639, 658-60 (1995) (describing mediating roles as long term, sophisticated grassroots organization and corporate formation and counseling either for-profits or non-profits, ranging from traditional legal work such as negotiating contracts, leases and loan documents to reviewing financial pro formas. The resulting benefits include those “reflect[ing] the fundamental values of skills and activism that provide the foundations of clinical legal education,” the ability to teach reflective lawyering, CED as potentially engaging students in egalitarian relationships between attorney and client, developing the self-sufficiency of subordinated individuals, and the values of client education to promote self-sufficiency, and the benefits of interdisciplinary efforts. (citation omitted)). Pitegoff, supra note 4, at 285 (describing clinics ability to “shape the perspective of numerous law graduates to see opportunities for community empowerment” and the process of stimulating community self-sufficiency).
tell their own stories, a process which critical legal theorists point out is important in itself.\textsuperscript{81}

Prioritizing constituency concerns distanced students from the culture of poverty law representation and allowed them to focus on factual investigation and consensus building. The focus group process is not the type of collaboration characteristic of community development lawyering. Critical lawyering suggests that we "make room for [the poor client's] voice,"\textsuperscript{82} but in the case of a neighborhood, this voice is not obvious and must be negotiated and defined.\textsuperscript{83} Students assisted consensus building on the financial services issue by cataloging local experiences, opinions, and arguments and consolidating them into a constituency voice. They found that assembling focus group data was not dissimilar to developing case theory, as the consensus would have to be supported by "[tying] together as much of the evidence as possible into a coherent and credible whole."\textsuperscript{84} Their investigations uncovered numerous versions of the "facts" affecting financial services in Port Baker. The students, for example, saw the relevance of participants' perceptions of racism because these perceptions fed into an important storyline of financial services usage.\textsuperscript{85} Bringing the research on constituency consensus back to the client relocates power,\textsuperscript{86} as expertise, now localized, rests squarely in the hands of community representatives.

The focus group process serves as a potent case study on a central issue in the collective decision-making process: What do you do when the very people who are meant to be represented are cut out? It shows students that group representation can allow for expressions of individual autonomy, even from the least empowered: from people that are unlikely\textsuperscript{87} either to attend community meetings or be elected as community organization board members. The


\textsuperscript{82} Miller, supra note 81, at 565.


\textsuperscript{84} Miller, supra note 81, at 492 (citing James A. McElhaney, \textit{Trial Notebook} 78 (3d ed. 1994)).


\textsuperscript{86} Shah, supra note 2.

\textsuperscript{87} Ellmann, supra note 83, at 1139.
focus group process allowed students to record the opinions of even the most disempowered, who had the incentive to participate because they were "selected" to join a small group called on to speak for the community. Students then used the information from this cross section of the constituency to develop a new financial services strategy.

The final pedagogical point raised by the case relates the practice issues to an ethical standard delineated in Ethical Model Rule 1.13, which states, "A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."88 The nature of the community development market means that the duly authorized constituents are often responsive to neither market forces nor the rhetorical intent of community development. The focus group experience, however, gives students data to evaluate the ethics of Model Rule 1.13 and reevaluate what it means to "represent" or to "act through duly authorized constituents." Through this process, students grapple with conflicts hands-on and can evaluate their roles as lawyers.

The focus on the classroom places clinics in a unique position to contribute to client growth and early development of products. Because of this focus, clinics can work with organizations that do not appear to have a product that will get foundation or government funding, but nevertheless might meet local consumer demands. The case study shows how savvy members of this low-income neighborhood were able to manage and solve their own problems. It also shows how strong and clear constituency demands for a particular sort of product aided its development. And, most important, it suggests that the CDCU would very likely have failed if the client had not done the research.

Legal expertise comes from knowing how to apply legal options to particular cases. Knowing which options to provide depends on knowing how to read a client's context. The pedagogical benefits of the approach applied to the clinical client in Port Baker89 stemmed

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89. Further pedagogical lessons derived from the Port Baker representation fall into the category of expertise-development, since the assignment fell within the students' "proximal zone of development." Brook K. Baker, Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice, 6 Clinical L. Rev. 1, 71 (1999) (describing the "proximal zone of development" as challenging students with the most complex problems they can handle with the goal of teaching problem solving). See also Gary L. Blasi, What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory, 45 J. Legal Educ. 313 (1995). The process of developing and understanding the focus group methodology required the students to borrow heavily from other disciplines as a way to developing new "meth-
less from the transactional arena than from typical ethical issues of client representation. Our goal was to empower a group in a transactional setting, but the educational benefits resonated well beyond the community development setting.

**CONCLUSION**

Community has become little more than a politically correct way of defining the poor. Yet community is an issue driven phenomenon, it is dynamic and its membership is in flux depending on what issue is driving its formation. Communities develop by coming to some consensus about issues they face, and build their strength from assessing their problems and developing their own solutions. As community development lawyers we must not thwart such opportunities for consensus around an issue by implementing a generic product that a funder has decided will solve the problem.

Posing the focus group method and its resulting CDCU product against the way markets and bureaucracies interact in community development makes clear how radical it is to bring standard business practices from our mainstream capitalist market into this business of empowerment. In analyzing the politics that guide community development non-profit culture and its bureaucratization of community, I have argued how the cross functional approach and the feedback loop have the power to pierce the cultural wall that has been constructed both to separate the poor because of their disempowerment and to inhibit their empowerment because of their separateness. By linking classroom and constituency, clinics have the power to lead the way to “mainstream” community development practice by bringing business practices that are standard outside community development in America’s economic markets.