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CED AFTER #OWS: FROM COMMUNITY ECONOMIC DEVELOPMENT TO ANTI-AUTHORITARIAN COMMUNITY COUNTER-INSTITUTIONS

Michael Haber[*]

INTRODUCTION

Beginning on September 17, 2011, a few hundred people gathering in a small park in lower Manhattan and calling themselves Occupy Wall Street engaged in a series of street protests and built a small, ramshackle encampment that would capture imaginations around the world, inspiring hundreds of thousands of people to take part in marches and demonstrations, build their own encampments and "occupations" of public and sometimes

private property, and engage in other political acts.[1] It may have been the largest, most visible U.S.-based protest movement since the 1960s.[2] Years after the encampments were forcibly shut down, the specter of the Occupy Movement and the attention it brought to the vast inequality between the economic elite and "the ninety-nine percent" have continued to haunt the U.S. political debate.[3] The Occupy Movement brought the issue of economic inequality into mainstream, twenty-first century U.S. political debate not through elected officials, policy experts, lobbyists, professional fundraisers, or non-profit advocacy groups. It did so, first, by creating a physical and cultural space where "all the people who want a better world [could] find

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1. *See* Karla Adam, *Occupy Wall Street Protests Go Global*, WASH. POST (Oct. 15, 2011), https://www.washingtonpost.com/world/europe/occupy-wall-street-protests-go-global/2011/10/15/gIQAp7kimL_story.html [perma.cc/SM6L-B353] (citing over 900 protests worldwide); Sarah Van Gelder, *How Occupy Wall Street Changes Everything*, *in* THIS CHANGES EVERYTHING: OCCUPY WALL STREET AND THE 99% MOVEMENT 1, 1–2 (Sarah Van Gelder & YES! Magazine eds., 2011) (writing that in over 1500 cities there have been "occupations and protests . . . from Madrid to Cape Town and from Buenos Aires to Hong Kong, involving hundreds of thousands of people").

2. Christopher Mathias, *Occupy Wall Street in American History: An Interview with NYU Professor Robert Cohen*, HUFFINGTON POST (Oct. 7, 2011), http://www.huffingtonpost.com/2011/10/07/occupy-wall-street-american-history_n_1000804.html [perma.cc/4KUE-JZFB] (calling Occupy "the largest left movement since the 1960s"). The other recent mass movement that rivals or surpasses the Occupy Movement in size and influence is the Movement for Black Lives, or Black Lives Matter Movement, which adopted some of the Occupy Movement's organizational tools and tactics. *See infra* Parts II.B and III.B.4.

3. The impact of the Occupy Movement's focus on economic inequality on the "national political conversation" has been widely discussed. *See, e.g.*, Katrina vanden Heuvel, *The Occupy Effect*, NATION (Jan. 26, 2012), http://www.thenation.com/blog/165883/occupy-effect [perma.cc/UZ86-9D5R] ("[Occupy] reset the media narrative so it's more aligned with the true crises of our times . . . ."); Ezra Klein, *Wonkbook: Occupy Wall Street Occupies Obama's 2012 Campaign*, WASH. POST: WONKBLOG (Dec. 7, 2011), http://www.washingtonpost.com/blogs/wonkblog/post/wonkbook-occupy-wall-street-occupies-obamas-2012-campaign/2011/12/07/gIQAZVN0bO_blog.html [perma.cc/TQL3-A5ZE] (arguing President Barack Obama's 2012 election campaign adopted the language of the Occupy Movement "in response to Occupy Wall Street's success in turning the national conversation towards inequality"); Michael Levitin, *The Triumph of Occupy Wall Street*, ATLANTIC (June 10, 2015), http://www.theatlantic.com/politics/archive/2015/06/the-triumph-of-occupy-wall-street/395408/ [perma.cc/8QTV-7GV4] (arguing that Occupy Wall Street's influence led to a string of increases in local and state minimum wage laws in 2015, the election of Bill De Blasio on a "tale of two cities" platform, and the unexpected success of the 2016 presidential campaign of Senator Bernie Sanders); Andrew Ross Sorkin, *Occupy Wall Street: A Frenzy that Fizzled*, N.Y. TIMES (Sept. 17, 2012, 8:51 PM), http://dealbook.nytimes.com/2012/09/17/occupy-wall-street-a-frenzy-that-fizzled/ [perma.cc/7Y39-FY9R] ("[Occupy Wall Street] created an important national conversation about economic inequality and upward mobility. The chant, 'We are the 99 percent,' has become part of the lexicon. Its message has subtly been woven throughout . . . the Democrats' position on everything from taxes on the highest earners to the soaring levels of student debt.").

each other"[4] and, together, "dream of some other way for human beings to get along."[5]   Second, the Occupy Movement used and popularized organizational structures designed to impose no barriers to membership or participation and to encourage decisionmaking that is not top-down but horizontal, decentralized, and local.[6]

These two ideas at the heart of the Occupy Movement—the struggle against structural inequality and the desire for a more directly democratic process to take back control over our lives—share much in common with the ideas underlying Community Economic Development (CED). Contemporary CED first emerged in the 1960s and 1970s, when activists in low-income communities fought for local residents to have a direct leadership role in efforts to revitalize those communities, and, in an era of widespread protest movements and civil unrest, private foundations and the federal government began to provide funding to support community-based non-profit organizations seeking to improve their neighborhoods through locally-designed, community-controlled projects.[7]   While some of those funders may have been motivated by a desire to squelch the more radical voices in low-income communities of color,[8] the political visions of these newly government-and-foundation-funded community organizations varied. While many groups sought to avoid confrontation and simply improve

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4. Naomi Klein, *The Most Important Thing in the World*, *in* THIS CHANGES EVERYTHING: OCCUPY WALL STREET AND THE 99% MOVEMENT 45, 45 (Sarah Van Gelder & YES! Magazine eds., 2011).

5. Matt Taibbi, *How I Stopped Worrying and Learned to Love the OWS Protests*, ROLLING STONE (Nov. 10, 2011), http://www.rollingstone.com/politics/news/how-i-stopped-worrying-and-learned-to-love-the-ows-protests-20111110 [perma.cc/Y8D9-C7VM].

6. *See* Sarah Jaffe, *The Power of Occupy Wall Street Is Not Just What They're Doing, but How They're Doing It*, ALTERNET (Nov. 29, 2011), http://www.alternet.org/story/153182/the_power_of_occupy_wall_street_is_not_just_what_they%27re_doing,_but_how_they%27re_doing_it_ [perma.cc/JQ8A-8MT9].

7. Roger A. Clay, Jr. & Susan R. Jones, *A Brief History of Community Economic Development*, 18 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 257, 258–60 (2009); *see also* Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 414–16 (2001); Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 318–19; Dana A. Thompson, *The Role of Nonprofits in CED*, *in* BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY ECONOMIC DEVELOPMENT FOR ADVOCATES, LAWYERS, AND POLICYMAKERS 57, 59–60 (Roger A. Clay, Jr. & Susan R. Jones eds., 2009).

8. *See* Randy Stoecker, *The CDC Model of Urban Redevelopment: A Critique and an Alternative*, 19 J. URB. AFF. 1, 7 (1997) ("Enough money is provided to stave off social unrest, but not enough to threaten the unequal balance of power. Conservative government celebrates CDCs while providing just enough money to help them fail . . . ."). *See generally* Christine E. Ahn, *Democratizing American Philanthropy*, *in* THE REVOLUTION WILL NOT BE FUNDED 63, 63–76 (Incite! Women of Color Against Violence ed., 2007); Tiffany Lethabo King & Ewuare Osayande, *The Filth on Philanthropy*, *in* THE REVOLUTION WILL NOT BE FUNDED 79, 79–89 (Incite! Women of Color Against Violence ed., 2007).

community services and promote neighborhood self-sufficiency, others grew out of the civil rights, Black Power, and other community and activist movements and fought to stimulate "grassroots political action to advance a broad-based, redistributive economic agenda."[9] By the 1970s, a significant number of these organizations became Community Development Corporations (CDCs), and their projects included the development of affordable housing, locally-owned businesses, job training, and social services programs.[10]

Although there were fewer than one hundred CDCs nationally at the time,[11] transactional law projects dedicated to representing these groups started to form in 1969, and new CED law projects developed throughout the 1970s and 1980s.[12] Since the mid-1990s, dozens of law school clinical programs have started to offer CED clinics that provide free transactional legal services to low-income community organizations, massively expanding the numbers of CED legal service providers.[13] Yet the rapid growth and increasing complexity of CED have led many to conclude that it has strayed too far from its radical roots, becoming too driven by outside funding sources, too constrained by byzantine government programs, and more focused on organizational growth than on the redistributive social change that was the ultimate goal for many involved in CED when it first developed.[14]

As the Occupy Movement was forced from its encampments, activists who participated in or were influenced by the movement began to bring its radical organizational structures and political commitments into community projects done in, with, and by low-income communities and communities of color, but created largely outside of a traditional CED framework.[15] These efforts hold the potential to break down divisions between service provision and community organizing and between community-based activism and mass social mobilization. They hold the potential to produce a more

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9. *See* Cummings, *supra* note 7, at 417.

10. Thompson, *supra* note 7, at 60.

11. Ross Gittell & Margaret Wilder, *Community Development Corporations: Critical Factors that Influence Success*, 21 J. URB. AFF. 341, 342 (1999).

12. *See* Ann Southworth, *Representing Agents of Community Economic Development: A Comment on Recent Trends*, 8 J. SMALL & EMERGING BUS. L. 261, 265–67 (2004); *see also infra* notes 45–46 and accompanying text.

13. Southworth, *supra* note 12, at 266–67.

14. *See infra* Part II.

15. *See infra* Part III. There is disagreement among the people who participated in the Occupy Movement and the actions arising directly out of those encampments about whether their actions after the fall and winter of 2011–2012 should be thought of as part of the Occupy Movement or as inspired by it. *See* Nathan Schneider, *Breaking Up with Occupy*, NATION (Sept. 11, 2013), http://www.thenation.com/article/breaking-occupy [perma.cc/RVR4-JNTL].

confrontational, democratic, inclusive, and politically-engaged approach to building community-based social change organizations. Success, however, will not be a piece of Occu-Pie.[16]

This Article presents a history and analysis of "anti-authoritarian" activism, examines the extent to which post-Occupy anti-authoritarian efforts to build new community-based projects can avoid the missteps that CED programs have made, and describes some of the challenges that these new efforts will have to confront. It also aims to contribute to recent legal scholarship on demosprudence, "the study of the dynamic equilibrium of power between lawmaking and social movements . . . . [and focusing] on the legitimating effects of democratic action to produce social, legal, and cultural change."[17] Part I begins with a brief history of CED and then considers legal academic, social scientific, and activist critiques of CED and non-profit community-based organizations more generally. Part II presents an overview and history of anti-authoritarian activism and describes its influence on the Occupy Movement and, more recently, the Movement for Black Lives. Part III describes how, as anti-authoritarian activism has grown, these activists have started to consider community-based "counter-institutions" to be an important component of their activism. These new community efforts, while in line with many elements of CED, are greatly influenced by anti-authoritarian activism. Part IV describes how these new groups have the potential to overcome some of the problems that developed in the CED model, outlines some of the short- and long-term challenges that will confront these new anti-authoritarian community efforts, and describes ways that transactional social change lawyers can help support these efforts.

I. CED: FROM GRASSROOTS ANTIPOVERTY MOVEMENT TO THE NON-PROFIT INDUSTRIAL COMPLEX

In the late 1960s and early 1970s, the first hints of contemporary CED emerged out of grassroots activist movements,[18] and many CED lawyers

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16. During the Occupy Wall Street encampment at Zuccoti Park in Manhattan, a local pizzeria took hundreds of "orders from [Occupy] supporters around the world to have its $15 'OccuPie' delivered to the protestors [in the park]." Philip Boroff, *Wall Street Protesters Gorge on 'OccuPie' Pizza, Veggies*, BLOOMBERG BUS. (Oct. 7, 2011), http://www.bloomberg.com/news/articles/2011-10-07/wall-street-protesters-gorge-on-15-occupie-pizza-free-canned-veggies [perma.cc/VW2A-VVKX].

17. Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2749 (2014); *see also* Lani Guinier, *Courting the People: Demosprudence and the Law/Politics Divide*, 89 B.U. L. REV. 539, 545 (2009); Lani Guinier, *Foreword: Demosprudence Through Dissent*, 122 HARV. L. REV. 4, 15–16 (2008); Gerald Torres, *Legal Change*, 55 CLEV. ST. L. REV. 135, 141–43 (2007).

18. *See* Cummings, *supra* note 7, at 413–14; *see also infra* Section I.A.1. "Social movements" as a unique social phenomenon are notoriously difficult to define. One influential definition comes from Charles Tilly, who describes a social movement as "a

argue that CED still is—or at least, if done properly, still can be—a politically-potent grassroots social change tactic despite the widespread criticisms of the efficacy of CED and the broader community-based non-profit social justice sector with which it is closely linked.[19] Subpart A begins with a brief history of CED and CED law from the late 1960s through the 1990s. By the late 1990s, a number of major critiques of CED emerged from progressive legal academics and social scientists, who challenged CED's effectiveness as an antipoverty strategy.[20] Subpart B summarizes these critiques and describes some efforts to shift CED practices to address these perceived problems in the 2000s. Around this time, activists also began to

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sustained series of interactions between power holders and persons successfully claiming to speak on behalf of a constituency lacking formal representation, in the course of which those persons make publicly visible demands for changes in the distribution or exercise of power, and back those demands with public demonstrations of support." Charles Tilly, *Social Movements and National Politics*, *in* STATEMAKING AND SOCIAL MOVEMENTS 297, 306 (Charles Bright & Susan Harding eds., 1984). However, critics argue that this definition fails to differentiate between social movements, non-profit advocacy groups, terrorists, riots, and other quite different efforts by the relatively powerless to make themselves heard. Michael McCann, *Law and Social Movements: Contemporary Perspectives*, 2 ANN. REV. L. & SOC. SCI. 17, 23 (2006). Such arguments over terminology led many leading social scientists to abandon the use of the term "social movements" entirely, instead preferring the broader concept of "contentious politics." *Id*. *See generally* DOUG MCADAM, SIDNEY TARROW & CHARLES TILLY, DYNAMICS OF CONTENTION 4–7 (2001) (describing "contentious politics"); CHARLES TILLY & SIDNEY TARROW, CONTENTIOUS POLITICS 11 (2d ed., 2015). Despite this trend away from the term, Michael McCann provides a reasonably inclusive three-part definition: (1) social movements "aim for a broader scope of social and political transformation than do other more conventional political activities"; (2) they "often employ a wide range of tactics . . . but they are far more prone to rely on communicative strategies of information disclosure and media campaigns as well as disruptive symbolic tactics such as protests, marches, strikes, and the like"; and (3) they are rooted in "core constituencies of nonelites whose social position reflects relatively low degrees of wealth, prestige, or political clout." McCann, *supra*, at 23–24. This article imagines each of these prongs as three circles that largely—but do not totally—overlap, and it varies its terminology to emphasize each of the different circles. Here, for instance, "grassroots activist movements" aims to highlight the third prong: roots in a disenfranchised community.

    19. *See generally* Alicia Alvarez, *Community Development Clinics: What Does Poverty Have to Do with Them?*, 34 FORDHAM URB. L.J. 1269 (2007) (arguing that CED lawyers can remain focused on an antipoverty mission through strict case-acceptance criteria); Cummings, *supra* note 7 (arguing that CED can return to progressive politics by moving away from "market-based" CED models to projects like worker co-ops and Community Benefits Agreements); Carmen Huertas-Noble, *Promoting Worker-Owned Cooperatives as a CED Empowerment Strategy: A Case Study of Colors and Lawyering in Support of Participatory Decision-Making and Meaningful Social Change*, 17 CLINICAL L. REV. 255 (2010) (asserting that CED can foster social change through the promotion of participatory empowerment in the context of worker co-ops); Gowri J. Krishna, *Worker Cooperative Creation as Progressive Lawyering? Moving Beyond the One-Person, One-Vote Floor*, 34 BERKELEY J. EMP. & LAB. L. 65 (2013) (arguing that worker co-ops can be vehicles for social change only with careful commitments to activism and cannot rely merely on the cooperative form for advancing social change).
    20. *See* Cummings, *supra* note 7 at 407–08.

challenge the ability of conventional non-profit organizations to play a meaningful role in social justice struggles. Although these activists' criticisms were not limited to CED, Subpart C describes their challenges to what some call the "non-profit industrial complex," challenges that are deeply relevant to CED and grassroots social justice efforts more generally.

A. A Brief History of CED and CED Law

CED has a number of precursors or, arguably, early examples, including pre-Civil War African-American agrarian collectives,[21] Progressive Era settlement houses,[22] and, philosophically, early twentieth-century African-American economic nationalism.[23] The origins of CED as practiced today, however, date most directly to the 1960s and early 1970s, when many civil rights organizations began grassroots advocacy around poverty and local issues, and new government programs, aimed at revitalizing low-income urban areas, started funding local government agencies and private community groups.[24]

1. The Birth of Contemporary CED in the 1960s

A number of related social forces began to give shape to a nascent CED in the mid- and late-1960s: the civil rights movement became increasingly focused on the needs of poor people;[25] groups tied to the New Left began community organizing in low-income communities;[26] urban riots spread

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21. JAMES DEFILIPPIS, UNMAKING GOLIATH: COMMUNITY CONTROL IN THE FACE OF GLOBAL CAPITAL 38–40 (2004).

22. *See generally* Alice O'Connor, *Swimming Against the Tide: A Brief History of Federal Policy in Poor Communities*, *in* URBAN PROBLEMS AND COMMUNITY DEVELOPMENT 77, 84–88 (Ronald F. Ferguson & William T. Dickens eds., 1999).

23. Clay & Jones, *supra* note 7, at 259–60; Cummings, *supra* note 7, at 410–12.

24. *See* Cummings, *supra* note 7, at 413–16.

25. Clay & Jones, *supra* note 7, at 260; Cummings, *supra* note 7, at 413; *see* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 38 (2012) (arguing that during this period "civil rights activists became increasingly concerned that, without major economic reforms, the vast majority of blacks would remain locked in poverty. Thus at the peak of the Civil Rights Movement, activists and others began to turn their attention to economic problems"); NOEL A. CAZENAVE, THE URBAN RACIAL STATE: MANAGING RACE RELATIONS IN AMERICAN CITIES 9 (2011) (arguing that after the Selma-to-Montgomery marches in Alabama in 1965, "the civil rights movement began to focus more on issues involving economic justice," a trend that only increased after urban uprisings in Watts and other cities outside of the south).

26. Although overlooked by many histories of CED, the Economic Research and Action Project (ERAP), created by members of Students for a Democratic Society, launched a program to organize the urban poor through community-led neighborhood organizations that would fight for basic needs like jobs, housing, welfare, and garbage removal, along the way aiming to mobilize community members toward more radical goals. *See* WINI BREINES, COMMUNITY AND ORGANIZATION IN THE NEW LEFT: 1962–1968, at 123–46 (1982). ERAP

across the country;[27] and grassroots movements became increasingly visible and vocal,[28] including a Black Power movement that pushed for economic self-determination and community control over local governmental functions like policing and education,[29] as well as movements supporting direct democracy and cooperative living.[30]   The federal government responded with new urban policies in the mid-1960s that moved away from top-down urban renewal programs toward initiatives that transferred some control over local projects to grassroots organizations following President Lyndon Johnson's announcement of a "War on Poverty" in 1964.[31] Modeled in part after Ford Foundation pilot projects, the Community Action Program (CAP), part of the Economic Opportunity Act of 1964, sought to increase neighborhood control over antipoverty efforts by delegating authority over urban projects to local Community Action Agencies (CAAs), which were required to ensure the "maximum feasible participation" of community residents.[32]   CAAs were highly controversial, most notably with urban mayors who feared losing their access to federal purse strings[33] and who were pressured by CAAs through sit-ins and demonstrations against local government policies to the point that local police and National Guard troops

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projects were locally governed by community members in Cleveland, Oakland, Newark, and other cities, in collaboration with outside activists, and "talked of counter-communities in the ghetto, building their own institutions in a decentralized utopia devoid of the corruptions of politics."   Richard   Rothstein,   *A   Short   History   of   ERAP*,   CALISPHERE http://content.cdlib.org/view?docId=kt4k4003k7&brand=calisphere&doc.view=entire_text [perma.cc/9Y5W-PD6G].

27. Robert Fisher & Eric Shragge, *Contextualizing Community Organizing*, *in* TRANSFORMING THE CITY: COMMUNITY ORGANIZING AND THE CHALLENGE OF POLITICAL CHANGE 193, 199 (Marion Orr ed., 2007).

28. *See id.*; *see also* Cummings, *supra* note 7, at 413–14.

29. DEFILLIPPIS, *supra* note 21, at 43–45.

30. *Id.* at 44–46.

31. *See* Cummings, *supra* note 7, at 415; Fisher & Shragge, *supra* note 27, at 199; O'Connor, *supra* note 22, at 100. As federal policy, urban renewal in the United States began with the Housing Acts of 1949 and 1954, legislative compromises in which federal funds were provided to cities to buy and demolish "blighted" areas so those areas could be redeveloped as both commercial space and housing for low-income people; once enacted, however, urban renewal became controlled by the Housing and Home Finance Agency, which discouraged using newly-cleared "blighted" areas for low-income housing. *See* PETER HALL, CITIES OF TOMORROW: AN INTELLECTUAL HISTORY OF URBAN PLANNING AND DESIGN IN THE TWENTIETH CENTURY 247–49 (3d ed., 2002). The result was that in "city after city . . . the areas that were cleared were the low-income, black sections next to the central business district; and the promised alternative housing did not materialize." *Id.* at 249.

32. *See* DAVID J. WRIGHT, IT TAKES A NEIGHBORHOOD: STRATEGIES TO PREVENT URBAN DECLINE 27–28 (2001); O'Connor, *supra* note 22, at 100–03.

33. *See* NOEL A. CAZENAVE, IMPOSSIBLE DEMOCRACY: THE UNLIKELY SUCCESS OF THE WAR ON POVERTY COMMUNITY ACTION PROGRAMS 151 (2007); O'Connor, *supra* note 22, at 103.

were sometimes called to quell the activism of these federally-sanctioned groups.[34]

Both federal policy and many community groups would change course at this important juncture. Congress and the Johnson administration quickly backed away from giving full freedom to the CAAs.[35] By the end of 1965, new rules were imposed on the program, requiring federal approval of their investments in community projects, prohibiting CAA employees from protesting on the job, and mandating that one-third of a CAA's members be made up of local government officials.[36] In 1966, two more limited federal programs were launched: the Model Cities Program, which combined service provision efforts with brick-and-mortar programs while returning local control to city officials, and the Special Impact Program (SIP), which offered block grants to community-based organizations to fund their own development strategies.[37]

The SIP modeled its activities on the work already being done by CDCs, which had been growing in African-American communities for a number of years and had gained substantial public attention when Senators Robert Kennedy and Jacob Javits came out in support of the work of the Bedford-Stuyvesant Restoration Corporation in Brooklyn, New York.[38] CDCs were a somewhat unlikely partner for the Johnson administration, given their origins in the movement for African-American self-determination and anti-capitalist leanings.[39] Yet in an era of urban unrest and political radicalism, many elected officials could become comfortable with CDCs, especially when they sought relatively non-controversial goals like community self-sufficiency and improved housing and community services.[40]

At the same time, and despite the restrictions being imposed on them, Community Action Agencies were radicalizing, with local agencies starting to organize thousands of poor neighborhood residents who demanded fairer, better welfare benefits.[41] Coming out of the CAAs, George Wiley created the National Welfare Rights Organization (NWRO), which aimed to link

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34. *See* EDWARD ZIGLER & SALLY J. STYFCO, THE HIDDEN HISTORY OF HEAD START 48 (2010).

35. CAZENAVE, *supra* note 33, at 166–67.

36. *See id.* at 167–68; Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 228–29 (1999).

37. DEFILLIPPIS, *supra* note 21, at 42; O'Connor, *supra* note 22, at 105–08.

38. O'Connor, *supra* note 22, at 105–06; *see* Stoecker, *supra* note 8, at 2; *History*, BEDFORD STUYVESANT RESTORATION, http://www.restorationplaza.org/about/history [https://perma.cc/QP64-4J9E].

39. O'Connor, *supra* note 22, at 106.

40. *See* Cummings, *supra* note 7, at 417.

41. *See id.* at 418.

these local welfare rights groups into a national movement.[42] The NWRO coordinated local campaigns designed to push welfare offices to pay special grants for food, rent, clothing, and furniture; encouraged masses of eligible people to apply for welfare; and built a national membership base of more than 22,000 organized poor people.[43]

2. *The Emergence of CED Law*

Just as grassroots organizations were coming to national prominence and the federal government was beginning to experiment with allowing some community control over local antipoverty initiatives, some social justice lawyers were rethinking prevailing antipoverty legal tactics. As early as the mid-1960s, social justice lawyers were questioning mainstream antipoverty law practice, then centered largely around welfare rights litigation, both for failing to meaningfully reduce poverty and because these legal strategies were thought to sometimes ignore the real-life needs of poor people.[44] By the time the Supreme Court rejected antipoverty lawyers' arguments in *Dandridge v. Williams*[45] and *Jefferson v. Hackney*,[46] prominent antipoverty lawyers were already moving away from the litigation "test case" strategy, in which an individual or group challenges the constitutionality of a statute or its application, because, as Gary Bellow argued at the time, "[i]f a major goal of the unorganized poor is to redistribute power, it is debatable whether judicial process is a very effective means toward that end. This is particularly true of problems arising out of disparities of wealth and income."[47]

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42. *Id.*; *see* FRANCES FOX PIVEN & RICHARD A. CLOWARD, POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL 288–89 (1977).

43. Cummings, *supra* note 7, at 419; *see also* PIVEN & CLOWARD, *supra* note 42, at 296.

44. MARTHA F. DAVIS, BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960–1973, at 133–45 (1993); Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L. REV. 123, 124 (1992); *see, e.g.*, Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1334 (1964) (arguing that lawyers for poor people need to consider the "civilian perspective"); Edgar S. Cahn & Jean C. Cahn, *What Price Justice: The Civilian Perspective Revisited*, 41 NOTRE DAME L. REV. 927, 936–40, 957–60 (1965) (criticizing dominant models for lawyers serving low-income people and proposing, as one possible solution, an increased connection to neighborhood organizations); Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1053 (1970) (arguing that "[t]wo major touchstones of traditional legal practice—the solving of legal problems and the one-to-one relationship between attorney and client—are either not relevant to poor people or harmful to them").

45. 397 U.S. 471 (1970).

46. 406 U.S. 535 (1972).

47. Comment, *The New Public Interest Lawyers*, 79 YALE L.J. 1069, 1077 (1970) (quoting Gary Bellow).

Although CED law was not yet widely known as such, the 1970s brought "an explosion in neighborhood activism"[48] and early efforts by social change lawyers to collaborate with these activists.[49] Lawyers in these years first began to try to fight poverty not through test case litigation, but through representation of community groups in low-income communities of color that sought to have a meaningful say over projects in their own neighborhoods. In 1969, the Council of New York Law Associates (now Lawyers Alliance for New York) and the National Housing and Economic Development Law Project (now the Insight Center for Community Economic Development) both formed,[50] and a number of other CED law projects dedicated to the representation of such community groups would form through the 1970s as the CED law model spread.[51]

3.   *Transition in the 1970s*

By the early 1970s, many antipoverty activists, in part due to a growing conservative backlash, began to shift their focus from welfare rights to building a broader, multiracial economic justice platform that would unite the poor and working class against the narrow interests of capital and its allies in government.[52] Wiley left NWRO to found the Movement for Economic Justice, and Wade Rathke left NWRO to start the Association of Community Organizations for Reform Now (ACORN), both of which sought to integrate poor and working-class people, across racial divides, into a national movement.[53]

At the same time, in 1972, the Nixon administration began a "revenue sharing" approach to granting funds to states and localities, giving largely unrestricted funds based on mathematical formulas rather than allocating money based on the specific needs of low-income communities.[54] The result

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48. William H. Simon, *The Community Economic Development Movement*, 2002 WIS. L. REV. 377, 388 (2002).

49. *See, e.g.*, Brian Glick and 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, 117 (1997) (noting early 1970s efforts "to represent and forge close relationships with community groups" at Brooklyn Legal Services Corp. A, another pioneering CED practice).

50. Southworth, *supra* note 12, at 265.

51. *See id.* at 266–67.

52. Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 463 (2001).

53. Cummings, *supra* note 7, at 420; Cummings & Eagly, *supra* note 52, at 463–64.

54. Lawrence Susskind, *Revenue Sharing and the Lessons of the New Federalism*, 8 URB. L. ANN. 33, 33–35 (1974). This was closely connected to Nixon's idea of New Federalism, the goal of which was to increase local control over resources, reflecting both a philosophical preference for local control and a political strategy aimed at winning the support of fiscal conservatives and suburban and rural voters. *Id.* at 35–37.

was a reduction in the overall funds going to low-income communities of color.[55] Extending this approach, the Ford administration in 1974 terminated Model Cities and approved the Housing and Community Development Act of 1974, which authorized the Department of Housing and Urban Development (HUD) to give block grants to states and municipalities.[56] States and municipalities were given discretion to develop revitalization strategies that aligned with local priorities and were encouraged to promote participation from local community groups, bolstering the growing CED movement.[57]

4. *"Market-Based" CED in the 1980s and 1990s*[58]

In the 1980s and 1990s, poor people had welfare, food stamps, Medicaid, housing assistance, civil legal services, and jobs programs slashed. Those cuts, together with the continued weakening of the labor movement and the urban manufacturing sector, led to increased poverty, unemployment, low-wage worker insecurity, and a decline in the real wages of the poor.[59] New antipoverty policies introduced in the 1980s and 1990s looked to private investment to help fight poverty, and the Low-Income Housing Tax Credit (LIHTC) program, the Empowerment Zone/Enterprise Community program, and the New Markets Tax Credit program all provided substantial financial incentives to private businesses and non-profits to help fund services, housing, and job programs in underserved communities.[60]

CDCs were one important beneficiary of these market-based approaches to fighting urban poverty, and they became central to U.S. urban policy as it came to rely on self-help approaches to fighting poverty through public-private partnerships.[61] Although many of these CDCs grew out of 1970s-era movement politics,[62] they were forced to become more businesslike in the 1980s and 1990s, as the regulatory complexity of these market-based projects increasingly drained resources from other priorities.[63] Tax credit financing and other market-based CED programs quickly transformed poverty alleviation programs into incentives for corporations to correct market failure by providing jobs and services in low-income communities—

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55. *See* O'Connor, *supra* note 22, at 110.

56. *Id.*

57. Cummings, *supra* note 7, at 416; *see also* O'Connor, *supra* note 22, at 110.

58. Cummings defines "market-based CED" as efforts toward "increasing for-profit initiatives in geographically discrete low-income neighborhoods [to] . . . produce economic transformation and community empowerment." Cummings, *supra* note 7, at 401.

59. Clay & Jones, *supra* note 7, at 263–64; Cummings, *supra* note 7, at 423–24.

60. Cummings, *supra* note 7, at 427–29.

61. *See* DeFilippis, *supra* note 21, at 50–53; Fisher & Shragge, *supra* note 27, at 203.

62. *See supra* notes 39–40 and accompanying text.

63. DeFilippis, *supra* note 21, at 50–53.

taxpayer-subsidized market expansion.[64] Although many community groups continued organizing through the 1980s and 1990s, market-based CED became so popular that CED, for some community-based organizations, "seemed to become virtually synonymous with community organizing."[65]

5. *CED Law in the 1980s and 1990s*

While elected officials were promoting these new programs as replacements for a more robust welfare state in the 1980s and 1990s, legal scholars and poverty lawyers, in some cases influenced by structuralist and poststructuralist social theory, became increasingly concerned with the lawyer-client relationship and how lawyers might better create the conditions for low-income clients to become "empowered."[66] These writers expanded on the critiques of poverty law litigation that existed since the 1960s, arguing that litigation may lead to short-term victories, but is ineffective against the power structures that created those inequities.[67] They argued that lawyers tend to dominate the attorney-client relationship and subordinate clients through "their expertise in technical matters, their use of mysterious legal language, their depersonalization of disputes, and their greater perceived importance."[68] They claimed that even a lawyer who wins a case for clients may harm them by casting their stories in such a way that the clients are portrayed as powerless victims, leading some to conclude that antipoverty litigation creates clients that are dependent, isolated, and deprived of the shared experiences necessary to build a broader social movement.[69]

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64. Fisher & Shragge, *supra* note 27, at 203.

65. *Id*.

66. Cummings, *supra* note 7, at 429–30 (using terms modern and post-modern to describe structuralist and poststructuralist social theory). *See generally* Janine Sisak, *If the Shoe Doesn't Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation*, 25 FORDHAM URB. L.J. 873, 876–77 (1998).

67. GERALD LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S EXPERIENCE 24 (1992); *see* Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 757 (1988) (arguing that reliance on litigation leads groups to limit their social change aspirations).

68. Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 951 (1992).

69. Cummings, *supra* note 7, at 434; *see, e.g.*, LÓPEZ, *supra* note 67, at 29 (asserting that traditional poverty law litigation "helps undermine the very possibility for re-imagined social arrangements that lies at the heart of any serious effort to take on the status quo"); Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 664–65 (1987) (arguing that poverty law litigation without organizing is mere "[r]emedial litigation [and] should not be mounted, even where altruistic relief is possible" because typical poverty law litigation practices "negate the poor as a historical class engaged in political struggle, thereby decontextualizing, atomizing, and depoliticizing that struggle"); White, *supra* note 67, at 756–57 (arguing that the process of litigation may "co-opt social mobilization").

These writers pushed for new models of social change lawyering, often called, following Gerald López, "rebellious lawyering."[70] They argued that poverty lawyers can more effectively challenge inequality by collaborating with clients, becoming part of a broader community dialogue that should include both legal and non-legal components.[71] They claimed that widespread participation in such community conversations encourages building coalitions, fights individualism and passivity, and can promote "empowerment," a sort of class consciousness or awareness that community residents are collectively engaged in a struggle for social and economic power.[72]

Although these writers did not necessarily consider CED to be a clear-cut "rebellious lawyering" practice, a number of common themes between CED and the "rebellious lawyering" concept are clear: they share a focus on long-term goals and a belief that communities and community organizations should set those goals; they both shift away from an emphasis on individual representation; they both attempt to demystify the law for clients as part of their practice; they both want lawyers to relate to clients as collaborators and supporters, not as individuals on whom to hang some new legal theory or approach; and they both aim to have community members collaborate with one another.[73] Many lawyers in the 1990s viewed CED as a new and growing form of antipoverty lawyering, one with much in common with theories of "rebellious lawyering," helping to cement CED law as an important form of public interest lawyering.[74]

B.   CED Confronts Itself

By the 1990s and early 2000s, with the continued popularity of CED and the new growth of CED clinical faculty in the legal academy, legal scholars and social scientists authored a number of significant analyses of CED's effectiveness at its self-defined goal—to meaningfully fight poverty and inequality through a bottom-up, community-controlled approach to urban

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70. *See* LÓPEZ, *supra* note 67, at 24. Others have used different terms to describe similar concepts, including community lawyering, collaborative lawyering, critical lawyering, and facilitative lawyering. *See* Ascanio Piomelli, *Foucault's Approach to Power: Its Allure and Limits for Collaborative Lawyering*, 2004 UTAH L. REV. 395, 398 n.6 (2004); Paul R. Tremblay, *Counseling Community Groups*, 17 CLINICAL L. REV. 389, 391 n.1 (2010).

71. LÓPEZ, *supra* note 67, at 50; Alfieri, *supra* note 69, at 695–706; White, *supra* note 67, at 761–63.

72. Alfieri, *supra* note 69, at 666; White, *supra* note 67, at 763–64.

73. *See* Sisak, *supra* note 66, at 886–87 (arguing that CED lawyers fit the "rebellious lawyering" model in many ways).

74. *See id*. (linking CED law and "rebellious lawyering"); Southworth, *supra* note 12, at 262–63 (arguing that transactional poverty law practices have "grown substantially" as traditional welfare law has been abandoned for CED law practices).

redevelopment.[75]   These writers made four major criticisms of the effectiveness of CED: (1) CED often fails to aggressively challenge structural drivers of inequality; (2) any successful social change movement needs to have community organizing and mass movement-building beyond the neighborhood as essential components; (3) CED advocates' claims to "empower" low-income communities are overly vague; and (4) the development work done by CED is simply too small in scale to seriously challenge poverty. This section summarizes these four critiques of CED and concludes with a brief consideration of how CED practitioners, in some cases, began to change in response to these critiques.

1.   CED Often Fails to Aggressively Challenge Structural Drivers of Inequality

Although CED projects have created affordable housing, job-training and social-service programs, and other critical benefits for low-income communities and communities of color, in order to fund many of these projects the CED model relies on community groups forming and maintaining relationships with banks, local, state and federal government agencies, and private foundations, entities that are "uninterested in—if not opposed to—social change."[76] To build and maintain those relationships, CDCs became tied down by contracts and partnerships with outside interests who "co-opted community representatives by giving them a stake in protecting the programs and the priorities with which outside, elite interests were aligned,"[77] leading many of these groups to become less politically engaged, less confrontational, and less committed to community organizing. At times, CED has even become a kind of rhetorical defense against those who would raise structural questions about racial and economic inequality, with successful CED projects used as examples of banks and businesses

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75. *See* Stoecker, *supra* note 8, at 4 (describing the social scientific critique of "bottom-up, comprehensive redevelopment" as spanning "across three decades," although the majority of his examples come from the late 1980s and 1990s). Much of the legal scholarship that critiques CED as an antipoverty strategy dates to the late 1990s and early 2000s. *See, e.g.,* Cummings, *supra* note 7 (2001); McFarlane, *supra* note 7 (1999); Shah, *supra* note 36 (1999); David Dante Troutt, *Ghettoes Made Easy: The Metamarket/Antimarket Dichotomy and the Legal Challenges of Inner-City Economic Development*, 35 HARV. C. R.-C. L. L. REV. 427 (2000).

76. Shah, *supra* note 36, at 239.

77. *Id.* at 220–21; *see* Cummings, *supra* note 7, at 451 (arguing that for much of "market-based" CED, the "notion of building political power among the poor to challenge institutional arrangements is viewed as inimical to the goal of packaging low-income communities as attractive business investments").

working on behalf of low-income communities even as those same firms are often principally dedicated to extracting money from those communities.[78]

2.   *Any Successful Social Change Movement Needs to Focus on Community Organizing and Mass-Movement Building Beyond the Neighborhood*

CED's emphasis on physical redevelopment has led many community organizations to focus more on building housing and other physical structures than on building community power, but there is little evidence that infrastructure projects and local market expansion meaningfully combat neighborhood poverty.[79]   CED critics have questioned the retreat from community organizing and movement-building politics and argue that confrontational community organizing remains a clearer path to bottom-up social change.[80]   Even when CDCs build successful projects that create affordable housing, social services, or jobs, CED remains a fundamentally piecemeal, uncoordinated approach to the systemic problem of poverty.[81] Sections of cities that have more organized groups and advocates who are better able to attract government and foundation money get the benefits of CED, while other communities fall further behind.[82]

The total commitment to community-based models has also led CED groups to largely accept the existing geography of cities, seeking to improve them through Empowerment Zones or CDC service areas, rather than challenging the stark inequities between rich and poor communities, inequities rooted in histories of segregation, redlining, racist land use and zoning policies, and other systemic mistreatment of low-income

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78. *See* Stoecker, *supra* note 8, at 7 (claiming that CED is used as "a means to divert our attention from the context. The media celebrate a single small initiative in a sea of decay").

79. *See* Cummings, *supra* note 7, at 447–48; Stoecker, *supra* note 8, at 3.

80. *See, e.g.*, Stoecker, *supra* note 8, at 12–13 (arguing that advocates should "emphasize human development and organizing as much as physical development, demand nonmarket solutions to the problems of poverty, be wary of public-private partnerships, subordinate development plans to an organizing agenda, and promote community (not CDC) control of physical space"). Conversely, some proponents of market-based CED praise it precisely for its lack of divisiveness. *See, e.g.*, PAUL GROGAN & TONY PROSCIO, COMEBACK CITIES: A BLUEPRINT FOR URBAN NEIGHBORHOOD REVIVAL 66 (2000) ("[C]ommunity organizing and planning of that period [the 1960s] was soon squandered on divisive or extremist political tactics, including the in-your-face style of protest that Tom Wolfe famously dubbed 'mau-mauing.'").

81. Troutt, *supra* note 75, at 482.

82. *See* Stoecker, *supra* note 8, at 6 (describing underfunded and failing CDCs and analysis showing that successful CDCs typically require a large budget and noting the great many CDCs and specific CDC projects that fail).

communities of color through biased resource allocation.[83] Isolating social struggles by neighborhood reifies imaginary neighborhood boundaries and keeps apart poor, working-class, and middle-class people who might otherwise come together, even across racial, ethnic, and other divisions, to form a broader movement for social change.[84]

3.   *CED Advocates' Claims to "Empower" Low-Income Communities Are Overly Vague*

"Empowerment," as the term is generally used by CED lawyers, is a process through which community members with little power as individuals can increase their feelings of power, and perhaps their actual power in society, through joining together and working collectively.[85] When a lawyer becomes involved in a community-led effort, the process of "empowerment" is "predicated on the non-hierarchical relationships between lawyer and client,"[86] and it requires that clients or communities are "collectively empowering themselves, [not] outsiders . . . empowering 'the less fortunate.'"[87]

To the extent that this is a real process, the CED model mostly fails to do it well. As CED is practiced, substantive decisions are often too complex to be decided collectively, and CED lawyers who might have hoped to practice "rebellious lawyering" are often forced to interact with only the most sophisticated people on a client's board of directors and staff, people who sometimes do not even live in the community the organization serves.[88] But even when a community undertakes a more genuinely participatory, community-led project, "empowerment" is an under-theorized concept. Use of the term tends to shift to fit the prevailing thinking of the most powerful within the CED sector, moving "from building community alliances for

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83. *See* Cummings, *supra* note 7, at 458; Troutt, *supra* note 75, at 455–66 (describing how zoning, land use, urban renewal, redlining, and other formal and informal policies led to a housing "antimarket" in African-American communities).

84. *See* Cummings, *supra* note 7, at 458 ("This place-based focus impedes efforts to forge a cross-racial coalition to advance a political agenda sensitive to the needs of low-income workers.").

85. *See, e.g.*, Cummings, *supra* note 7, at 444 (describing empowerment as "a complex process that occurs on a variety of different planes—political, social, and psychological," and it that is "a discernable transformation—a quantum of influence that can be cultivated by active participation in local community life"); Huertas-Noble, *supra* note 19, at 266–67 (defining empowerment as "a collective participatory process that redistributes power and wealth . . . . Because power is only realized through struggle . . . empowerment must be linked to the redistribution of power and to community organizing for social change").

86. Shah, *supra* note 36, at 246.

87. Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 472 n.218 (2000).

88. Shah, *supra* note 36, at 236–38.

social mobility and mainstream integration in the early 1960s, to self-sufficiency, neighborhood control and separation in the late 1960s and 1970s, to nominal citizen participation in outside economic investment in the 1980s and 1990s."[89] The term's connotations also bend significantly with political perspectives on CED; the term is tied to private ownership of property for conservatives, to access to government resources for centrists, and to collective community control for the left.[90] These definitional shifts have nothing to do with changes in our understanding of what purports to be a psychosocial phenomenon; rather, the term "empowerment" tends to be used as a *post hoc* justification for various CED projects and methods.[91]

4. The Development Work Done By CED Is Too Small in Scale to Seriously Address Poverty

Although CDCs have created many thousands of affordable housing units, thousands of jobs, and likely hundreds of education and social service programs,[92] low-income communities of color everywhere—whether or not they have active CED projects—continue to suffer from disinvestment, unemployment, unfair housing, and widespread poverty. If a major goal of community organizations engaged in CED is to minimize poverty through the creation of affordable housing, jobs and social services, quantitative studies of decades of work by CDCs have found little evidence of success.[93] Despite the substantial effort undertaken by CDCs across the country to build affordable housing, CDCs meet less than one percent of the U.S. annual housing need.[94] Similarly, CED projects intended to foster entrepreneurship and develop microenterprises have not had significant impacts on local poverty; CDC entrepreneurship programs tend to create few jobs, little living-wage employment, and few real successes as these entrepreneurs, like

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89. *Id*. at 219.

90. WILLIAM PETERMAN, NEIGHBORHOOD PLANNING AND COMMUNITY-BASED DEVELOPMENT: THE POTENTIAL AND LIMITS OF GRASSROOTS ACTION 35 (1999).

91. Shah, *supra* note 36, at 235.

92. *See* Sara E. Stoutland, *Community Development Corporations: Mission, Strategy, and Accomplishments*, *in* URBAN PROBLEMS AND COMMUNITY DEVELOPMENT 193, 213–19 (Ronald F. Ferguson & William T. Dickens eds., 1999) (describing quantitative data on CDC housing programs and numbers of people employed by CDCs, but noting that more information is needed to determine exactly how many CDC programs provide social services or other programming and how large or successful those other programs are).

93. *See generally* Cummings, *supra* note 7, at 450 (arguing that even the biggest housing development program, the Low-Income Housing Tax Credit program, does not even have a clear impact on the overall production of affordable housing units); Stoecker, *supra* note 8, at 3 ("Numerous analysts, including CDC advocates, cannot find evidence that CDCs have enough impact to reverse neighborhood decline . . . or that the development they produce would not have happened anyway.").

94. Stoecker, *supra* note 8, at 2–3.

other minority-owned businesses, suffer from high rates of failure due to inadequate start-up capital, discrimination, and weak professional networks.[95]

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Despite these critical interventions, most CED programs in the late 1990s and 2000s continued to focus on market-based CED work, perhaps even reaffirming their connection to the market by expanding initiatives in microenterprise and social enterprise development.[96] However, a number of CED legal practices began to integrate CED with projects more directly connected to community organizing campaigns. Some CED lawyers began to concentrate on efforts around "accountable development," which connected CED with the environmental justice movement and aimed to change urban redevelopment practices through grassroots organizing efforts that would sometimes push for community benefits agreements.[97] Other CED lawyers became involved in the development of worker-owned, self-directed co-operative businesses ("worker co-ops"), arguing that worker co-op development, especially when tied to community organizing efforts, can lead to "systemic change that benefits other similarly situated people and communities."[98] Although these new efforts around community benefits agreements and worker co-ops have not displaced the mainstream of CED practice, they reflect efforts by CED lawyers to respond to the criticisms of market-based CED as an antipoverty social change strategy.[99]

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95. *See* Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 HOFSTRA L. REV. 839, 857–59 (2014); Louise A. Howells, *The Dimensions of Microenterprise: A Critical Look at Microenterprise as a Tool to Alleviate Poverty*, 9 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 161, 164–68 (2000).

96. *See, e.g.*, Laurie Hauber, *Promoting Economic Justice Through Transactional Community-Centered Lawyering*, 27 ST. LOUIS U. PUB. L. REV. 3, 9 (2007) ("[A] community-centered transactional pro bono program that supports community business development is a necessary component in furthering economic justice in disempowered communities."); Susan R. Jones, *Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law*, 14 WASH. U. J.L. & POL'Y 249, 266–67 (2004) (describing a trend within CED toward social entrepreneurism, which aims to combine social, philanthropic, and business values, integrating CED, social work, and business development); Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195, 196 (1997) (describing small business creation as "an essential part" of CED).

97. Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, *in* CAUSE LAWYERS AND SOCIAL MOVEMENTS 302, 313 (Austin Sarat & Stuart Scheingold eds., 2006); Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CAL. L. REV. 1999, 2048–53 (2007).

98. Huertas-Noble, *supra* note 19, at 267.

99. *See, e.g.*, Foster & Glick, *supra* note 97, at 2017 (arguing that community benefits agreements projects help "low-income and working class people to develop their own vision

C. Activists Confront "the Non-Profit Industrial Complex"

The critiques raised by these academics and legal scholars were not theirs alone. In the early and mid-2000s, grassroots activists were making related criticisms of the broader world of social justice organizations, including community-based non-profits. Most famously centered around a 2004 conference and 2007 critical anthology—both titled *The Revolution Will Not Be Funded*[100]—these activists challenged the ability of non-profit organizations to comply with government regulations, appease grantors, and fundraise while engaging in confrontational grassroots community activism. Although their criticisms were not specific to CED, many of their challenges to the contemporary non-profit sector are directly applicable to it, as CED commonly involves non-profit organizations that aim to provide community services as part of their social justice missions. These activists raised three main interrelated criticisms: (1) non-profits depoliticize social movements; (2) non-profits have come to minimize community control over their own struggles; and (3) 501(c)(3) tax exemption is fundamentally a mechanism for wealthy people and corporations to minimize their tax liability and should be challenged by social justice activists, not embraced.[101]

1. Non-Profits Depoliticize Social Movements

For community organizations to sustain or grow their efforts by paying their workers or providing many kinds of community services, they typically need money. Organizations may adopt fee-for-service models, but because wealthy individual donors are inaccessible for many community groups,[102] most rely on grants from government agencies and private foundations.

These grantors tend to depoliticize the work of community-based social justice non-profits. In some cases, organizations are directly pressured to change their work or their missions to receive funding.[103] But the problem

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for their communities, moving beyond mainstream CED's dependence on outside capital, which determines what types of facilities can be built and what services provided in low-income communities"); Huertas-Noble, *supra* note 19, at 256 (arguing that not all CED lawyering succeeds at providing "an opportunity to collaborate with and empower clients and communities" and proposing a new focus on empowerment and the promotion of worker co-ops as an empowerment strategy).

100. *See* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX (INCITE! Women of Color Against VIOLENCE ed., 2007); *The Revolution Will Not Be Funded Conference*, INCITE! (Apr. 30, 2004), http://www.incite-national.org/page/revolution-will-not-be-funded-conference [perma.cc/9LJA-48KZ] [hereinafter *The Revolution Will Not Be Funded Conference*].

101. *See* THE REVOLUTION WILL NOT BE FUNDED, *supra* note 100; *The Revolution Will Not Be Funded Conference*, *supra* note 100.

102. King & Osayande, *supra* note 8, at 81–82.

103. *See* Andrea Smith, *Introduction: The Revolution Will Not Be Funded*, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 1, 1–2

is more pernicious than grantors conditioning funding on their grantees' politics.   Private foundations typically target their giving to either community organizing groups or groups that provide direct services, leading those two kinds of work to often be separated within the non-profit sector.[104] By segregating community services for people in need from political action and community organizing, community-based social justice groups lose much of their ability to organize low-income people confronting poverty-related crises related to health, housing and work, thereby becoming complicit in the depoliticization of their programs.[105]   This split of organizing and services has led some community-based non-profits to individualize or even pathologize the communities confronting these crises, providing them with counseling, social work, and charity, rather than helping them organize to fight the structural inequities they confront.[106]

Even those rare private foundations that are willing to support politically-engaged social justice organizations that connect organizing with service provision tend to be "ultimately interested in the packaging and production of success stories, measurable outcomes, and the use of infrastructure and capacity-building systems."[107]   To appease grantors, social justice organizations have to shift their focus, and a significant part of their labor, from strategies for social change to strategies for satisfying grantors, often diluting or changing their organizational missions to do so.[108] These grantors

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(INCITE! Women of Color Against Violence ed., 2007) (describing INCITE! Women of Color Against Violence had a grant award revoked by the Ford Foundation because "[a]pparently, during the board approval process, a board member decided to investigate INCITE! further and disapproved of what s/he found on [their] website" regarding support for the Palestinian people).

104. Paul Kivel, *Social Service or Social Change, in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 129, 129–130 (INCITE! Women of Color Against Violence ed., 2007); Rickke Mananzala & Dean Spade, *The Nonprofit Industrial Complex and Trans Resistance*, 5 SEXUALITY RES. & SOC. POL'Y. 53, 56–57 (2008).

105. Kivel, *supra* note 104, at 129–130.

106. Mananzala & Spade, *supra* note 104, at 57.

107. Amara H. Perez, *Between Radical Theory and Community Praxis: Reflections on Organizing and the Non-Profit Industrial Complex*, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 91, 92–93 (INCITE! Women of Color Against Violence ed., 2007).

108. Adjoa Florência Jones de Almeida, *Radical Social Change: Searching for a New Foundation*, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 185, 186 (INCITE! Women of Color Against Violence ed., 2007) ("[A] radical vision may still be reflected in our mission statements, in the posters and quotes with which we decorate our work spaces; but how are these ideals manifested in our actual day to day lives and in the work we are doing?"); Perez, *supra* note 107, at 92 (describing a shift to focusing on "charts and tables that demonstrate how successfully the work has satisfied foundation-determined benchmarks"); Madonna Thunder Hawk, *Native Organizing Before the Non-Profit Industrial Complex*, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 101, 105 (INCITE! Women of Color Against Violence

demand tangible deliverables, numerical outputs, and funding cycle-driven outputs that force non-profits to attend to short-term benchmarks, at every turn pulling non-profits away from long-term strategies of increasing community power and building politically engaged, sustainable organizations.[109]

This is not necessarily happenstance. Non-profits rely on philanthropy from private foundations, wealthy individuals, and corporations, groups dominated by elites who tend to have reformist goals and to fund policy reform work, social services, and charity, not grassroots organizing.[110] In his 1969 *Black Awakening in Capitalist America*, an influential activist text, Robert Allen argues that foundation funding to moderate civil rights groups at the height of the Black Power movement in the late 1960s and early 1970s was an intentional strategy by the powerful to fund moderate and liberal groups—and thereby hamstring more radical activists—within the civil rights movement.[111] For these activist critics, the development of the contemporary non-profit social justice sector might thus be considered part of a two-pronged attack on the Black Power movement: the dramatic rise of a "Prison Industrial Complex"[112] that incarcerated huge numbers of people, especially young men of color, along with the simultaneous rise of a "Non-Profit Industrial Complex" that channeled social justice organizations into less radical work.[113]

2. *Non-Profits Have Come to Minimize Community Control Over Their Own Struggles*

The need for grants and donations leads non-profits to want to take steps to satisfy grantor and donor expectations and to develop a network of potential donors. Yet to obtain 501(c)(3) status, learn fundraising jargon, research grant opportunities, secure funding, satisfy grant requirements, and

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ed., 2007) (detailing how a group's "focus turned to raising money to keep the organization going, while the actual work of activism became secondary and watered down").

109. *See generally The Revolution Will Not Be Funded Conference*, *supra* note 100.

110. *Id*.

111. ROBERT L. ALLEN, BLACK AWAKENING IN CAPITALIST AMERICA (1969), *excerpted in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 53, 53–64 (INCITE! Women of Color Against Violence ed., 2007); Dylan Rodriguez, *The Political Logic of the Non-Profit Industrial Complex*, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 21, 23 (INCITE! Women of Color Against Violence ed., 2007).

112. *See generally* Mike Davis, *Hell Factories in the Field: A Prison Industrial Complex*, NATION, Feb. 20, 1995, at 229–33 (analyzing the rapid expansion of the California prison system and coining the term "prison industrial complex").

113. Ruth Wilson Gilmore, *In the Shadow of the Shadow State*, *in* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 41, 42–43 (INCITE! Women of Color Against Violence ed., 2007); Rodriguez, *supra* note 108, at 21–22.

cultivate personal relationships with foundations and individual donors requires skills and relationships that are concentrated in people with substantial educational, class and racial privilege.[114] This has led non-profits to become increasingly professionalized and divorced from low-income communities, with boards consisting of donors and elite professionals, sometimes with tokenistic community membership, and with senior staff typically coming from relatively privileged backgrounds.[115] Non-profits have also become corporatized, increasingly replicating the bureaucratic structures, job titles, and language of the corporate world,[116] along with the substantial discrepancies in salaries and power that those titles imply.[117]

3. *501(C)(3) Tax Exemption Is Fundamentally a Mechanism to Reduce the Tax Liability of Wealthy People and Corporations, and Should Be Challenged By Social Justice Activists, Not Embraced*

Social justice non-profits commonly obtain 501(c)(3) tax status as a means to attract donations and grants, but embracing this tax status, rather than challenging the system of tax exemption, may have a net effect of hurting poor people. A significant part of the money that is given to both 501(c)(3) public charities and private foundations would otherwise go to the federal treasury as tax revenue.[118] Instead of those funds being used for budgetary priorities set by elected representatives, the 501(c)(3) system allows wealthy individuals and corporations to subtract substantial sums from those budgetary priorities to fund their own interests.[119] If those hundreds of billions of dollars[120] were to be taxed, that government revenue could be used for a whole range of social and economic programs or for any number of public goods that could dramatically help low-income communities. Instead, tax law allows that money to be taken from the public and used for any 501(c)(3)-eligible purposes, overwhelmingly for churches and religious organizations, the arts, and right-wing causes.[121] Some of that money also goes right back to the rich through fees paid to board members of private foundations.[122] Yet while hundreds of antipoverty groups compete

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114. King & Osayande, *supra* note 8, at 81–84; Perez, *supra* note 107, at 93.

115. Mananzala & Spade, *supra* note 104, at 57–58.

116. Rodriguez, *supra* note 111, at 33.

117. King & Osayande, *supra* note 8, at 81.

118. Ahn, *supra* note 8, at 65.

119. *Id.*

120. Total charitable giving from individuals, foundations and businesses totaled $335 billion in 2013. Brice S. McKeever & Sarah L. Pettijohn, *The Nonprofit Sector in Brief 2014*, URBAN INST. 1 (Oct. 2014), http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413277-The-Nonprofit-Sector-in-Brief--.PDF.

121. Ahn, *supra* note 8, at 66–72.

122. *Id.* at 67–68.

for foundation funds every year, there is no mass movement from social justice organizations to change or repeal 501(c)(3) regulations.[123]

II. A BRIEF HISTORY OF ANTI-AUTHORITARIAN ACTIVISM

The history of anti-authoritarian activism is critical to understanding the Occupy Movement, the Movement for Black Lives, and other recent social change movements, but it is complicated by overlap with other post-1960s political movements[124] and uncertain terminology. Even the term "anti-authoritarian" is itself only occasionally used by these activists themselves; the category encompasses activists who identify as anti-authoritarians, but also many who are more likely to call themselves anarchists, anti-capitalists, autonomists, feminists, horizontalists, radicals, and many who reject all of those labels.[125] If anarchism is one controversial label sometimes applied to—and sometimes embraced by—these activists, other than a distrust of government power they share with many across the political spectrum, close connections between anti-authoritarian activism and earlier anarchist movements in the United States and Europe[126] are tenuous: anti-authoritarians are far more directly influenced by the social movements of the 1960s and 1970s, which themselves had little direct influence from anarchism.[127] In addition, connotations of support for violence against

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123. There are some atheists, civil libertarians, and tax reformers who want to see tax exemption for churches eliminated, but they generally do not propose the elimination of tax exemption for charities. *See, e.g.*, Robert W. Wood, *Should America Tax Churches?*, FORBES (July 28, 2015), http://www.forbes.com/sites/robertwood/2015/07/28/should-america-tax-churches/ (proposing that the corporate tax exemption for churches be eliminated due to the potential tax revenue and the challenges of policing the legitimacy of churches); Matthew Yglesias, *We Should Be Taxing Churches*, SLATE (Aug. 22, 2013), http://www.slate.com/blogs/moneybox/2013/08/22/churches_should_be_taxed_then_everyo ne_can_speak.html [perma.cc/AAU4-US5W] (arguing for taxation of churches, in part, so they can be free to engage in political speech).

124. Indeed, the early history of this activism emerged in many ways from the same political moment that birthed CED. *See infra* Section II.B.

125. CHRIS DIXON, ANOTHER POLITICS: TALKING ACROSS TODAY'S TRANSFORMATIVE MOVEMENTS 59 (2014).

126. Although anarchism was a fairly popular leftist political philosophy in Europe and the U.S. between 1848 and 1914, two World Wars, the first American Red Scare from 1918–21, Bolshevism in Russia and Eastern Europe, and the rise of Fascism in the 1930s effectively destroyed the popular anarchist movement. URI GORDON, ANARCHY ALIVE: ANTI-AUTHORITARIAN POLITICS FROM PRACTICE TO THEORY 29 (2008).

127. *Id.* at 5. Writers and activists who identify with the older anarchist tradition often have few kind words for anti-authoritarian activists. *See, e.g.*, MURRAY BOOKCHIN, SOCIAL ANARCHISM OR LIFESTYLE ANARCHISM: AN UNBRIDGEABLE CHASM? 9–10 (1995) (describing anti-authoritarian activism as "lifestyle anarchism . . . [that is] steadily eroding the socialistic character of the libertarian tradition . . . . Ad hoc adventurism, personal bravura, an aversion to theory . . . a playground for juvenile antics"); Andrew N. Flood, *An Anarchist Critique of Horizontalism*, ANARCHIST WRITERS (Feb. 5, 2014), http://anarchism.pageabode.com/andrewnflood/anarchist-critique-horizontalism-occupy

people or property that go along with ideas of "anarchism" are somewhat misplaced, as these activists reject violence against people entirely, and their openness to property destruction as a tactic is, even among those who voice support for it, often more shibboleth than real, an expression of commitment to anti-authoritarian principles more than an actual intent to damage property.[128]

Anti-authoritarian activists are connected less by a focus on particular issues than by a set of shared commitments that cut across political issues as they are typically framed. In broad terms, those shared commitments are: (1) a commitment to freedom and opposition to all forms of authoritarianism and hierarchy; (2) a commitment to opposing and overcoming the marginalization of people of color, women, LGBTQ people, people with disabilities, and all other marginalized groups, and a belief that societal structures, relationships, and communication must strive to be more inclusive, democratic and horizontal; and (3) a belief that activism must be prefigurative, that the processes used in organizing and building the movement itself must already be constructing the world they want to see, and so no exceptions or compromises to the first two principles can be uncritically accepted for the sake of political expediency.[129] These

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[perma.cc/5GY6-55AZ] (arguing that anti-authoritarian movements either completely "lack a class analysis . . . or replace it with a pretty crude wealth/corruption/corporations concept that . . . reduce[s] what is wrong to 'evil people making evil decisions'").

128. *See* NATHAN SCHNEIDER, THANK YOU, ANARCHY: NOTES FROM THE OCCUPY APOCALYPSE 126 (2013) (describing ongoing debates over property destruction within Occupy Wall Street, with many participants committing to nonviolence and others rejecting nonviolence as "dogma," but "no cases of intentional property destruction" committed after weeks of Occupy Wall Street); *see also infra* notes 210–13 and accompanying text for a discussion of the concept of "diversity of tactics." Still, there have been instances of anti-authoritarian groups engaging in property destruction, sometimes associated with participation in "Black Blocs," "ad hoc assemblages of individuals or affinity groups that last for the duration of a march or rally. The expression designates a specific type of collective action, a tactic that consists in forming a mobile bloc in which all individuals retain their anonymity thanks in part to their masks and head-to-toe black clothing. Black Blocs may occasionally use force to express their outlook in a demonstration, but more often than not they are content to march peacefully . . . . Their tactic, when it involves the use of force, enables them to show the 'public' that neither private property nor the state, as represented by the police, is sacred." FRANCIS DUPUIS-DÉRI, WHO'S AFRAID OF THE BLACK BLOCS?: ANARCHY IN ACTION AROUND THE WORLD 2–4 (Lederhendler trans., 2013). Black Blocs were somewhat controversial in the Occupy Movement, with some considering them to be "the cancer of the Occupy movement . . . [that] confuse[s] acts of petty vandalism and a repellent cynicism with revolution." Chris Hedges, *The Cancer in Occupy*, TRUTHDIG (Feb. 6, 2012), http://www.truthdig.com/report/item/the_cancer_of_occupy_20120206 [perma.cc/3Q2E-WH9T]; *see* SCHNEIDER, *supra*, at 127–32 (discussing debates over Black Bloc tactics and Hedges' broadside against them among participants in the Occupy Movement, saying that in January 2012, "every OWS meeting one went to became a discussion about violence and nonviolence and Chris Hedges").

129. *See infra* Part II.A.

commitments have led anti-authoritarian activists to carve out a new terrain for their politics, one to the political left of the Democratic party, skeptical of the hierarchy and funding sources of typical non-profits, and opposed to the hierarchy, rigidity, and exclusivity of much of the traditional left.[130]

Part II presents the Occupy Movement in this context, as part of a broader history of anti-authoritarian activism that has emerged over some decades, but most clearly in the 1990s. Subpart A describes the three shared commitments of the anti-authoritarian activists. Subpart B presents a brief history of anti-authoritarian activism, including the Occupy Movement. Subpart C then details the organizational tools developed through anti-authoritarian activism, including the Occupy Movement.

A. The Core Commitments of Anti-Authoritarian Activism

Anti-authoritarian activists are connected by shared commitments to three broad, interrelated principles: autonomy, horizontalism, and prefigurativism.

Autonomy describes a commitment to individual freedom and direct self-government, and opposition to all forms of authoritarianism and hierarchy, including, for most, opposition to extractive capitalism and authoritarian government power.[131] Anti-authoritarians use the term "autonomy" to distinguish themselves from the government, corporations, and other institutions that are centralized and hierarchical; the term implies self-organization, direct democracy unmediated by representatives, and the idea that no person, group, or political party should mandate what another person must do.[132] Anti-authoritarians do not necessarily reject every aspect of the state, but generally oppose its most directly authoritarian aspects, like the police and military.[133]

Horizontalism is rooted in a commitment to equality and opposition to the marginalization of people of color, women, people with disabilities, LGBTQ people, indigenous people, and all others who have been marginalized in

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130. *See, e.g.*, DIXON, *supra* note 125, at 1 (quoting Max Uhlenbeck) ("We are critical of the non-profit world—increasingly integrated into the corporate model—as a major vehicle for structural social change. We are critical of the centralized political party structure, whether it be the neoliberal Democrats or the small leftist 'revolutionary sects' that continue to operate in near anonymity around the country . . . . The alternative for many of us has been to continue to identify with a broad-based, but still rather vague, political tendency—sometimes described as the 'anti-authoritarian, anti-capitalist, non-sectarian left.'").

131. *See* GEORGY KATSIAFICAS, THE SUBVERSION OF POLITICS: EUROPEAN AUTONOMOUS SOCIAL MOVEMENTS AND THE DECOLONIZATION OF EVERYDAY LIFE 6–7 (2006); Marina Sitrin, *Introduction*, HORIZONTALISM: VOICES OF POPULAR POWER IN ARGENTINA 1, 4 (Marina Sitrin ed., 2006).

132. KATSIAFICAS, *supra* note 131, at 7–8; Sitrin, *supra* note 131, at 4.

133. DIXON, *supra* note 125, at 65.

society.[134]   These struggles are seen as related, and anti-authoritarian activists may describe the struggle against marginalization as working from an "anti-oppression" framework, or may invoke the concept of "intersectionality" developed by women-of-color feminists.[135] At one level, horizontalism describes a desire to break from mainstream social justice organizations in which a board or senior staff set an agenda and more junior staff implement it, from the vanguardism of the broadly Leninist socialist left who are comfortable with a central body setting an agenda to guide the broader population to political consciousness, and from traditional community organizing, which aims to rally community members to support a specified goal, rather than setting goals and dividing work as a whole group, through a participatory, democratic process.[136]

  More deeply, anti-authoritarians believe that our relationships today are affected by the power dynamics of hierarchy at a fundamental, perhaps psychological, level and these power dynamics impact how we relate to one another in our everyday lives, holding us back from real equality.[137] "Horizontalism" describes efforts to structure our relationships in ways that are attentive to, and fight against, the interpersonal hierarchies that permeate our relationships so we can work toward a more truly equal, horizontal solidarity.[138] In that vein, many anti-authoritarians reject some of the macho trappings of earlier radicals, instead seeking more supportive models and practices in which activists are themselves respected, nurtured, and supported in their life choices.[139]
Prefigurativism is a commitment to using processes in organizing and building a social change movement that are themselves already constructing

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134. *See* DIXON, *supra* note 125, at 88; Sitrin, *supra* note 131, at 3–4.

135. DIXON, *supra* note 125, at 72–73. The term "intersectionality" was popularized by legal scholar Kimberlé Crenshaw. *See* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989). The concept is far older, with Crenshaw finding historical predecessors dating to the nineteenth century. *Id*. at 160–66 (citing ANNA JULIA COOPER, A VOICE FROM THE SOUTH (1892) and Sojourner Truth, *Ain't I a Woman?*, Address at the Women's Convention (1851)). Although they did not use the term "intersectionality," women-of-color feminists in the 1970s, like the members of the Combahee River Collective, focused on it, describing themselves as "particularly committed to working on those struggles in which race, sex, and class are simultaneous factors in oppression . . . . One issue that [was] of major concern to [them] and that [they] [had] begun to publicly address is racism in the white women's movement." Combahee River Collective, *The Combahee River Collective Statement*, *in* HOME GIRLS: A BLACK FEMINIST ANTHOLOGY 264, 272–73 (Barbara Smith ed., 1983).

136. *See* DIXON, *supra* note 125, at 66.

137. Sitrin, *supra* note 131, at 3–4.

138. *See* DIXON, *supra* note 125, at 89.

139. *See* DIXON, *supra* note 125, at 90–92.

the world they want to see.[140] Unlike most past social movements, social change is not deferred to some far-off date by demanding reforms from the state until bigger changes can come when the time is finally right.[141] Indeed, many anti-authoritarian activists are unconcerned with changing the current forms of exploitation to make them less authoritarian by degree; rather, the goal is to change the world by making changes to ourselves and our ways of relating to each other, "the gradual creation of a culture of democracy,"[142] finding a way to "change the world without taking power."[143] Although some anti-authoritarian activists will participate in reform efforts, prefigurative politics are conceptually grounded on a radical critique of public bureaucracies that ultimately demands that they be abolished or radically overhauled: "[S]uch bureaucracies are so rigid, so hierarchical, and so prone to rent seeking that they cannot deliver social goods across wide populations in either effective or 'democratic' ways."[144] Quite different activities fit within the broad scope of prefigurative politics: countercultural lifestyles that point to a less hierarchical world, including things like biking or walking rather than driving, vegetarianism, collective housing, participating in product boycotts, and other efforts to live in accordance with anti-authoritarian principles; horizontal organizing, bringing people together to leverage their collective power, but without leaders dictating the terms or the goals; creating more egalitarian, supportive, and horizontal social movements; and creating new kinds of "counter-institutions" that provide necessary services like food or health care while maintaining their commitments to the other anti-authoritarian principles.[145]

B. A Brief History of Anti-Authoritarian Activism

Like CED, the earliest influences on anti-authoritarian activism date back to the early twentieth century or before, but the early history of today's anti-authoritarian activism can be traced most clearly to the late 1960s and 1970s.[146] In the late 1960s, a broadly inclusive "New Left" was connected

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140. *See* DIXON, *supra* note 125, at 84; GORDON, *supra* note 126, at 34.

141. Sitrin, *supra* note 131, at 4.

142. DAVID GRAEBER, THE DEMOCRACY PROJECT: A HISTORY, A CRISIS, A MOVEMENT 196 (2013).

143. *See generally* JOHN HOLLOWAY, CHANGE THE WORLD WITHOUT TAKING POWER (2002).

144. Lucie E. White & Jeremy Perelman, *Stones of Hope: Experience and Theory in African Economic and Social Rights Activism*, *in* STONES OF HOPE: HOW AFRICAN ACTIVISTS RECLAIM HUMAN RIGHTS TO CHALLENGE GLOBAL POVERTY 149, 167 (Lucie E. White & Jeremy Perelman eds., 2011).

145. DIXON, *supra* note 125, at 85.

146. Anti-authoritarian activists trace their history to varied groups: the Industrial Workers of the World (IWW), a militant labor union that engaged in bottom-up organizing, rejecting

to the antiwar movement, the civil rights movement, the women's liberation movement, a growing environmental and back-to-nature movement, a nascent Gay Liberation movement, and race- and ethnicity-based movement groups like the American Indian Movement and the Chicano movement. It was also tied to all sorts of political experiments among students and young radicals aimed at creating new ways for people to live together: food co-ops, underground newspapers, housing collectives, communes and intentional communities, and more.[147] By the early 1970s, parts of that loose New Left coalition split apart. Many civil rights activists and others focused their energies on community organizing and making local, community-driven change, over time developing some of these efforts into CED; others in the New Left turned their attention to sexual liberation politics, retreated to rural communes, or turned to militant Socialist groups.[148] Over the course of the 1970s, just as CED was maturing, anti-authoritarian activism was developing many of its core commitments and tools through women-of-color feminism and the anti-nuclear movement.[149]

Women-of-color feminism developed in the late 1960s and 1970s when many radical women of color and lesbians began to criticize mainstream feminism for marginalizing their experiences within the feminist movement.[150] Some started their own caucuses within broader organizations

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labor movement norms to include women, African-Americans, and immigrant workers in one union; early- and mid-twentieth century pacifist groups—like Fellowship of Reconciliation, A Quaker Action Group, Movement for a New Society, and the War Resisters League—which drew inspiration from both political and faith traditions and embraced civil disobedience as a tool for peace; the Student Nonviolent Coordinating Committee (SNCC), a civil rights group that helped organize sit-ins and freedom rides, and which was organized in a generally non-hierarchical, participatory structure; and the Black Panther Party, a militant outgrowth of the civil rights movement, which, although hierarchically organized, provided community services in an expressly politicized context, what they called "survival programs pending revolution." *See id*. at 24–30; *see also* DAVID GRAEBER, DIRECT ACTION: AN ETHNOGRAPHY 228–37 (2009).

147. *See* BLAKE SLONECKER, A NEW DAWN FOR THE NEW LEFT: LIBERATION NEWS SERVICES, MONTAGUE FARM, AND THE LONG SIXTIES 3–8 (2012); DIXON, *supra* note 125, at 31.

148. *See* DIXON, *supra* note 125, at 32; SLONECKER, *supra* note 147, at 3; *see also* GRAEBER, *supra* note 146, at 229–34.

149. *See* DIXON, *supra* note 125, at 37–38 (arguing that in addition to women-of-color feminism and the anti-nuclear movement, the prison abolitionist movement of the 1970s was an equally important influence on anti-authoritarian activism).

150. *See id*. at 34–35; *see also* Ula Taylor, *The Historical Evolution of Black Feminist Theory and Praxis*, 29 J. OF BLACK STUDIES 234, 245–50 (1998). In 1971, Toni Morrison pointedly wrote that African-American women "listen to feminists talk of liberation while somebody's nice black grandmother shoulders the daily responsibility of child rearing and floor mopping and the liberated one comes home to examine the housekeeping, correct it, and be entertained by the children. If Women's Lib needs those grandmothers to thrive, it has a serious flaw." Toni Morrison, *What the Black Woman Thinks About Women's Lib*, N.Y. TIMES MAG., Aug. 22, 1971, at 64. In her experience of early 1970s feminist groups, bell hooks

like SNCC and the NWRO, while others created their own organizations like the Third World Women's Alliance, Women of All Red Nations, and the National Black Feminist Organization.[151]   Women-of-color feminists constructed the category "women of color," a new, politically-charged concept of identity that bridged the experiences of women of different backgrounds, and helped create a new focus on how race, gender, class, sexual orientation, and other systems can jointly oppress and marginalize people, forcing the perspectives of, for example, African-American women to the margins of both mainstream feminism and the mainstream civil rights movement.[152] In addition to theorizing this new politics of intersectionality, many women-of-color feminists also practiced prefigurative politics and were opposed to political actions that put ends before means.[153]

Anti-authoritarian activism continued to develop through the anti-nuclear movement of the late 1970s, which was influenced by both civil rights movement-style confrontational nonviolence and the anti-hierarchical, prefigurative models of women-of-color feminism.[154]   The anti-nuclear movement's structure and procedures closely followed the Movement for a New Society, a pacifist group led by leftist Quakers from Philadelphia, who brought a Quaker decision-making process, called consensus, into their meetings.[155] It organized itself in "affinity groups,"[156] in which five to fifteen people worked collectively on projects developed independently from their larger groups.[157]   They also worked prefiguratively, creating co-ops and using horizontal organizing processes, and saw themselves as building a new, liberatory community while also fighting nuclear weapons and nuclear power.[158]

Other movements would borrow from the anti-nuclear approach in the 1980s and early 1990s. Starting in the early 1980s, AIDS activists launched

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recalls, "white women adopted a condescending attitude towards me and other non-white participants. The condescension they directed at black women was one of the means they employed to remind us that the women's movement was 'theirs' . . . . They did not see us as equals." BELL HOOKS, FEMINIST THEORY: FROM MARGIN TO CENTER 12 (2d ed., 2000).

    151. DIXON, *supra* note 125, at 34–35; *see also* GORDON, *supra* note 126, at 30–31.

    152. *See* DIXON, *supra* note 125, at 35–36; GORDON, *supra* note 126, at 31.

    153. *See* DIXON, *supra* note 125, at 36. *See generally supra* note 135 and accompanying text.

    154. *See id.* at 41; *see also* GRAEBER, *supra* note 146, at 234–35.

    155. GRAEBER, *supra* note 146, at 235.

    156. Affinity groups are discussed in more detail in Part II.C.1. In a reference to historical anarchism—the name derives from the Spanish *grupos de afinidad*—the units of the Iberian Anarchist Federation in the Spanish Civil War is inexact, although there are similarities between the military units—with their structured organization and controlled membership— and today's anti-authoritarian working groups. *See* GORDON, *supra* note 126, at 15–16.

    157. *See* DIXON, *supra* note 125, at 41.

    158. *See id.*

groups like ACT UP and AIDS Action Now! that used direct action[159] and prefigurative politics and, that saw lesbians, bisexuals, and people of color challenge the dominance of the mostly-white gay male leadership of the earlier Gay Liberation Movement.[160] By the early 1990s, it became increasingly common for LGBTQ women and men of color to view their fights as part of broader, intersectional struggles around not just homosexuality, but also race, class, and gender.[161] Also at that time, radical environmental and animal rights groups like Earth First!, the Animal Liberation Front, and the Earth Liberation Front combined environmentalism, direct action, and non-hierarchical affinity groups with a broader intersectional analysis, with Earth First! even engaging in actions in support of the labor rights of blue-collar loggers against their bosses.[162]

In the 1990s, anti-authoritarian activists set up local Food Not Bombs groups, which took salvageable food being thrown away by stores and supermarkets and used it to prepare free vegetarian meals for the public, using those public meals as opportunities to promote animal rights and environmental causes.[163] They developed radical bookstores, started pirate radio collectives, formed groups that wrote letters and sent books to prisoners, and would sometimes live collectively or in squats.[164] Unlike women-of-color feminist activism, a lot of these projects in the 1980s and 1990s were undertaken by young white people of relative privilege, many of whom were college educated, often more closely connected to a politicized corner of the mostly-white 1980s and 1990s punk music subculture than to low-income communities of color.[165] Indeed, anti-authoritarian women and

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159. The concept of *direct action* is sometimes conflated with civil disobedience, and while there is much overlap, there is a difference in the underlying principle. *See generally* GRAEBER, *supra* note 146, at 203. While civil disobedience often involves an implicit petition to the government to change its policies, direct action is rooted in prefigurativism and seeks instead "to achieve our goals through our own activity rather than through the actions of others." *Id*. at 202 (quoting Rob Sparrow, *Anarchist Politics & Direct Action*, SPUNK LIBRARY, http://www.spunk.org/texts/intro/sp001641.html [https://perma.cc/47N4-X475]). For example, civil disobedience could include the burning of a flag at an anti-war protest as a symbolic statement addressed to the government itself; direct action would include actions like blocking a road to—however temporarily—prevent a military convoy from reaching its destination. *See generally id*. at 201–11.

160. DIXON, *supra* note 125, at 41–42.

161. *See* GORDON, *supra* note 126, at 31.

162. *See* RICHARD J. F. DAY, GRAMSCI IS DEAD: ANARCHIST CURRENTS IN THE NEWEST SOCIAL MOVEMENTS 25–26 (2005); DIXON, *supra* note 125, at 42.

163. GRAEBER, *supra* note 146, at 236.

164. *Id*.

165. *See* DIXON, *supra* note 125, at 41. *See generally* GRAEBER, *supra* note 146, at 257–62; THOMAS R. ROCHON, MOBILIZING FOR PEACE: THE ANTINUCLEAR MOVEMENTS IN WESTERN EUROPE 16–17 (1988) (describing European anti-authoritarian, antinuclear activists of the late 1970s and early 1980s as "relatively privileged" and focused on "nonmaterial issues").

people of color—then and now—have asserted that white male self-proclaimed "anarchists" can sometimes marginalize their perspectives and drown out their voices while seeming to believe that they are "somehow 'non-oppressive' by virtue of claiming to be 'outside' the system."[166]

By the mid-1990s, the growing popularity of the Internet allowed strangers and acquaintances a new ability to easily connect and share information, helping anti-authoritarian activists from around the world to collaborate. On January 1, 1994, the day that the North American Free Trade Agreement (NAFTA) went into effect, the Zapatista Army of National Liberation seized seven cities in Chiapas, Mexico under the slogan of "for humanity and against neoliberalism."[167] Although overcome militarily, the Zapatistas were able to use the Internet and other media to promote their blend of indigenous traditions, feminism, anti-globalization, and European and American leftist thought, quickly engaging with national and international civil society and even fairly mainstream non-governmental organizations that also opposed globalization, using that political leverage to force the Mexican government into a prolonged negotiation process rather than allowing the government to impose a quick military solution.[168] The Zapatistas were committed to an international anti-globalization struggle, and used the Internet to connect with North American and European anti-authoritarian networks[169] and community and labor groups from the global south.[170] In 1997, the Zapatistas helped organize the Peoples' Global Action (PGA) network, which linked large workers' movements in Brazil and India, European anti-authoritarian groups like Reclaim the Streets UK and Ya Basta! in Italy, and indigenous, agrarian, and radical labor and environmental groups opposed to globalization, but with otherwise fairly varied political philosophies.[171]

North American anti-authoritarian groups affiliated with the PGA launched a week of protests at the 1999 World Trade Organization

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166. Caitlin Hewitt-White, *Women Talking About Sexism and Oppression in the Anti-Globalization Movement*, KICK IT OVER 39 (2001); *see also* DAY, *supra* note 162, at 197.

167. *See* DIXON, *supra* note 125, at 43; GRAEBER, *supra* note 146, at xiii.

168. DAY, *supra* note 162, at 191; *see 1995*, SIPAZ, http://www.sipaz.org/1995-6/?lang=en [perma.cc/DJ8T-VMDM] ("From the very first days following the uprising the Zapatistas had opened up a dialogue with the civil society, not only in Chiapas but in all of Mexico, something which has been one of its greatest strengths and forms of protection.").

169. *See infra* Part III.B for a discussion of networks.

170. *See generally* DAY, *supra* note 162, at 191.

171. DIXON, *supra* note 125, at 43–44; GORDON, *supra* note 126, at 21–22; GRAEBER, *supra* note 146, at xiii–xiv, 292; Patrick Cuninghame, *Autonomism as a Global Social Movement*, 13 WORKINGUSA: J. LABOR & SOC. 451, 451–52 (2010).

ministerial in Seattle.[172] The protests drew significant international media attention and a major police response, with hundreds arrested.[173] The week-long "Battle in Seattle" may be the most obvious U.S. precursor to the encampments of the Occupy Movement. That said, another important influence on anti-authoritarian activism between 1999 and the birth of the Occupy Movement was the response to the Seattle protests from activist women and people of color, who criticized the protests for reproducing hierarchies of race, gender, class, age, and experience within the movement space.[174] After the Seattle protests, anti-authoritarian activists in the 2000s launched actions at other conferences of world leaders tied to globalization, started new projects and networks like Critical Resistance, No One Is Illegal, and a new incarnation of Students for a Democratic Society.[175]

There is no single moment when some person or group first thought up the Occupy Movement, but by the start of the 2010s, anti-authoritarian activism and calls for some kind of action to start in New York were coming from all directions.[176] A small group of anti-authoritarian activists began

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172. *See* GRAEBER, *supra* note 146, at 236, 290–93. *See generally* ALEXANDER COCKBURN, JEFFREY ST. CLAIR & ALLAN SEKULA, 5 DAYS THAT SHOOK THE WORLD: SEATTLE AND BEYOND (2000).

173. *See* GRAEBER, *supra* note 146, at 292–93.

174. *See generally* DIXON, *supra* note 125, at 44–45.

175. *See id.* at 47; *see also infra* Part III.B.

176. The Occupy Movement was both inspired by and was a part of a global flare-up in mostly anti-authoritarian activism that includes: the Arab Spring protests in Northern Africa and the Middle East in late 2010 and 2011; the student occupations from 2008 through 2010 at the New School in New York and throughout the University of California school system; the Eurozone protests, especially in Spain, sometimes called the Indignados or M-15 Movement; the February and March 2011 protests against Wisconsin Governor Scott Walker's attempt to revoke collective bargaining rights for state employees, which led up to an occupation of the Wisconsin State Capitol Building; a coalition of New York advocacy groups called New Yorkers Against Budget Cuts, which organized a short-lived encampment, called "Bloombergville," in front of New York's City Hall in June 2011; a group of anti-authoritarian activists who were meeting at 16 Beaver Street in Manhattan, a meeting space used by politically-minded artists who were discussing the idea of bringing a General Assembly like the one some had witnessed in Spain that spring to New York; the call by the Canadian anti-consumerist group Adbusters for an occupation of Wall Street on September 17, 2011, in response to the growing corporate influence on democracy in the U.S. and growing economic inequality; and the leaderless online "hacktivist" group, Anonymous, which not only endorsed Occupy Wall Street to its hundreds of thousands of online followers in August 2011, but which, three months earlier, sought to organize an occupation of Zuccotti Park that would protest against the greed of the powerful "1%." *See* Andy Kroll, *How Occupy Wall Street Really Got Started*, *in* THIS CHANGES EVERYTHING: OCCUPY WALL STREET AND THE 99% MOVEMENT 16 (Sarah Van Gelder and YES! Magazine eds., 2011) (describing the influence of the group meeting at 16 Beaver Street on Occupy Wall Street); SCHNEIDER, *supra* note 128, at 9 (describing how Anonymous sought to organize an action with many similarities to Occupy Wall Street just months earlier, only to have just sixteen people show up); Ferry Biedermann, *From Europe to the U.S., Protesters Are Inspired by Arab Spring*, NATIONAL (Abu Dhabi) (Oct. 5, 2011), http://www.thenational.ae/news/world/europe/from-

holding open meetings to discuss the various calls for a September action in early August and, borrowing heavily from prior anti-authoritarian activism, agreed not to specify any demands, came up with the slogan "We are the 99%," and agreed that "the process of bottom-up direct democracy would be the occupation's chief message at first, not some call for legislation to be passed from on high."[177] But to focus too much on these planning meetings misses an essential point of anti-authoritarian activism. The successes of the Occupy Movement and anti-authoritarian activism generally relies on procedures that allow individuals the freedom and flexibility to structure and re-structure the effort to make it their own. Once two thousand or more people were in Zuccotti Park on the morning of September 17,[178] the Occupy Movement was, in a meaningful way, theirs, and all of ours.[179]

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europe-to-the-us-protesters-are-inspired-by-arab-spring [perma.cc/4BGR-GWFH] (linking Occupy to the Arab Spring). *See generally* David W. Chen, *In 'Bloombergville,' Budget Protesters Sleep In*, N.Y. TIMES (June 15, 2011), http://cityroom.blogs.nytimes.com/2011/06/15/in-bloombergville-budget-protesters-sleep-in [perma.cc/BYP9-MSWP] (describing the Bloombergville encampment); Monica Davey, *Protesters in Wisconsin Say They Are Staying Put*, N.Y. TIMES (Feb. 20, 2011), http://www.nytimes.com/2011/02/21/us/21wisconsin.html?_r=1 [perma.cc/393S-PDGD] (describing the occupation of the Wisconsin State Capitol Building); Andrew Fleming, *Adbusters Sparks Wall Street Protest Vancouver-Based Activists Behind Street Actions in the U.S.*, VANCOUVER COURIER (Sept. 30, 2011), http://www.vancourier.com/Adbusters+sparks+Wall+Street+protest/5466332/story.html [perma.cc/8UHC-LBP7] (describing the role of Adbusters in sparking Occupy); Carmen Pérez-Lanzac, *Democracia Real Ya Prepara Una Convocatoria Mundial para el 15 de Octubre*, EL PAIS (May 30, 2011), http://politica.elpais.com/politica/2011/05/30/actualidad/1306761727_898845.html [perma.cc/R96T-6SPA] (describing the Indignados' call for a global action on October 15); Michael Hardt & René Gabri, Address at Venice International University: Occupy Wall Street in a Global Context (Dec. 15, 2011), http://www.youtube.com/watch?v=eNSUivMFCB8 (describing the Arab Spring, Eurozone protests, Occupy Wall Street, and other activism as "links in a chain" in a "cycle of struggles," connected by a shared aspiration for democracy in the face of concentrated power).

177. SCHNEIDER, *supra* note 128, at 20.

178. GRAEBER, *supra* note 142, at 49.

179. The freedom of the Occupy Movement to ignore the wishes of anyone who might claim to be its "founder" became especially clear in the first weeks of Occupy Wall Street, when Kalle Lasn and Micah White, the editors of *Adbusters*, drafted a manifesto directed to President Obama with demands related to income inequality. *See generally* Mattathias Schwartz, *Pre-Occupied*, NEW YORKER (Nov. 28, 2011), http://www.newyorker.com/magazine/2011/11/28/pre-occupied [perma.cc/35GP-M2KA]. The draft manifesto was roundly rejected through the consensus process; instead, on September 29, after days of debate and discussion, the New York City General Assembly adopted a "Declaration of the Occupation" that demanded nothing at all from Wall Street or the government, only vaguely calling on "the people of the world . . . to assert [their] power." *Declaration of the Occupation of New York City*, #OCCUPYWALLSTREET—NEW YORK CITY GENERAL ASSEMBLY (Sept. 29, 2011), http://www.nycga.net/resources/declaration/ [perma.cc/AC45-J5XG].

For the rest of September, only one hundred to two hundred people slept at the Occupy Wall Street encampment each night, but this small group could expand into the thousands during the days and evenings.[180] Participants built an encampment that offered communal facilities and services including free food, basic medical care, sleeping supplies, a lending library, Internet access, a schedule of activities and actions, and activist training.[181] General Assemblies were held to plan actions, activities and trainings, but the group stayed true to its principle of being leaderless—or as some said, "leaderful."[182] Although initially there was little media attention paid to the occupation, an incident in which young, white women demonstrators were pepper-sprayed by a police officer on September 24 drew significant press.[183] Following the arrests of seven hundred Occupy Wall Street demonstrators on the Brooklyn Bridge on October 1,[184] community and labor groups from across the city held a rally at Foley Square on October 5, where 20,000 people came to express their support.[185] By early October, communities

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180. *See* Marina Sitrin, *The Chills of Popular Power: The First Month of Occupy Wall Street*, *in* THIS CHANGES EVERYTHING: OCCUPY WALL STREET AND THE 99% MOVEMENT 29–30 (Sarah Van Gelder and YES! Magazine eds., 2011) (describing 6000–7000 people in Zuccotti Park on the afternoon of September 30, 2011).

181. *See* George Packer, *All the Angry People*, NEW YORKER (Dec. 5, 2011), http://www.newyorker.com/magazine/2011/12/05/all-the-angry-people/ [https://perma.cc/ZDV3-LHRM].

182. Jonathan Matthew Smucker, *#OWS: We are ALL Leaders!*, BEYOND THE CHOIR (Oct. 28, 2011), http://jonathansmucker.org/2011/10/28/ows-we-are-all-leaders/ [https://perma.cc/GW4N-R9XH]; *Is Occupy Leaderless or Leaderful: Insights from Working Groups*, FUTURE OF OCCUPY (Feb. 4, 2012), https://thefutureofoccupy.wordpress.com/2012/02/04/is-occupy-leaderless-or-leaderfull-insights-from-working-groups/ [https://perma.cc/88D7-GKNT].

183. Kat Stoeffel, *Occupy Wall Street's Media Problems*, N.Y. OBSERVER (Oct. 6, 2011), http://www.observer.com/2011/09/occupy-wall-streets-media-problems/ [https://perma.cc/V7Q9-CDGX]. Chelsea Elliott, one of the women pepper-sprayed, said in an interview, "[i]ronically enough, and unfortunately, the cops spraying a bunch of white girls, well, our donations have tripled. We're getting media attention." Jen Doll, *Chelsea Elliott, Occupy Wall Street Protester Sprayed by Cop, Tells Us What Happened*, VILLAGE VOICE (Sept. 25, 2011), http://blogs.villagevoice.com/runninscared/2011/09/chelsea_elliott.php [https://perma.cc/RMG5-CUXL].

184. *See* Al Baker, Colin Moynihan & Sarah Maslin Nir, *Police Arrest More Than 700 Protesters on Brooklyn Bridge*, N.Y. TIMES (Oct. 1, 2011), http://cityroom.blogs.nytimes.com/2011/10/01/police-arresting-protesters-on-brooklyn-bridge/ [https://perma.cc/U3DK-UEV5].

185. Jen Doll, *Occupy Wall Street: Live Updates from the March*, VILLAGE VOICE (Oct. 5, 2011), http://blogs.villagevoice.com/runninscared/2011/10/occupy_wall_str_11.php [https://perma.cc/LA5V-8X2C]; Joanna Walters, *Occupy America: Protests Against Wall Street and Inequality Hit 70 Cities*, GUARDIAN (Oct. 8, 2011), http://www.guardian.co.uk/world/2011/oct/08/occupy-america-protests-financial-crisis [https://perma.cc/8E5Z-E2ZY].

across the country were holding similar demonstrations and occupations.[186]
On October 15, tens of thousands of demonstrators held rallies and
occupations in roughly nine hundred cities around the world.[187] By early
November, the Occupy Movement was faced with a widespread, coordinated
law enforcement effort to shut down their encampments, and the Zuccotti
Park encampment, and similar camps in dozens of other cities and towns
were raided and ultimately shut down by force.[188] The raids on the Occupy
encampments were not the end of the Occupy Movement, and for months
after the encampments were destroyed, Occupy groups continued their
activism both under the "Occupy" name and not.[189]

   More importantly than the continued use of the Occupy name, activism in
the United States continues to be influenced by the principles and tools of
anti-authoritarian activism. The People's Climate March in New York in
September 2014 was the largest climate march in history, with roughly
311,000 participants.[190] Although the march was sponsored by big non-
profits like Avaaz and 350.org, it was not coordinated through a central
committee or by any one organization or coalition, but rather was organized
through one hundred autonomous working groups, each "self-organizing
around visions of climate justice that reflect the priorities of their
members."[191] Like Occupy Wall Street, the march did not issue a set of
demands and featured a diversity of tactics,[192] including a street blockade

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186. *See* Walters, *supra* note 185 (describing "70 major cities and more than 600
communities" that have joined the protests, including Chicago, Boston, Memphis, New
Orleans, Las Vegas, Philadelphia, Austin, Louisville, and Atlanta, where protests were held
during the first week of October).

187. *See* Phillip Pullella, *Wall Street Protests Go Global; Riots in Rome*, REUTERS (Oct.
15,   2011),   http://www.reuters.com/article/2011/10/15/us-protests-
idUSTRE79E0FC20111015 [https://perma.cc/ARK3-UNAL].

188. Shawn Gaynor, *The Cop Group Coordinating the Occupy Crackdowns*, S.F. BAY
GUARDIAN   (Nov.   18,   2011),   http://www.sfbg.com/politics/2011/11/18/cop-group-
coordinating-occupy-crackdowns/ [https://perma.cc/KL2Z-Y4MR]; Christopher Robbins,
Justice Dept: Homeland Security Advised Raids on Occupy Wall Street Camps, GOTHAMIST
(Nov.   16,   2011),
http://www.gothamist.com/2011/11/16/justice_dept_official_raids_of_occu.php
[https://perma.cc/ZY9Y-WGLN]; Rick Ellis, *Update: 'Occupy' Crackdown Coordinated
with   Federal   Law   Enforcement   Officials*,   MINN.   EXAM.   (Nov.   15,   2011),
http://www.examiner.com/top-news-in-minneapolis/were-occupy-crackdowns-aided-by-
federal-law-enforcement-agencies#ixzz1dsiSbfyh [https://perma.cc/2QKB-6DVM].

189. *See infra* Part III.A.

190. *See* Lisa W. Foderaro, *Taking a Call for Climate Change to the Streets*, N.Y. TIMES
(Sept.   21,   2014),   http://www.nytimes.com/2014/09/22/nyregion/new-york-city-climate-
change-march.html?_r=0 [https://perma.cc/BN9J-PKA2].

191. Patrick Robbins, *Occupy & The Climate March*, INDYPENDENT (Sept. 12, 2014),
https://www.indypendent.org/2014/09/12/occupy-climate-march   [https://perma.cc/TB2V-
NC4B].

192. *See infra* Part II.C.1.

called "Flood Wall Street".[193] The Movement for Black Lives[194] came to national prominence in 2012, after the killing of Trayvon Martin by George Zimmerman and Zimmerman's subsequent acquittal.[195] Unlike earlier protests over police misconduct, which were led by traditional non-profit groups, often with ties to the Democratic party, religious organizations, and clear hierarchies like the National Action Network and the Rainbow/PUSH Coalition, these new efforts have been informed by a broader range of activist traditions, including the Occupy Movement, and are rooted in a broader, intersectional politics, use horizontal organizing, and, in some cases, have used prefigurative politics rather than crafting demands for change from the government.[196]

C.   The Tools of Anti-Authoritarian Activism

Over the course of this history, anti-authoritarian activists have developed different prefigurative tools to structure their activities in accordance with their commitments to autonomy and horizontalism. This section describes some of these tools, and discusses how those tools were implemented, developed, and experimented with by the Occupy Movement.

1.   The Tools of Autonomy: Direct Democracy, Consensus, the General Assembly, Modified Consensus, Affinity Groups, Spokes Councils, and Diversity of Tactics

Direct democracy is a fundamental tool for anti-authoritarian activists, flowing from the core principle of autonomy. Much of their activity rests on the premise that allowing all who want to have their say on a matter should be given an opportunity to do so; unlike most organizations where information and power is concentrated at the top, anti-authoritarians seek to diffuse decision-making power and use every meeting as an opportunity to

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193. *Flood Wall Street: 100 Arrested at Sit-In Targeting Financial Giants' Role in Global Warming*, DEMOCRACY NOW (Sept. 23, 2014), http://www.democracynow.org/2014/9/23/flood_wall_street_100_arrested_at [https://perma.cc/R63G-WULS].

194. This article uses the term "Movement for Black Lives" rather than "Black Lives Matter" to distinguish the broader movement from the coalition called "the Black Lives Matter Network." *See infra* notes 308–11 and accompanying text.

195. Jazelle Hunt, *Black Lives Still Matters to Grassroots and Black Media*, BLACKPRESSUSA (Jan. 13, 2015), http://www.blackpressusa.com/black-lives-still-matters-to-grassroots-and-black-media/#sthash.Wdc5IxzV.dpbs [https://perma.cc/F2HZ-PGNG]; *see infra* Part III.C.4.

196. Raven Rakia & Aaron Miguel Cantú, *The Fight for the Soul of the Black Lives Matter Movement*, GOTHAMIST (Apr. 7, 2015), http://gothamist.com/2015/04/07/black_lives_matter_movement.php [https://perma.cc/HVE3-ZFUL]; *see infra* Part III.C.4.

"create new ideas and ways of doing things, and develop skills for working collectively and democratically."[197]

Voting by majority, however, leaves the minority in the position of having to accept a position it does not support. Instead of voting, anti-authoritarians typically use the *consensus* process to make decisions.[198] In the traditional consensus model, group members make proposals that are then discussed collectively.[199] Together, the group refines proposals based on any concerns that members express until the proposal either achieves consensus or a group member *blocks* consensus, in which case the proposal may be abandoned, postponed, or discussed further and modified.[200] The goal of the consensus process is to allow all participants to have an opportunity to have their concerns heard and addressed.[201] Consensus is not the same as requiring a unanimous vote on a detailed proposal; the "essence of the consensus process is just that everyone should be able to weigh in equally on a decision, and no one should be bound by a decision they detest."[202] The process only really works if blocks are reserved for rare situations; at Occupy Wall Street, blocks were supposed to only be used when a participant felt that a proposal raised "a moral, ethical, or safety concern [for] . . . the Movement as a whole."[203]

The principle of autonomy also leads many anti-authoritarian groups to strive to allow all to participate in their processes. In a *General Assembly* there is no membership list, and anyone present has an opportunity to fully participate, speak and make proposals. The function of the General Assembly is not to make group decisions but to hear everyone's point of view and then allow "individuals and subgroups . . . to then act autonomously, respecting the assembly while sparing it the burden of micromanagement."[204] Typically, individual participants do not give up

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197. DIXON, *supra* note 125, at 86.

198. *Id.* at 87.

199. *Id.*; GRAEBER, *supra* note 142, at 214–20; GRAEBER, *supra* note 146, at 300–18. *See generally* C. T. BUTLER & AMY ROTHSTEIN, ON CONFLICT AND CONSENSUS: A HANDBOOK ON FORMAL CONSENSUS DECISIONMAKING (1987) (presenting a detailed analysis of consensus tools).

200. DIXON, *supra* note 125, at 87; GRAEBER, *supra* note 142, at 215–17.

201. DIXON, *supra* note 125, at 87; GRAEBER, *supra* note 142, at 214–20; GRAEBER, *supra* note 146, at 300–18.

202. GRAEBER, *supra* note 142, at 211.

203. *Proposal for Blocks Protocol at General Assembly*, #OCCUPYWALLSTREET N.Y.C. GEN. ASSEMBLY (Jan. 5, 2012), http://www.nycga.net/2012/01/05/proposal-for-blocks-protocol-at-general-assembly/ [https://perma.cc/A7LJ-CA4A].

204. SCHNEIDER, *supra* note 128, at 19. Schneider gives an example of activity on September 1, sixteen days before the "official" start: "[N]ine people had been arrested while attempting to sleep legally on the sidewalk of Wall Street as a 'test run,' and a video of it was getting traction online. A student group was rehearsing a flash mob to Michael Jackson's 'Thriller.' The Food Committee had raised eight hundred dollars . . . . The National Lawyers

their freedom to be part of, or not part of, any particular action just because it was approved by a General Assembly.

Because of the tremendous difficulty of reaching consensus in large General Assemblies, from the beginning of the Occupy Movement the New York City General Assembly and the large General Assembly at Occupy Oakland used a process called *modified consensus*, requiring just ninety percent of the General Assembly to give consensus to a project for it to be approved if, in the first instance, the consensus process breaks down because of one or a few people refusing to remove their blocks after reasonable efforts were made to satisfy them.[205] The idea behind modified consensus is that it allows for significant participation and encourages collaboration, but prevents individuals or small groups of people from taking advantage of the tool of the block—intended to be reserved for only the most serious of concerns about a proposal—"to stifle the group's forward momentum."[206] If bending the rules for political expediency seems completely contrary to the fundamental anti-authoritarian principles, debate about the pros and cons of modified consensus was common within the Occupy Movement.[207]

After consensus is given to a proposal in a large body like a General Assembly, the details of implementation for projects and actions undertaken by anti-authoritarian activists are done through small *affinity groups*.[208] Affinity groups are decentralized groups of roughly five to fifteen people who work together to decide what they want to do and how they want to do it, without any direct control from some higher body.[209] The concept aims to allow for autonomy while preserving community, and affinity groups remain connected to the larger body through either General Assemblies or

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Guild would be sending in observers in green caps. More than any one plan, there were plans." *Id*.

205. GRAEBER, *supra* note 142, at 216, 224–25; Tim Hartnett, *Using Modified Consensus in OWS*, CONSENSUS DECISION-MAKING, http://www.consensusdecisionmaking.org/Articles/Using%20Modified%20Consensus%20in%20OWS.html [https://perma.cc/7L6Z-J7CH].

206. Hartnett, *supra* note 205.

207. *To Consense or Not to Consense*, OCCUPYWALLSTREET.ORG (Feb. 11, 2013), http://occupywallst.org/article/consense-or-not-consense/ [https://perma.cc/2S6E-3R3A]; *see The Great Debate: Should Real Democracy Movements Stick to Consensus in Decision-Making Process*, OCCUPIED TIMES OF LONDON (May 16, 2012), http://theoccupiedtimes.org/?p=3456 [https://perma.cc/74QQ-GHHJ] (presenting an argument in favor of consensus or modified consensus in decision-making and a counter-argument that even modified consensus does not always provide the speed and agility necessary for actions, and arguing that it over-values the position of those who come to General Assemblies with good rhetorical skills or a specific strategy).

208. GRAEBER, *supra* note 146, at 288–89.

209. *Id*.; *see* GORDON, *supra* note 126, at 16; SCHNEIDER, *supra* note 128, at 68.

spokescouncils, gatherings of a reporter from each affinity group to report to the larger body.[210]

Affinity groups that are more permanent than ones organized for a particular action or event may be called *collectives*, which again have a small membership that comes together for a long-term anti-authoritarian project.[211] Affinity groups and collectives coordinate and collaborate in different ways. At a local or city-wide level, these small groups may come together in a General Assembly or spokescouncil, but outside of a town or city, on a national or international level, anti-authoritarian activists are commonly said to work through a *network*, a term used in two related ways.[212]

First, the term *network* can mean a *personal network*, personal relationships between people formed by talking online or in person.[213] The term is also sometimes used to mean a *banner network*, when individuals or affinity groups take action as part of a network linked together by a broad ideological theme, but without any personal connection to others conducting activities under that banner.[214] Individuals and groups have taken actions under the banners of Earth First!, Anti-Racist Action, and Anonymous, even though the planning and execution of those actions were never known or discussed beyond the individuals doing the work. In this sense, a network is sometimes no more than "a convenient label for a certain goal or type of political activity"[215] that might amplify the seeming importance of an otherwise-isolated act.

Following the logic of the affinity group, the idea of *diversity of tactics* means allowing different affinity groups to choose their specific tactics toward a broadly-defined goal supported by consensus of the larger group, and that an affinity group may use any particular tactic that advances toward that goal unless it is so abhorrent to the larger group that it is blocked.[216] Because anti-authoritarians often have different views on how, when, or whether to engage in actions that may result in property damage, debates over such tactics often lead to impassioned disagreements, causing "many activists . . . [to become] sick to death of the subject."[217] The benefit of the concept of "diversity of tactics" is avoidance of such impossible debates, though critics of the concept believe it is a euphemistic cover for tacit

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210. GRAEBER, *supra* note 146, at 289.
211. GORDON, *supra* note 126, at 16.
212. *See id.* at 14–17.
213. *Id.* at 14.
214. *Id.* at 15.
215. *Id.*
216. SCHNEIDER, *supra* note 128, at 67.
217. GORDON, *supra* note 126, at 78.

approval of property damage,[218] or, perhaps worse, that it undermines real consensus and sidesteps "very real tensions which are still seething under the surface."[219]

2.   *The Tools of Horizontalism: Anti-Oppression Trainings, Identity-Based Caucuses, Progressive Stack, Horizontal Organizing*

Anti-authoritarian activists have also developed a range of tools to promote horizontalism and address issues related to oppression and privilege.

First, consistent with their roots in women-of-color feminism, anti-authoritarian activists have developed a variety of *anti-oppression trainings*, individual and collective study groups, and discussion sessions around these issues.[220] More generally, anti-authoritarian groups aim to forge ties to low-income communities and communities of color, acknowledging that many drawn to these forms of activism come from backgrounds of at least some degree of privilege.[221]

Anti-authoritarian activists also have created tools for their networks and General Assemblies that seek to challenge and shift dynamics of oppression and privilege.[222] Some anti-authoritarian groups create identity-based caucuses so that marginalized groups can structurally intervene in decision making; some groups use meeting tools like *progressive stack*, which grants priority in speaking order to women, people of color, LGBTQ people, and anyone from "traditionally marginalized" groups.[223] The Occupy Movement

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218. SCHNEIDER, *supra* note 128, at 67.

219. GORDON, *supra* note 126, at 78.

220. DIXON, *supra* note 125, at 96.

221. *Id*. at 97–98. The Occupy Movement was sometimes unfairly caricatured as being made up of only rich white college students, when in fact many local Occupy-related efforts developed in low-income communities and communities of color, and the mainstream of Occupy participants were rarely rich. *See infra* Part III.A.1; *see also* GRAEBER, *supra* note 142, at 84 (arguing that much of the animosity toward Wall Street that made up the ideological core of the Occupy Movement came from two groups of people suffering because of financial debt: people from the working class who were directly or indirectly impacted by the subprime-lending-driven mortgage crisis, and underemployed college graduates with large student loan debts); GRAEBER, *supra* note 146, at 252–54 (describing anti-authoritarian activists in general as people who come together at a class "juncture . . . between downwardly mobile elements of the professional classes and upwardly mobile children of the working class . . . . The first represents the classic recruitment base for artistic bohemia . . . . The second represents the classic stereotype of the revolutionary, particularly in the Global South").

222. WRITERS FOR THE 99%, OCCUPYING WALL STREET: THE INSIDE STORY OF AN ACTION THAT CHANGED AMERICA 27–32 (2012).

223. *See id*. at 29–30; Allison Burtch, *My Hope for #Occupy Wall Street*, FEMINISTING (Oct. 4, 2011), http://feministing.com/2011/10/04/guest-post-my-hope-for-occupy-wall-street/ [https://perma.cc/3962-42AN]; Manissa McCleave Maharawal, *So Real It Hurts: Notes on   Occupy   Wall   Street*,   RACIALICIOUS   (Oct.   3,   2011),

tried to implement all of these tools: it had caucuses of women, people of color, people who identify as LGBTQ, and other identity-based caucuses; offered anti-oppression trainings, teach-ins, and open discussions on racism and oppression in collaboration with Occupy the Hood, Occupy 477, and more established community groups like Movement for Justice in El Barrio and the Audre Lorde Project; and meetings and General Assemblies typically used progressive stack, and more generally encouraged all speakers to "Step Up, Step Back" and not dominate the conversation.[224]

Anti-authoritarian *horizontal organizing* (sometimes also called *relational organizing*) differs significantly from traditional community organizing. Given the core commitment to avoid any sort of hierarchy, typical organizing models, in which one or more experienced organizers or an established community organization sets an agenda and rallies people to their cause, are rejected.[225] Coming out of the thinking of women-of-color feminism, anti-authoritarian activists see this as thinly veiled manipulation and instead aim to invite people to participate and collectively develop their goals, strategies, and tactics.[226] Concerted efforts to engage in horizontal organizing in communities of color were ongoing within the Occupy Movement, but tensions did arise over exactly what the relationship between a General Assembly and low-income communities and communities of color should be.[227] These tensions are one important reason many within the Occupy Movement, like other anti-authoritarian activists before them, began to move away from a sole focus on large General Assemblies in the public square and turn instead to building relationships, networks, and new forms of organization with and within low-income communities and communities of color.[228]

III. FROM ANTI-AUTHORITARIAN ACTIVISM TO COMMUNITY COUNTER-INSTITUTIONS

Anti-authoritarian activism has been an important influence on U.S. social movements since at least the 1980s, and its principles and tactics were central to the Occupy Movement and influenced the Movement for Black Lives, the

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http://www.racialicious.com/2011/10/03/so-real-it-hurts-notes-on-occupy-wall-street/ [https://perma.cc/V7FT-YBTK].

224. *See* WRITERS FOR THE 99%, *supra* note 222, at 30, 119; Burtch, *supra* note 223.

225. *See* DIXON, *supra* note 125, at 185.

226. *Id.* at 185–86.

227. Rinku Sen, *Race and Occupy Wall Street*, NATION (Oct. 26, 2011), http://www.thenation.com/article/race-and-occupy-wall-street/ [https://perma.cc/ZHY7-LUWR] (describing examples of tensions as well as acts of solidarity between the Occupy Movement and communities of color).

228. *See infra* Part III.

two most prominent social change movements in a generation.[229] Absent meaningful participation from low-income communities, people of color, and other marginalized groups, however, the adherence to anti-authoritarian principles will never build a truly mass movement to challenge systemic inequality.[230] Even while the encampments were in place, many anti-authoritarian activists recognized that Occupy Wall Street needed to reach out from lower Manhattan not just to like-minded activists in other cities but also to specifically engage low-income communities and communities of color in the outer boroughs and low-income neighborhoods across the country, and to work together to build new networks, coalitions and community-based projects, rather than allow their commitments to anti-authoritarian principles to derail such possibilities by forcing them to rehash impossible debates over process and structure among an increasingly frustrated group every night.[231]

The Occupy Movement took important steps toward such community activism both while the encampments were active and after they were destroyed; some of these are described in Subpart A of this Part. Most of these efforts, however, did not rise to the level of building long-lasting community projects. Subpart B of this Part introduces the concept of the "community counter-institution" to discuss how anti-authoritarian activists—both before and after the Occupy Movement and continuing through the Movement for Black Lives—are building new, community-based organizational vehicles for social change that ground their work on the anti-authoritarian principles.

A. The Occupy Movement Branches Out

From the first months of Occupy Wall Street, participants worked in and with low-income communities and communities of color. This subpart describes projects developed during and shortly after the destruction of the

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229. *See supra* note 2 and accompanying text.

230. *See Not An Alternative, Counter Power As Common Power*, 9 J. AESTHETICS & PROTEST (2014), http://joaap.org/issue9/notanalternative.htm [https://perma.cc/QB9M-S6YY] (criticizing the Occupy Movement's reliance on General Assemblies for excluding "those who could not show up . . . . Working people, whether waged or unwaged, in the paid-labor market or caring for others, were disadvantaged by the basic structure of the movement. And, because Occupy so celebrated *direct* democracy, those who could not attend were not even represented in the discussion").

231. *See* DIXON, *supra* note 125, at 54 (describing the "crucial role" played by the People of Color Caucus of Occupy Wall Street to raise "challenges around racism and other systems of oppression in a predominantly white and often male-dominated context," which led to efforts to "work in alliance with more established organizations" based in low-income communities of color).

encampments that sought to mesh anti-authoritarian activism with community-based organizing, advocacy, and service-provision.

1.   *Occupy in the Outer Boroughs*

Many in the Occupy Movement felt that the "ultimate aim would be to create local assemblies in every town and neighborhood, as well as networks of occupied dwellings, occupied workplaces, and occupied farms that can become the foundations of an alternative economic and political system."[232] Different affinity groups took significant steps in this direction quite soon after the Occupy Movement first began.

A group called Occupy the Hood was formed by people of color to promote the Occupy Movement in communities of color, helping to launch locally-led groups in African-American and Latino communities in Atlanta, Boston, Chicago, Cincinnati, Dallas, Detroit, Los Angeles, Milwaukee, New Orleans, New York, Orlando, Philadelphia, Pittsburgh, Portland, Richmond, Seattle, and St. Louis.[233]   These groups had no formal leadership, collaborated with more traditional local organizations, made decisions using forms of consensus, and undertook projects in small affinity groups.[234] The projects undertaken by these assemblies would not seem entirely out of place for more traditional community-based organizations: they rallied against so-called "midnight evictions" in Atlanta, protested the fatal shooting of a thirteen-year old and demanded transparency in the distribution of Community Development Block Grant funds in Milwaukee, and worked to build a cross-race coalition of activists in Chicago.[235]

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232. GRAEBER, *supra* note 142, at 261.

233. *See* Alex Alvarez, *CNN Takes A Look At Occupy The Hood: 'Adding Color To The Occupy Wall Street Movement,'* MEDIAITE (Feb. 3, 2012), http://www.mediaite.com/tv/cnn-takes-a-look-at-occupy-the-hood-adding-color-to-the-occupy-wall-street-movement/ [https://perma.cc/C9Y9-H7P4]; Ross, Janell & Trymaine Lee, *Occupy The Hood Aims To Draw People Of Color To Occupy Wall Street*, HUFFINGTON POST (Oct. 14, 2011), http://www.huffingtonpost.com/2011/10/14/occupy-the-hood-occupy-wall-street_n_1009850.html [https://perma.cc/6P54-DZY3]. *See generally* Max Chalkin, *Dispatches from Dewey Square: What Is Occupy the Hood?*, BOSTON.COM (Nov. 4, 2011), http://www.boston.com/lifestyle/blogs/thenextgreatgeneration/2011/11/dispatches_from_de wey_square_w.html [https://perma.cc/7GWC-VF6H] (describing the interaction between the Occupy the Hood assembly in the Roxbury-Dorchester-Mattapan area and the larger, less diverse Occupy Boston encampment).

234. *See* Chalkin, *supra* note 233 (describing the Occupy the Hood consensus process as "a bit more reminiscent of the organizational structure of the Civil Rights Movement, but without a MLK- or Malcolm X-esque figure at the forefront. Any member can propose an action, and those who agree form a 'Coalition of the Willing' and take direct action").

235. Rebecca Burns, *As Occupy the Hood National Gathering Concludes, Questions About Race and Occupy Persist*, IN THESE TIMES (July 27, 2012), http://inthesetimes.com/uprising/entry/13586/as_occupy_the_hood_national_gathering_con cludes_questions_about_race_and_oc [https://perma.cc/PS93-RLS6].

In New York, Occupiers formed a number of neighborhood-based General Assemblies. In Sunset Park, Brooklyn, Occupy Sunset Park held community dinners and General Assemblies that aimed to bring together the largely segregated Latino, Chinese, African-American, and White community residents to discuss concerns that crossed those divides, like public school closures and unfair landlords.[236] Similarly, in the largely Caribbean-American and African-American northern half of Crown Heights, Brooklyn, the Crown Heights Assembly—later reconstituted as the Crown Heights Tenants Union—was formed to promote affordable housing and fight gentrification.[237]

Connections between Occupy Wall Street and low-income communities of color in New York were not all formed from Zuccotti Park outward. In the working-class African-American neighborhood of Hollis, Queens, a group of African-American seniors formed a group inspired by the Occupy Movement they called the "99% Club" to fight unscrupulous local landlords and the local effects of the foreclosure crisis.[238] They conducted research on abandoned houses in their neighborhood, filed complaints with the Department of Buildings, and made a short Internet video explaining the problem to help galvanize support for a larger protest.[239] The video was seen by Occupy Queens, and the mostly-older, African-American group, and the mostly-young, majority-white Occupy Queens group worked together to demand the transformation of a long-vacant apartment building into a community facility.[240]

2.   *Occupy and the Foreclosure Crisis*

Starting on December 6, 2011, days after most of the Occupy Movement's encampments were forcibly shut down, groups of Occupy participants and

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236. Justin Chan, *Taking Pages from OWS Playbook, Occupy Sunset Park Thinks Local*, VOICES OF NY (Apr. 12, 2012), http://www.voicesofny.org/2012/04/taking-pages-from-ows-playbook-occupy-sunset-park-thinks-local/ [https://perma.cc/V83X-CJTB]; Jennifer Cheng, *With Rent Strikes and Video Cameras, Activists Step Up in Sunset Park*, VOICES OF NY (Aug. 2, 2012), http://www.voicesofny.org/2012/08/with-rent-strikes-and-video-cameras-activists-step-up-in-sunset-park/ [https://perma.cc/4N2Z-BUZH].

237. *See generally Our Demands*, CROWN HEIGHTS TENANTS UNION, http://www.crownheightstenantunion.org/#!our-demands/rm4hp [https://perma.cc/6E74-MB52].

238. Mark Naison, *How Occupy Wall Street Has Revitalized Neighborhood-Based Protest–The Hollis Example*, WITH A BROOKLYN ACCENT (Apr. 16, 2012), http://withabrooklynaccent.blogspot.com/2012/04/how-occupy-wall-street-has-revitalized.html [https://perma.cc/9GWF-Y2VS].

239. *Id*.

240. *Id*.; Janet R. Jackson, *What's Good From . . . HPC 99% Club and the Occupy Queens-March*, BRAND NEWZ, http://www.brandnewz.com/?p=12160 [https://perma.cc/W64C-3WSP].

community activists from more than twenty-five low-income communities around the country engaged in a range of actions related to the foreclosure crisis.[241] In New York, over one thousand people gathered in East New York, Brooklyn, to help a once-homeless community organizer and his family move into a vacant, bank-owned house.[242] Local activists in Nashville helped a seventy-eight-year-old woman stop Chase Bank from evicting her by occupying her house and, in San Diego and Los Angeles, twenty-four hour front-lawn encampments saved two families' homes from foreclosure.[243] In Rochester, New York, nearly one thousand people protested at a Wells Fargo branch, helping a family to avoid foreclosure, and in Atlanta, front-yard occupations stopped the evictions of two houses, a church, and a homeless shelter.[244]

Many of these efforts developed out of the "sword and shield" model pioneered in Boston by City Life/Vida Urbana and Project No One Leaves, in collaboration with the clinical program at Harvard Law School.[245] Groups like Occupy Our Homes Atlanta, Springfield No One Leaves (Springfield, MA), Nobody Leaves Mid-Hudson (Poughkeepsie, NY), Occupy Our Homes Minnesota, the Chicago Anti-Eviction Campaign, and similar groups around the country used this approach to help families facing foreclosure fight eviction through legal work done in collaboration with civil disobedience actions.[246] Their work includes vigils, sit-ins, and protests against banks seeking to evict people, and blockades against sheriffs trying

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241. Les Christie, *Occupy Protesters Take Over Foreclosed Homes*, CNN MONEY (Dec. 6, 2011), http://money.cnn.com/2011/12/06/real_estate/occupy_movement_spreads/ [https://perma.cc/DDL5-DEMX].

242. SCHNEIDER, *supra* note 128, at 107. The East New York effort may have been poorly planned and is the subject of some controversy; one of the homes that was being considered as a possible place to occupy was inhabited and when 1000 people showed up in front of the house, a woman shouted "I live here! What are you doing?" *Id*. The house that was ultimately occupied had been foreclosed on, but the prior owner was trying to return. Candice M. Glove, *'They Took My Place!' Single Dad Trying to Take Back Home Occupied by OWS*, N.Y. POST (Jan. 15, 2012), http://nypost.com/2012/01/15/they-took-my-place-single-dad-trying-to-take-back-home-occupied-by-ows/ [https://perma.cc/4K2V-PHQD].

243. Laura Gottesdiener, *We Win When We Live Here: Occupying Homes in Detroit and Beyond*, WAGING NONVIOLENCE (Mar. 28, 2012), http://wagingnonviolence.org/feature/we-win-when-we-live-here-occupying-homes-in-detroit-and-beyond/ [https://perma.cc/W5ZX-7TBK].

244. *Id*.

245. *Id*.; *see* Sasha Abramsky, *Fighting Foreclosure in Boston*, NATION (June 15, 2011), http://www.thenation.com/article/fighting-foreclosure-boston/ [https://perma.cc/7GEW-XGPY] (detailing the collaboration between the Harvard Legal Aid Bureau and Project No One Leaves, which combines litigation, negotiation, and varied public relations and civil disobedience actions to pressure banks to negotiate affordable mortgage modifications and prevent foreclosures).

246. *See generally* Gottesdiener, *supra* note 243.

to remove residents from houses scheduled for auction.[247]   These civil disobedience tactics were developed before the Occupy Movement began, but because of the willingness of many within Occupy to engage in direct action, they were widely used in the winter of 2011–12.[248]

3.   *Occupy Sandy*

Superstorm Sandy hit New York on October 26, 2012, thirteen months after Occupy Wall Street began in New York. Occupy veterans quickly coalesced into Occupy Sandy, which achieved instant prominence in the weeks after the storm as the largest direct aid group for communities in need, weeks before FEMA, the Red Cross, or HUD-funded New York programs would be brought to scale.[249] The group was able to act so quickly because of their experience coordinating the feeding and shelter for large numbers of people during and after the Occupy Wall Street encampment, savvy with social media and already-existent social media networks with thousands of members, sensitivity to issues of class that led it to focus its efforts in the areas that were in greatest need, a willingness to collaborate with already-established community organizations, a lack of bureaucracy, and the efficiency of the autonomous affinity group-style organizational structure at times of disorder and crisis.[250] Occupy Sandy brought together more than sixty thousand volunteers who provided food, water, shelter, medical care, mold remediation, rebuilding assistance, psychological help, legal assistance, and more.[251] Unlike most charitable organizations that seek to provide assistance to people in need following a disaster, Occupy Sandy concentrated not only on providing food and other basic necessities to those in need, but also on working with local residents to organize new grassroots groups, including efforts to build community institutions like community-organizing groups and an incubator for worker-owned co-ops.[252] The

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247. *See id.*

248. *See id.*

249. Eric Ambinder et. al., *The Resilient Social Network: @OccupySandy #Superstorm Sandy*, HOMELAND SEC. STUD. & ANALYSIS INST. 39–43 (Sept. 30, 2013), http://homelandsecurity.org/docs/the%20resilient%20social%20network.pdf.

250. *Id.* at 52–62; Miriam Axel-Lute, *"Doing What They Do Best": Lessons of Occupy Sandy*, ROOFLINES (Dec. 3, 2012), http://www.rooflines.org/2976/doing_what_they_do_best_lessons_of_occupy_sandy/ [https://perma.cc/G4MJ-QHYJ].

251. Ambinder, *supra* note 249, at 1.

252. Ari Paul, *Storm Troopers: The Legacy of Occupy Sandy*, BROOKLYN RAIL (Sept. 4, 2013), http://www.brooklynrail.org/2013/09/local/storm-troopers-the-legacy-of-occupy-sandy [https://perma.cc/55TN-32TT].

process was, at least in part, about seeking to "push politically . . . to take volunteers into organizers and then make them activists."[253]

Most of the work done by Occupy Sandy outside of the direct storm response was done through affinity group-style projects, some of which would develop into independent community groups and non-profits.[254] Rockaway Wildfire, for instance, operates with a core of nine people, about half of whom are local residents and about half of whom became connected to the Rockaways, a low-income community in Queens badly damaged by Sandy, through their participation in Occupy Sandy.[255] The group came to work on a community benefits agreement campaign; like many such efforts, the campaign involves a large coalition, which means collaborating with lawyers, sympathetic local elected officials, and other non-profits.[256] A group called Worker Owned Rockaways Cooperatives used money donated to Occupy Sandy to help incubate worker co-ops in the Rockaways.[257] While the workers in these worker co-ops were local residents, the group also came to rely on a partnership with a more experienced non-profit to help lead the effort, in this case a non-profit lender that makes loans to worker-owned cooperatives.[258] Another group launched Sandy Storyline, a participatory storytelling project organized as a more conventional non-profit, although one with an emphasis on presenting the stories of Sandy victims from communities often overlooked in other media accounts.[259] A project called Signal Recovery sought to take the affinity group framework and translate it

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253. Rebecca Davis & Meena Hart Duerson, *Occupy Sandy Relief Effort Puts Occupy Wall Street Activists in the Spotlight Again a Year After Zuccotti Park*, N.Y. DAILY NEWS (Dec. 5, 2012) (quoting Brett Goldberg), http://www.nydailynews.com/new-york/occupy-sandy-relief-puts-occupy-wall-street-back-spotlight-article-1.1213249 [https://perma.cc/7M77-WUEH].

254. *See* Davis & Duerson, *supra* note 253.

255. Kalin Callaghan, *Community Benefits Agreement Taking Shape for Arverne East*, WAVE (Apr. 25, 2014), http://www.rockawave.com/news/2014-04-25/Columnists/Dispatches.html [https://perma.cc/YUE2-JU7H]; *Who We Are*, ROCKAWAY WILDFIRE, http://rockawaywildfire.org/?page_id=32 [https://perma.cc/F46B-VHGN].

256. *See Community Benefits Agreement*, ROCKAWAY WILDFIRE, http://rockawaywildfire.org/?page_id=18 [https://perma.cc/RN6L-7AHL] (listing coalition members).

257. *See Worker-Owned Rockaway Cooperatives*, WORKING WORLD, http://www.theworkingworld.org/us/341-2/worker-owned-rockaway-cooperatives/ [https://perma.cc/P8WH-SXFP].

258. *See id.*

259. *See What is a Participatory Documentary?*, SANDY STORYLINE, http://www.sandystoryline.com/what-is-a-participatory-documentary/ [https://perma.cc/VHV9-DFUJ].

into a deeply horizontal non-profit 501(c)(3) community-organizing group in the Rockaways.[260]

B.   Toward Community Counter-Institutions

Even before the Occupy Movement began, many anti-authoritarian activists were interested in deepening their organizational structures, moving from a reliance on networks of affinity groups toward creating *counter-institutions*.[261]   The term reflects both a degree of permanence and a commitment to challenging the institutions of the dominant social order.[262] Counter-institutions hold the potential to be vehicles that will allow anti-authoritarian activists to move beyond their tendencies toward endless refinement and re-refinement of principles and tactics, one-off direct actions, and countercultural insularity, toward a "movement-building" approach that connects these activists with popular struggles to build "broad-based movements capable of engaging ordinary people."[263] Although the counter-institution concept is broad enough to include a variety of groups and activities, this article is most interested in the nexus of the counter-institution and the traditional base of CED and social justice community groups in low-income communities and communities of color. This article will call anti-authoritarian counter-institutions that work to build in, with, and from low-income communities and communities of color *community counter-institutions*.

Anti-authoritarian community counter-institutions hold the potential to bridge the gap between the anti-authoritarians' radical political commitments but tendency toward insularity and one-time direct actions, on the one hand, and CED's strengths at developing large-scale community-

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260. Brett Goldberg, Presentation: The Non-Profit Industrial Complex and Its Effects on Sandy Recovery, Beyond Resilience: Actions for a Just Metropolis Conference (June 8, 2013).

261. *See generally* DIXON, *supra* note 125, at 146–48. Anti-authoritarian activists developed this focus for a number of related reasons: a recognition that their efforts are often short-lived and want to create more sustainable organizing structures; a desire to pay attention to context and to work collaboratively with labor, community groups, students, and others over the long term; an acceptance that skepticism of non-profits does not mean that long-term groups cannot be valuable tools; a desire for long-term accountability mechanisms grounded in anti-authoritarian principles; the aim to be more open to new participants, especially from low-income communities and communities of color, and the recognition that developing membership organizations that allow individuals to engage with their efforts can be an essential tool; and a desire for anti-authoritarians to have a longer-term, supportive environments that activists can think of as their political homes. *Id*. at 207–15.

262. Daniel Murray, *Prefiguration or Actualization? Radical Democracy and Counter-Institution in the Occupy Movement*, BERKELEY J. SOC. (Nov. 3, 2014), http://berkeleyjournal.org/2014/11/prefiguration-or-actualization-radical-democracy-and-counter-institution-in-the-occupy-movement/ [https://perma.cc/24SK-C6BH].

263. DIXON, *supra* note 125, at 17.

based programs that provide essential services but which tend to prioritize tangible short-term gains over movement building, on the other. The projects described in this section point to real-world experiments with developing community counter-institutions.

1. *Common Ground Collective, New Orleans, LA*

In the wake of Hurricane Katrina, former Black Panther Malik Rahim, his partner Sharon Johnson, and their friend, Austin-based activist Scott Crow, formed a collective out of Rahim's house in the Algiers section of New Orleans.[264] The goal was to form a "revolutionary aid organization . . . based on the principles and practices of other groups: an organization of residents and outside volunteers with support from larger civil society, one that engaged in aid work without government interference."[265] Influenced by the Black Panthers, they aimed to build programs that provided direct assistance while also organizing for social change.[266] They began from a simple two-part mission statement: "One, to provide first response relief to marginalized communities in the Gulf Coast Basin. Two, to build or rebuild infrastructure in communities affected by the disasters of the hurricane and the long, slow history of abandonment and neglect."[267]

Soon, while FEMA, the Red Cross, and other agencies were still moving slowly and ineffectively to get procedures and programs in place, Common Ground Collective was providing a wide assortment of basic direct services, including food and water, first aid, garbage removal, and more,[268] and had a goal of being "as horizontal and democratic as possible," although they recognized that an ideally anti-authoritarian structure "in reality . . . needed years to build, and something more centralized" would be necessary to get services to people in crisis.[269] Rather than working through open, deliberative assemblies, they organized the group as a network of small projects and programs under one umbrella—some were called "affinity

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264. SCOTT CROW, BLACK FLAGS AND WINDMILLS: HOPE, ANARCHY, AND THE COMMON GROUND COLLECTIVE 56 (PM Press ed., 2011).

265. *Id*.

266. *Id*. at 57. Crow describes the Black Panthers' influence on him and the Common Ground Collective as rooted in the Black Panthers' refusal to limit their work to one issue or set of issues and their rejection of strategies based on incremental change through government channels; Common Ground was inspired by how the Black Panthers "tried to address the myriad issues in an integral way by feeding people, defending communities from police brutality, offering education, and providing basic health care . . . . They saw themselves as agents of change that didn't need or want to wait for the white power structures to do something." *Id*. at 74.

267. *Id*. at 89.

268. *Id*. at 131–34.

269. *Id*. at 132.

groups," while others preferred to be called simply "work groups" or "teams."[270] Some of the projects had one or more coordinators, but the goal was to require coordinators to be accountable to their groups, or else they could be removed from those positions for a variety of reasons.[271] Volunteers who came to Common Ground from all over the country, many wholly unfamiliar with anti-authoritarian ideas, were trained on the structure.[272] Although Common Ground Collective did have a centralized group that coordinated the work of the different affinity groups, they mostly limited their work to logistical support, long-term planning, legal issues, and responding to urgent crises, avoiding involvement with day-to-day project oversight.[273]

Over the course of one year from September 2005 to August 2006, Common Ground Collective achieved extraordinary quantitative results: they hosted more than ten thousand volunteers; served more than one hundred thousand local residents; gutted twelve hundred houses, twelve schools, and four churches; established the first health clinic after Katrina in the Lower Ninth Ward; set up a legal clinic; distributed several thousand bicycles; established community gardens and programs for soil and wetlands restoration; created distribution centers and various community centers; set up a women's shelter; created an independent media center for news of the recovery struggle in New Orleans; employed more than forty low-income local residents in the renovation of a low-income housing complex; and surveyed the housing condition and ownership records for twelve thousand impacted houses.[274] This was all done for about two million dollars raised from public donations and a massive amount of volunteer labor and donated materials.[275] The group strived to not only provide those services, but to do so consistently with anti-authoritarian principles, "participating in direct democracy at every turn with local residents," a sort of "community-organized revolution . . . not a seizure of state power, but a revolution . . . of exercising grassroots power to make the changes we all wanted to see."[276]

As Common Ground Collective started to transition from storm recovery to a rebuilding effort, however, problems emerged. The collective sought to take over a low-income housing development called Woodlands Complex, a

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270. *Id.* at 133–34.

271. *Id.* at 134.

272. *Id.*

273. *Id.*

274. Don Paul, *Common Ground's Eighth Anniversary: A Model of Volunteer-Driven Rebuilding in New Orleans*, TRUTHOUT (Sept. 16, 2013), http://www.truth-out.org/news/item/18772-common-grounds-eighth-anniversary-a-model-of-volunteer-driven-rebuilding-in-new-orleans [https://perma.cc/2CX2-GJFJ].

275. *Id.*

276. CROW, *supra* note 264, at 159.

facility that was never well-maintained and whose owner, after the storm, allowed garbage to pile up and apartments to become empty and vandalized, leading residents to become fearful for their safety.[277] Starting in April 2005, Common Ground began managing the property based on an oral promise by the owner to sell it to them, and ended up spending hundreds of thousands of dollars to pay low-income local residents to work to restore the building, only to have the owner then sell the building and evict the remaining low-income tenants.[278] Soon after some of the original collective members left New Orleans and the Woodlands Complex debacle, the group changed its name to Common Ground Relief and moved in a more conventional non-profit direction, becoming a 501(c)(3), creating more of a hierarchy and a leadership-designed five-year plan, and bringing in experienced senior staff from outside the community to manage operations and impose greater accountability.[279]

2. *Sylvia Rivera Law Project, New York, NY*

Sylvia Rivera Law Project (SRLP) was founded in August 2002 by Dean Spade, a transgender man and then-recent law graduate with the mission to address poverty and over-incarceration of low-income transgender people and transgender people of color.[280] Soon after forming, the group evolved into a 501(c)(3) non-profit organization run collectively by and for low-income trans communities and trans communities of color.[281] It provides legal services, public education, and works toward policy change through community organizing.[282] Its core collective—comprised of all its staff and board—is made of a majority people of color as well as a majority transgender people.[283] SRLP's model was influenced by the critiques of the non-profit industrial complex and the service-provision models of the Black Panther Party and Young Lords, in which services like basic needs assistance and education were provided in an explicitly politicized context.[284] The

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277. *See Hundreds Face Eviction in New Orleans*, DEMOCRACY NOW (Nov. 27, 2006), http://www.democracynow.org/2006/11/27/hundreds_face_eviction_in_new_orleans [https://perma.cc/CE2A-42GV].

278. *See id.*

279. *See generally* Interview by Dan Young & Ian Mayes, KNYO-LP 107.7 FM, with Thom Pepper, Operational Director, Common Ground Relief, *Common Ground Relief*, JUST AND SUSTAINABLE NEW ORLEANS PODCAST (Nov. 30, 2007), http://knyo.libsyn.com/just-and-sustainable-new-orleans-common-ground-relief/.

280. *SRLP History*, SYLVIA RIVERA L. PROJECT, http://www.srlp.org/about/srlp-history [https://perma.cc/Y9MN-DHJ2].

281. *Id.*

282. *Id.*

283. *Id.*

284. Mananzala & Spade, *supra* note 104, at 63.

project was originally formed with law fellowship funding and was housed within the Urban Justice Center, a progressive but traditionally-structured poverty law organization, but it soon split off to become an independent group outside of the Urban Justice Center's hierarchical structure.[285]

Upon separation from the Urban Justice Center, SRLP sought to align itself more fully with horizontal principles and "create a fully trans organization governed in some way that would resist the typical race, gender, and class dynamics of poverty law organizations."[286] This was not done simply by, hiring people of color and trans people for leadership positions. Rather, Spade and his colleagues studied a variety of collectives, reviewed their by-laws and organizational documents, interviewed their members, and ultimately developed a handbook that details the organization's structure, criteria for collective membership, grievance policies, decision-making structure, and more.[287] Maintenance of this structure became part of the core mission of the group,[288] as SRLP aims not just to provide legal services and engage in community organizing around issues affecting low-income trans communities and trans communities of color, but to "create structures that model our vision of a more just society . . . . [and] to use a non-hierarchical structure to support work that aims to redistribute power and wealth for a more just society."[289]

The collective is built around six equal teams: the Direct Services Team, which runs the legal clinic and advocates for policy reform within institutions that affect the community; the Public Education Team, which coordinates trainings, web resources, media, and publications; the Fundraising and Finance team, which raises money and administers financial systems; the Collective Development Team, which recruits new collective members and is responsible for internal anti-oppression work; the Organizing Support Team, which links the group to other community-based organizations and connects clients to opportunities for organizing on issues that affect them; and the Board Team, which mostly limits its oversight to the legal and financial obligations of the organization.[290] Each team has at least one full-time staff member in addition to other collective members, people who commit to at least one year of involvement with the group, with a specified number of hours per month, and the Collective Development Team makes sure that each team maintains a majority of people of color as

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285. *Id.*
286. *Id.*
287. *Id.*
288. Sylvia Rivera Law Project, SRLP Collective Member Handbook 1 (2009), http://srlp.org/files/collective%20handbook%202009.pdf.
289. *Id.* at 1.
290. *Id.* at 1–2.

well as a majority of trans, intersex, or gender-nonconforming people.[291] Each team seeks to delegate decision-making and implementation power to small groups and individuals while employing annual work plans and other accountability measures to make sure that the "broad strokes of programming" are approved by the broader organization.[292] All of the teams meet together twice each year to present their work for the year, give progress reports, discuss priorities, and build collaborations.[293] At all meetings, the consensus process is used to make decisions within each team and the larger collective.[294]

The organization also aims to approach fundraising consistently with these anti-authoritarian principles. It seeks to maintain a large donor base of community members and allies, rather than relying on a small number of foundations and wealthy individuals.[295] They raise significant funds from sliding-scale and free community events that raise money and use mass mailings that both solicit donations and share information about issues facing the trans community in New York.[296] Despite these successes, they have not been able to fundraise in total consistency with their anti-authoritarian principles, and they have had to rely on a combination of law fellowships, foundation grants, major donors, and small donations.[297]

3.   *Mayday Bar and Community Space, Brooklyn, NY*

Mayday Bar and Community Space (Mayday) was formed by community activists who were also active participants in the Occupy Movement and is based in the historically low-income and Latino—but rapidly gentrifying— neighborhood of Bushwick, Brooklyn.[298] It conceives of itself as a "community space grounded in Bushwick but with city-wide reach and attention to social movements worldwide."[299] Where SRLP brings the tools of anti-authoritarian activism to a somewhat traditional non-profit mission— law, organizing, and political advocacy to fight for a marginalized community—Mayday has a less conventional mission for a community group: it is designed to be a community space available on a deeply-discounted sliding scale for community organizations and activists.[300]

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291. Mananzala & Spade, *supra* note 104, at 65.
292. *Id.*
293. *Id.*
294. *Id.*
295. *Id.* at 66.
296. *Id.*
297. *Id.*
298. MAYDAY SPACE, *MAYDAY SPACE HANDBOOK* 3 (2015) (on file with author).
299. *Id.*
300. *Id.*

Mayday is a low-cost, non-profit "movement"[301] landlord[302] that provides one-time, short-term, and long-term facilities to "long time community organizers to amplify neighborhood issues such as immigrant rights, food justice, tenants['] rights, gentrification and displacement as well as broader global issues such as climate justice and Internet freedom."[303]

But the goal goes beyond that: Mayday aims to be conscious about use of the space as a hub for social movement actions and dialogue between different groups of activists, different movements, and local residents, and to bridge between anti-authoritarian and more traditional community justice groups to foster a "broader social justice community, allowing for the cross-pollination of ideas and relationships."[304] Toward that end, Mayday offers periodic "open hours" for free use of the space by community and activist groups, holds a monthly community potluck, and sponsors other events with the goal of building community among those who use the space, activists from across the city, and local community residents.[305] The space is made affordable to community groups through its affiliate, a separately-chartered LLC that operates a bar a few blocks away, which pays for its own space as well as a significant part of the community space. Although structured as a conventional LLC, investors in the bar were presented with "the most socialist business plan"[306] imaginable so they would be aware that any profits on their investments would be secondary to subsidizing the community space as well as, upon reaching certain monthly profit benchmarks, an amount up to twenty-five percent of net profits being donated to "local organizing, climate justice direct action initiatives and the expansion of social movement infrastructure."[307]

Organizationally, Mayday shares some commonalities with SRLP. The Mayday Collective is responsible for day-to-day project management and oversight of Mayday by consensus rules, although if consensus cannot be achieved, they accept a fallback of a two-thirds supermajority to approve a proposal.[308] To become a part of the collective, a person must have spent at least six months on a committee of the organization and be approved by the

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301. *Id.*

302. Mayday is technically a sublessor, with a long-term commercial lease and permissive rights to sublet the space.

303. MAYDAY SPACE, *supra* note 298, at 3.

304. *Id.* at 4.

305. *Id.* at 7.

306. Samuel Wexman, *Jeremy Scahill Celebrated the Paperback Release of Dirty Wars at MayDay Space in Bushwick*, BUSHWICK DAILY (Oct. 14, 2014), http://bushwickdaily.com/2014/10/jeremy-scahill-celebrated-the-paperback-release-of-dirty-wars-at-mayday-space-in-bushwick/ [https://perma.cc/MQL8-4Y2P].

307. MAYDAY SPACE, *supra* note 298, at 7.

308. *Id.* at 6–7.

current collective by consensus.[309]   Mayday's committees include programming and outreach, which works on event planning, reserving the space, and conducting community outreach; and space management, which assigns people to cover shifts at "open hours" for the community to use the space and at special events, and also coordinates between the bar space and the community space.[310]   Mayday also has a board of directors, which reviews and approves its budget and major expenses, but delegates day-to-day management responsibility to the collective.[311]

To use the space, Mayday requires that individuals and groups agree to an anti-oppression statement, which includes commitments to: "a political culture grounded in solidarity, respect, listening, cooperation, kindness and non-dogmatism," "prioritize conflict de-escalation over police involvement," and "ongoing awareness of our prejudices, the structures of oppression that affect our personal experiences, and our privileges (by virtue of being white, male, cis-gendered, able-bodied, a U.S. citizen, wealthy, and/or straight, among other identities) in this society," and "hearing each other and creating opportunities for all voices to be heard, especially those that have been historically marginalized or silenced."[312] As of summer 2015, Mayday had just opened the space, and had already sought to bring in groups that could build connections between different community organizations and activists.

4.   Groups Affiliated with the Movement for Black Lives, Long Beach, CA; Ferguson, MO; Miami, FL; Cleveland and Columbus, OH

The Movement for Black Lives first came to national prominence following the killing of Trayvon Martin by George Zimmerman in Sanford, Florida in 2012 and Zimmerman's subsequent acquittal. After the verdict, Alicia Garza, Patrice Cullors, and Opal Tometi created the Twitter hashtag #BlackLivesMatter, giving a name to the frustration, fear and anger felt by many people of color after such unjustified, unpunished killings. That name turned into a rallying cry for protesters in the streets and on social media, and ultimately become a name for a movement.[313] As other unarmed African-Americans died at the hands of police officers or while in police custody in

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309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.* at 8.

313. Alicia Garza, *A Herstory of the #BlackLivesMatter Movement*, Feminist Wire (Oct. 7, 2014), http://www.thefeministwire.com/2014/10/blacklivesmatter-2/ [https://perma.cc/N7LG-2JPT]; Hunt, *supra* note 195; Herbert G. Ruffin, *Black Lives Matter: The Growth of a New Social Justice Movement*, Blackpast.org, http://www.blackpast.org/perspectives/black-lives-matter-growth-new-social-justice-movement [https://perma.cc/793C-SR3Z].

the subsequent months—Eric Garner, Mike Brown, Walter Scott, Freddie Gray, and too many others—the #BlackLivesMatter hashtag was tweeted many thousands of times while protests erupted in cities around the country.[314]

Although the importance of the hashtag #BlackLivesMatter and the organizing effort that Garza, Cullors, Tometi, and others built around it should not be downplayed as the most critical moment in the early development and growth of the Movement for Black Lives, there is also an overlap between the pre-history of this movement and the Occupy Movement. In the fall of 2011, President Obama refused to intervene in the State of Georgia's planned execution of Troy Davis, an African-American man convicted of murdering a police officer, but believed by many to be innocent.[315] In response, over one thousand anti-death penalty and racial justice activists launched a "Day of Outrage," a march through New York City that ultimately ended up at a still-fledgling Occupy Wall Street encampment at Zuccotti Park.[316] When the anti-death penalty and racial justice activists encountered the Occupy encampment, "the protestors made an immediate connection between Occupy's mobilization against inequality and the injustice in the execution of a working-class Black man. After the march, many who had been activated by the protests for Davis stayed and became a part of the Occupy encampment on Wall Street."[317] Months later, Occupy Oakland would name their encampment after Oscar Grant, who was killed by police on a subway platform in Oakland, and Occupy Atlanta would name their encampment after Davis.[318]

The Movement for Black Lives might have some history predating the killing of Trayvon Martin and the subsequent development of the #BlackLivesMatter hashtag, and both the hashtag and the Zimmerman verdict attracted national attention, but it was the series of protests stretching from summer 2014 through spring 2015 over the police killing of Mike Brown in Ferguson, Missouri that "brought the world's attention to the crisis of racist policing practices in the United States."[319] The Ferguson uprising began on the night of Brown's killing, with police seeking to quell demonstrations through brute force, traversing the streets in tanks and wearing tactical military gear adorned with wristbands proclaiming "I am

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314. Ruffin, *supra* note 313.

315. Keeanga-Yamahtta Taylor, From #BlackLivesMatter to Black Liberation 144-45 (2016).

316. *Id*.

317. *Id*. at 145.

318. *Id*. at 146.

319. Id. at 2.

Darren Wilson."[320] Police shot protesters with less-lethal weaponry, clouded the streets with tear gas, threatened journalists and unarmed protesters with live ammunition and semi-automatic weapons, and arrested one hundred seventy-two people over twelve days.[321]   Undeterred, the protests grew, attracting activists impacted by police violence across the country, and protesters held vigils, picketed outside of the Ferguson police department, blocked major highways, occupied St. Louis University, and asserted their right to demonstrate in the streets.[322]

As the Movement for Black Lives activists fought to maintain their presence in the streets, engaged in these militant tactics and months of protest, the traditional civil rights establishment suddenly found that younger activists questioned their relevance.[323]   Reverend Al Sharpton, among the most prominent of these establishment leaders, blamed the protesters for the police crackdown, even criticizing the activists as he delivered the eulogy at Brown's funeral.[324] Sharpton tried to keep protesters focused on the narrow issue of police accountability, but the younger protesters rejected Sharpton and developed an increasingly broad, intersectional, radical political vision, while Sharpton resorted to name calling, comparing the leaders of the new movement to "pimps" and "hoes."[325]

From the outset, the Movement for Black Lives began as a network like the Occupy Movement, as opposed to a more traditional civil rights organization with a non-profit board and hierarchical leadership.[326] Aiming to do no less than "(re)build the Black liberation movement,"[327] many in the Movement for Black Lives were influenced by intersectionality, LGBTQ activism, and women-of-color feminism, by Pan Africanism, and by the

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320. *Id*. at 154-55. Darren Wilson is the police officer who killed Mike Brown.

321. *Id*. at 155.

322. *Id*. at 155-56.

323. *Id*. at 158-59.

324. *Id*. at 159-60.

325. *Id*. at 159-73; Azi Paybarah, *Amid Tensions, Sharpton Lashes Out at Younger Activists*, POLITICO (Jan. 31, 2015), http://www.politico.com/states/new-york/city-hall/story/2015/01/amid-tensions-sharpton-lashes-out-at-younger-activists-019334 (quoting Sharpton as saying that protesters' criticism of older civil rights leaders shows their naiveté, that they are letting the national attention "play on [their] ego[s]. 'Oh, you young and hip, you're full of fire. You're the new face.' All the stuff that they know will titillate your ears. That's what a pimp says to a ho.").

326. Coco Fusco, *The Latest Protests Are Similar to the Occupy Movement*, N.Y. TIMES (Dec. 15, 2014), http://www.nytimes.com/roomfordebate/2014/12/15/what-does-the-style-of-a-protest-say-about-a-movement/the-latest-protests-are-similar-to-the-occupy-movement [https://perma.cc/8LJM-MNZZ].

327. Garza, *supra* note 313.

Occupy Movement.[328]   Many—though surely not all[329]—of these activists
frame the struggle as an intersectional and perhaps horizontalist movement,
as Garza does:

> Black Lives Matter is a unique contribution that goes beyond extrajudicial
> killings of Black people by police and vigilantes. It goes beyond the narrow
> nationalism that can be prevalent within some Black communities, which
> merely call on Black people to love Black, live Black, and buy Black,
> keeping straight cis Black men in the front of the movement while our
> sisters, queer and trans and disabled folk take up roles in the background or
> not at all.   Black Lives Matter affirms the lives of Black queer and trans
> folks, disabled folks, Black-undocumented folks, folks with records,
> women and all Black lives along the gender spectrum.   It centers those that
> have been marginalized within Black liberation movements.[330]

As often-disconnected demonstrations emerged in cities around the
country to proclaim "Black Lives Matter," activists in these different cities
pushed Garza, Cullors, and Tometi to coordinate the formation of a

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328. Ruffin, *supra* note 313. One example of the direct influence of the Occupy Movement
on the Movement for Black Lives can be seen through the work of the Wildfire Project, a
group founded by an active participant in Occupy Wall Street and Occupy Sandy, which has
provided trainings on movement-building and organizing to some well-known groups
affiliated with the Movement for Black Lives, including the Dream Defenders and Ohio
Student   Association.   *See*   The   Wildfire   Team,   THE   WILDFIRE   PROJECT,
http://www.wildfireproject.org/who-we-are/the-wildfire-team/;   Current   Groups,   THE
WILDFIRE   PROJECT,   http://www.wildfireproject.org/who-we-are/current-groups/.
Similarly, the "think-make-and-do-tank" Movement NetLab is led by activists with
experience in both the Movement for Black Lives and the Occupy Movement and has worked
on trainings with BlackLivesMatter NYC. *See* Who We Are, MOVEMENT NETLAB,
http://movementnetlab.org/who-we-are/;   BlackLivesMatter NYC,   MOVEMENT NETLAB,
http://movementnetlab.org/portfolio-items/black-lives-matter/?portfolioID=11300.

329. In her study of the Movement for Black Lives and how the legal academy can be
involved in it, Amna Akbar argues that it is hard to make blanket statements about the
movement as a whole, because, like "the celebrated movements of the past, debate and
disagreement, experimentation, trial, error, and correction are everywhere. Short- and long-
term goals vary among members of the movement, as do the tactics, strategies, and underlying
commitments to liberal, reformist, and radical politics. At this early moment, a full taxonomy
of the movement is impossible . . . ." Amna A. Akbar, *Law's Exposure: The Movement and
the Legal Academy*, 65 J. LEGAL EDUC. 352, 356 (2015).

330. Garza, *supra* note 313; *see also* Akbar, *supra* note 329, at 359–60 ("Movement leaders
take an intersectional approach that incorporates race, sex, gender, and class in to the
movement's analysis. Moreover, the history of chattel slavery . . . has been invoked to frame
capitalism as central to the devaluation of black life, creating a vein of anti-capitalist and
socialist critique.").   However, an important critique of this focus has been made by a
Movement for Black Lives activist named R. L. Stephens II, who argues that these claims of
intersectionality obscure an effort by some within the movement to create a leadership class
of middle-class, college educated Black people whose lived experience of police violence is
different from that of Black people who live in poverty. Interview by Doug Henwood, Behind
the News Podcast, with R. L. Stephens II, Editor, Orchestrated Pulse (Aug. 13, 2015),
https://kpfa.org/episode/behind-the-news-august-13-2015/.

centralized coalition.[331]   This has led to some degree of confusion over names, as there is now both the "official" coalition they formed called the "Black Lives Matter Network," as well as a broader social movement network that is often called the "Black Lives Matter Movement" or the "Movement for Black Lives."[332] These overlapping names may reflect some degree of tension or philosophical difference between parts of the activist network Movement for Black Lives and the more centralized Black Lives Matter Network,[333] but this is easily overstated—the Black Lives Matter Network does not try to prevent others from calling themselves part of Black Lives Matter, but asks that if they do so they retain the intersectional political vision of the creators of the hashtag.[334]

Although some who have participated in the Movement for Black Lives might view it as centered principally on the demand for the state to change its policies on policing and police tactics and to prosecute and punish officers who engage in violent misconduct,[335] this is easy to overstate. Some within the Movement for Black Lives reject making any such policy demands.[336] At the national level, a coalition of more than sixty groups affiliated with the Movement for Black Lives released *A Vision for Black Lives: Policy Demands for Black Power, Freedom & Justice*, a broad and intersectional set of forty proposals and thirty-four policy briefs centered across six themes: ending the war on Black people (including an end to capital punishment, an

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331. Ash-Lee Henderson, Concerned Citizens for Justice & Project South, Current Uprisings and Movements in the United States and Prospects for Coalition Building, Plenary Presentation at ClassCrits VIII—Emerging Coalitions: Challenging the Structures of Inequality Conference (Oct. 23, 2015).

332. Bill Fletcher, Jr., *From Hashtag to Strategy: The Growing Pains of Black Lives Matter*, IN THESE TIMES (Sept. 23, 2015), http://inthesetimes.com/article/18394/from-hashtag-to-strategy-the-growing-pains-of-black-lives-matter [https://perma.cc/3EXM-WYDU]. To try to minimize such confusion, this article refers to the broader movement as the Movement for Black Lives.

333. *Id*. (engaging in a panel discussion where R. L. Stephens states, "I've noticed a growing divide between rhetoric from the dominant voices within the Black Lives Matter network and what I've heard from Black people on the ground . . . . The fact that there are queer Black women at the forefront of the hashtag and the organization has been highlighted; that's good, but . . . the dynamics are the same as the old leadership class. I'm seeing a lot of representational tactics, but I'm not seeing real power built at the ground level for marginalized people").

334. *See* Garza, *supra* note 313 (telling activists who "adopt Black Lives Matter and transform it into something else . . . [that] it's appropriate politically to credit the lineage from which your adapted work derived . . . . If you adapt Black Lives Matter, use the opportunity to talk about its inception and political framing.")

335. *See, e.g., #BlackLivesMatter National Demands*, BLACK LIVES MATTER, http://blacklivesmatter.com/demands/ (demanding the arrest of Darren Wilson and dismissal of prosecutor Robert McCullough, the discontinuance of a federal program supplying military weaponry to local law enforcement agencies, and lower spending on law enforcement in general) (last visited Aug. 28, 2015).

336. Akbar, *supra* note 329, at 357.

end to the war on Black immigrants, trans, queer, and gender-nonconforming people, the demilitarization of law enforcement, and a radical transformation of the penal system); reparations (including free access to lifetime education for all Black people and a guaranteed minimum livable income for all Black people); investments in the education, health, and safety of Black people and divestment from exploitive forces (including the decriminalization of drugs, universal health care, a divestment from fossil fuels, and cuts in military expenditures); economic justice (including a more progressive tax code, job programs, the renegotiation of trade agreements, financial support for Black alternative institutions, and protections for workers); community control (including direct community control of law enforcement agencies, an end to the privatization of education, and participatory budgeting at the local, state, and federal levels); and political power (including the release of political prisoners, net neutrality, and protection and funding for Black institutions).[337] This broad, ambitious document, the product of a year of research and debate among Movement for Black Lives activists across the country, reflects the intersectional focus of the movement as well as the experience of Garza, Cullors, and Tometi, all "veteran organizers with a distinguished record of fighting for economic justice, immigrant rights, gender equity, and ending mass incarceration."[338]

At the local level, many Movement for Black Lives activists have worked on autonomous, affinity group-style projects under a Black Lives Matter banner on a wide range of issues impacting African-American communities, women, poor people, and others. For example, in Long Beach, California, autonomous Movement for Black Lives projects include a support circle for mothers who have lost loved ones; a campaign for a civilian police oversight board; a door-to-door community organizing project "surveying residents on their experiences in and visions for Long Beach in regards to criminal justice, economics, politics, and social justice";[339] and a "cop watch" project that films police encounters and also connects people with human rights observers and lawyers.[340] In Ferguson, a local coalition of groups and individuals called Hands Up United launched community programs that aim to organize community members around police misconduct issues while also providing educational services, job training, and other programs as part of

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337. A Vision for Black Lives: Policy Demands for Black Power, Freedom & Justice, THE MOVEMENT FOR BLACK LIVES, https://policy.m4bl.org/.

338. Robin D. G. Kelley, *What Does Black Lives Matter Want?*, BOSTON REVIEW (Aug. 17, 2016), http://bostonreview.net/books-ideas/robin-d-g-kelley-movement-black-lives-vision.

339. *Projects*,   BLACKLIVESMATTER   #LBC, https://blacklivesmatterlbc.wordpress.com/projects/ [https://perma.cc/U2Q6-EFKV].

340. *Id.*

that organizing work.[341]   Following a model similar to that of the Black Panthers, the coalition started a "Books and Breakfast" program that offers free breakfasts along with readings on wide-ranging radical political themes.[342] The goal is to merge direct services with "political education and community organizing, so these conversations continue for weeks."[343] Groups within the Hands Up United coalition have also launched community gardens, a job-training program, and a monthly conversation circle that aims "to do all things—not just a police brutality banner but a more holistic look at how we solve systemic racism, and how that intersects with class and gender."[344] Through all of these projects, the broader Hands Up United coalition has remained committed to organizing and has helped to coordinate the ongoing protests and actions around police violence in the Ferguson area.[345]

Other groups affiliated with Movement for Black Lives are be less focused on developing community programs than Black Lives Matter Long Beach and the Hands Up United Coalition, but have embraced many of the core commitments of anti-authoritarian activists while maintaining community roots. The Ohio Student Association—based in Cleveland and Columbus, but with statewide chapters—and Miami's Dream Defenders are both local groups with national reach. Both groups are closely tied to the Movement for Black Lives but do not limit their work to issues related to policing or even racial justice, instead framing their work around how "capitalism, patriarchy, and white supremacy operat[e] as one mutually reinforcing system."[346] These and other groups have formed a national coalition called Freedom Side, which aims to link policing issues, educational inequality, the criminalization of immigrants, the rights of gender non-conforming people, and the economic needs of low-wage workers in a broad national coalition.[347] They aim to transform the flare-ups of Black Lives Matter protests into a

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341. Carimah Townes, *How Ferguson Changed Once the Media Went Home*, THINK PROGRESS (Aug. 5, 2015), http://thinkprogress.org/justice/2015/08/05/3687679/what-ferguson-looks-like-one-year-later/ [https://perma.cc/EQQ7-ZT5U].

342. *Id.*

343. *Id.*

344. *Id.*

345. *See* Rika Tyler, *Ferguson 1 Year Later: We're Still Living in Crisis*, HANDS UP UNITED (Aug. 13, 2015), http://www.handsupunited.org/blog/stillincrisis/ [https://perma.cc/VVC5-MURE] (describing the "front liners" like Hands Up United and other groups who are still protesting peacefully in the streets, and who, in the face of mace, flash grenades, mass arrests, and other police force, are still "in it for the long haul").

346. Geoff Gilbert, *Freedom Side's Emerging Radical Democratic Imagination*, WAGING NONVIOLENCE (July 1, 2015) (quoting James Hayes), http://wagingnonviolence.org/feature/freedom-sides-emerging-radical-democratic-imagination/ [https://perma.cc/9FZV-8NYS].

347. *Id.*

longer-term community-based movement and to do so not through traditional organizing but using horizontal organizing and consensus, through the creation of a democratic community of activists to lead local campaigns in Florida, Ohio, and elsewhere, and to come together to collaborate on national issues.[348]

IV. FROM CED TO COMMUNITY COUNTER-INSTITUTIONS

The examples described in Part III should not be understood to be unequivocal successes or taken as universal models, but together these projects point to varied ways that community counter-institution models are developing and how they hold potential to bring together the strengths of traditional CED and community-based social justice groups with anti-authoritarian principles and tools, creating new models for politically-engaged, movement-building community activism that also provides essential community services.

CED groups have been able to build affordable housing, develop job-training and social-service programs, and create community-minded small businesses and social enterprises. Over its decades of history, however, there is little evidence that CED models have meaningfully affected poverty beyond relatively small-scale development successes, and its model has too often distracted community groups from engaging in the kinds of confrontational community organizing and mass-movement building that many believe to be essential for social change.[349] Some CED practitioners recognize this and have argued for putting more emphasis on worker co-ops or integrating CED more closely with community organizing campaigns, such as through community benefits agreements projects.[350]

Community counter-institution models propose a deeper philosophical shift, one that goes beyond just a greater connection to community organizing, one rooted in anti-authoritarian commitments to horizontalism, autonomy, and prefigurativism. Section A of this Part IV presents ways that community counter-institution models have the potential to overcome the problems with CED identified in Part I by looking at three broad shifts these groups are making away from current community-based organization norms. Section B outlines some of the challenges for these community counter-institutions to building successful social change projects that provide essential services, organize communities toward the development of a mass movement, and seek to ultimately "change the world without taking

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348. *Id.*
349. *See* discussion *supra* Parts I.B., I.C.
350. *See supra* notes 97–99 and accompanying text.

power."[351] Section C describes some ways that transactional social change lawyers can support these efforts.

A.   Community Counter-Institutions Have the Potential to Fight Structural Inequality from Within Communities More Effectively than the Dominant Social Justice Non-Profit and CED Models

Community counter-institution models point to three conceptual shifts from current forms of community-based non-profit organizations. This section describes the impacts of shifting from CED to prefigurativism, from hierarchy to horizontalism, and from empowerment to autonomy.

1.   *From CED to Prefigurativism*

Prefigurativism describes the anti-authoritarian commitment to using processes in organizing and building a social change movement that are themselves already constructing the world they want to see.[352]   CED, especially when operating in the now-typical market-based forms that are heavily reliant on banks, corporations, and government programs, is far from prefigurative. CED practitioners accept, with some disappointment, the degree to which their work has become driven by funders, lenders, and complicated financing schemes.[353] Emergent community counter-institution models hold the potential to: (a) focus on politicized, confrontational community organizing and mass movement-building as their core missions, rather than over-investing their resources on development projects that in themselves may have little impact on poverty or inequality; (b) work beyond neighborhood boundaries to build a broader social change movement; and (c) if not wholly launch a movement against the 501(c)(3) system and other non-profit legal and regulatory oversight regimes, at least encourage their members to consider how the laws governing their activities are themselves worthy of political analysis and critique and may themselves raise opportunities for organizing.

a.   *Community Counter-Institutions Can Focus on Politicized Community Organizing and Mass Movement-Building that Challenges the Structural Drivers of Poverty and Inequality*

CED programs have been successful at creating housing, community facilities, job training programs, social services programs, incubating small businesses and worker co-ops, and more.[354] But these successes have led

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351. *See generally* HOLLOWAY, *supra* note 143.

352. *See supra* notes 137–42 and accompanying text.

353. *See supra* notes 76–78 and accompanying text.

354. *See supra* note 92 and accompanying text.

many CED programs to prioritize bricks-and-mortar development projects ahead of community organizing and movement building, leading CED programs too often to fail to aggressively challenge the structural drivers of inequality.[355] The reasons for this include the need for CED groups to maintain relationships with banks, government agencies, and private foundations in order to fund costly projects,[356] and the time and effort required for community groups to undertake these large-scale projects, which can often take away from the energy and resources needed for organizing and base-building projects.[357]

By grounding their efforts in prefigurativism, community counter-institutions have the potential to focus on building a mass movement while still providing essential community services. This flips the political logic of the CED model on its head. In the CED model, services are provided to improve a community, block by block, often with little attention paid to broader issues, except to the extent they impact locally. Conversely, community counter-institutions aim to build a mass movement and look to local service-provision as one element of developing, from the grassroots and prefiguratively, a more equal system of human relations as a part of the process of building a mass movement.[358]

In the community counter-institution, community services are closely tied to organizing. Every food pantry or afterschool program is also an opportunity for organizing, in the way that Occupy Sandy projects sought to organize people from communities directly or indirectly impacted by the storm, converting them from volunteers to activists,[359] the way that SRLP aims not to simply provide legal help to as many people as possible, but focuses significant resources on developing a "by-and-for environment" of mutual aid, organizing and building its collective as it provides services,[360] or the way the Hands Up United coalition combines organizing, political education, and direct service in its Books and Breakfast program.[361]

b. Community Counter-Institutions Can Create Networks Beyond Local Neighborhood Boundaries to Build a Broader Movement

In many cases, CED projects concentrate their efforts in a neighborhood that has become home to primarily people of one particular race or ethnicity

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355. *See* discussion *supra* Part I.B.1.
356. *See supra* notes 76–78 and accompanying text.
357. *See supra* note 63 and accompanying text.
358. *See supra* notes 140–45 and accompanying text.
359. *See supra* note 252–53 and accompanying text.
360. *See* Mananzala & Spade, *supra* note 104, at 64; *supra* notes 288–89 and accompanying text.
361. *See supra* notes 342–43 and accompanying text.

not due to accident, but to long histories of discrimination and segregation by class and race.[362] Community groups have a tendency to accept those existing neighborhood divisions and only rarely seek to build alliances across communities, races, ethnicities, and other categories of identity to build a mass movement for social change.[363] Community counter-institutions may be similarly grounded at the community level, but aim to engage with broader issues and do not limit themselves or their actions to a narrowly-defined service area, even if such a community remains its base. Mayday, for instance, seeks to be "grounded in Bushwick but with city-wide reach and attention to social movements worldwide."[364] Similarly, community projects affiliated with the Movement for Black Lives from across the country have directly coordinated joint efforts on national campaigns, both online and in person, while organizing and providing direct services in their local communities.[365]

c. Community Counter-Institutions Can Use Legal Questions about their Own Structures as Opportunities for Organizing

Community-based social justice non-profits have generally relied on 501(c)(3) status as a tool to help them fund their projects, but the overall tax-exemption system does not necessarily help low-income communities, as a lot of otherwise taxable money that could fund public programs is diverted from government revenues and given to private entities that may, in many cases, provide little benefit to poor people or people of color.[366]

Because of this critique and a general anti-authoritarian skepticism toward the federal government, many anti-authoritarian projects wrestle with whether or not to seek 501(c)(3) status, trying to balance prefigurative politics with the benefit that 501(c)(3) status can convey to their programs and their supporters, many of whom may themselves be low- or moderate-income people. Ideally, community counter-institutions would seek to use this 501(c)(3) dilemma as an opportunity to connect their organizations to broader political issues and make the decision of whether or not to apply for 501(c)(3) status in a politicized context, considering critiques of how the tax system is sometimes used to drive inequality and disfavor low-income communities, using the decision-making process itself as an opportunity for organizing.

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362. *See supra* notes 83–84 and accompanying text.
363. *See* discussion *supra* Part I.B.2.
364. MAYDAY SPACE, *supra* note 298, at 3.
365. *See* discussion *supra* Part III.B.4.
366. *See* discussion *supra* Part I.C.3.

2. *From Hierarchy to Horizontalism*

Although CED and community-based social justice non-profits more broadly consider community input, and even community control, to be essential, for many CED efforts, there is a stark divide between this ideal and the day-to-day work necessary to achieve community priorities.[367] In the typical non-profit corporate structure, decision-making authority is controlled by the majority vote of a somewhat small board of directors, a process in which dissenters ultimately lose their voice in setting the direction of the organization.[368] For many non-profits board power is even more tightly controlled, with a small minority of directors and senior staff holding *de facto* power over the rest of the board of directors.[369] This dynamic can be especially problematic on boards where some directors are members of the community and others are on the board because of their professional expertise or access to financial resources. Such commonplace arrangements can lead to community members becoming less active leaders of their organizations and sometimes even just window-dressing for nominally community-led organizations.[370]

Unfortunately, CED and CED lawyers are sometimes among those responsible for this. The emphasis of CED programs on projects like affordable housing, facilities development, and small business development not only tends to require experience concentrated in those from relatively privileged backgrounds, it also typically requires a fleet of outside experts—lawyers, bankers, business consultants, architects, and others, all of whom collectively have a tendency to take over the day-to-day work on a project, even for the most community-minded CDCs.[371]

Horizontalism is rooted in a commitment to equality and opposition to all oppression.[372] Community counter-institutions seek to break from mainstream social justice organizations, in which boards and senior staff set an agenda and more junior staff or volunteers are tasked with implementation, to create more egalitarian approaches that hold the potential for more meaningful community control.[373] Common Ground Collective, SRLP, and Mayday all move away from the model in which a board and

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367. *See* discussion *supra* Parts I.B.2, I.C.2.

368. *See, e.g.*, MODEL (THIRD) NONPROFIT CORP. ACT § 8.24(c) (2008) (providing the default rule that "[i]f a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors.").

369. *See generally supra* notes 88, 114–17 and accompanying text.

370. Shah, *supra* note 36, at 239–40.

371. *See generally supra* notes 63, 88 and accompanying text.

372. *See supra* note 134–37 and accompanying text.

373. *See supra* note 136 and accompanying text.

senior staff set the agenda for subordinate staff and volunteers.[374] Although both SRLP and Mayday have non-profit corporate boards, their powers are circumscribed, with both using boards as quasi-affinity groups primarily tasked with ensuring legal compliance and consistency with broad organizational missions, not programming specifics or policy decisions.[375] Both groups also have collective bodies to coordinate the work of the entity as a whole, rather than an Executive Director or similar person who would typically play a more traditional managerial role.[376] While interpersonal power dynamics and hierarchies within social relationships surely still exist in these groups,[377] the decision to work within a prefigurative, horizontal structure can lead, over time, to groups that maintain programmatic effectiveness while developing to become increasingly horizontal, which can mean becoming increasingly accessible to, and controlled by, the community.[378]

At a deeper level, horizontalism describes efforts to structure interpersonal relationships in ways that can be used to fight against these hierarchies that still permeate our relationships and work toward a more truly equal, horizontal solidarity.[379] Community counter-institutions strive to be attuned to how their internal organizational structures can be used to promote such horizontal solidarity. Where many in a community may be left feeling outside of the work done by CED groups because of the predominance of outside professionals and senior staff who may not be fully trusted or embraced as community members, horizontalist structures aim to combat such marginalization by constant attention to organizational inclusiveness to a far greater degree than traditional community-based non-profits.[380] Mayday, for instance, requires all people using the space to agree to an anti-oppression statement that specifies commitments to: "[A] political culture grounded in solidarity, respect, listening, cooperation, kindness and non-dogmatism [and] hearing each other and creating opportunities for all voices to be heard, especially those that have been historically marginalized or silenced."[381]

Similarly, while many progressive non-profits aim to be inclusive and seek to hire a diverse staff or a staff that is representative of the communities

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374. *See* discussion *supra* Part III.B.

375. *See supra* notes 290, 311 and accompanying text.

376. *See supra* notes 277–94, 308–11 and accompanying text.

377. *See generally* discussion *infra* Part IV.B.3.

378. One example of this might be when SRLP separated from the Urban Justice Center. *See supra* note 285 and accompanying text.

379. *See supra* note 138 and accompanying text.

380. *Id.*

381. *See* Mayday Space, *supra* note 298, at 8.

they serve, SRLP goes beyond such measures by requiring specific percentages of people of color and trans people to serve in various capacities throughout the organization, aiming to ensure community control throughout every prong of the group.[382]

3. From Empowerment to Autonomy

One of the main concepts underlying CED and other community-based social justice efforts is the theory that by joining a community group and working together with their neighbors, local residents of a community can become "empowered" through being part of a community effort to improve their neighborhoods.[383] The anti-authoritarian principle of autonomy, on the other hand, is rooted in a commitment to individual freedom and opposition to hierarchy.[384] Through their commitment to the principle of autonomy, community counter-institutions have the potential to: (a) move away from the necessity of compromising for the sake of the group necessitated by "empowerment" models toward a more direct model that gives priority to organizing, action, and individual freedom over dialogue and compromise, driving direct community control over their own struggles; and (b) return community organizing and movement-building to the central mission of the community group, even while it simultaneously provides essential community services.

a. Community Counter-Institutions Depart from "Empowerment" Models to Give Direct Control to Individuals in the Community

Exactly how the process of empowerment works is often left somewhat vague in the scholarship on CED, and critics have argued that the "attractiveness of the empowerment ideal is its ideological fungibility . . . . [Empowerment] serves as a convenient shorthand for an array of amorphous commitments, resonating with nationalist conceptions of autonomy, progressive ideals of activism, liberal notions of participation, and conservative principles of self-help."[385] Even if the process of "empowerment" is not chimeric, so much of CED is dominated by market-based methods and government programs that opportunities for such "empowerment" are tightly constrained.[386]

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382. *See supra* note 291 and accompanying text.
383. *See* discussion *supra* Part I.B.3.
384. *See supra* notes 131–33 and accompanying text.
385. Scott L. Cummings, *Recentralization: Community Economic Development and the Case for Regionalism*, 8 J. SMALL & EMERGING BUS. L. 131, 132–33 (2004); *see also supra* notes 89–91 and accompanying text.
386. Cummings, *supra* note 385, at 141.

Community counter-institutions propose new models that move away from a primary focus on the process of "empowerment" driven by community members coming together in a transformative dialogue[387] to ones that push for the decentralization of power to autonomous small group structures that are governed by direct democracy and operate with substantial liberty from the larger group through a consensus process. The structure of SRLP, for example, allows a small group with a majority of community members to fully define their own program and then to lead it, subject only to the low bar of the larger organization's consensus support for the broad goal.[388] Their twice-yearly organization-wide meetings do not exist to "empower" community members, but, if anything, to be a slight check on what are ideally wholly community-engineered, community-led projects that report to the larger group only for consensus approval of their broadly-framed goal.[389] Similarly, Common Ground Collective allowed groups to define and run their own projects, with the central body largely performing administrative and not directive or agenda-setting functions.[390] These models are grounded in a different perspective than the "empowerment" philosophy underpinning CED.[391] The autonomous approach gives primacy to the rights of a small group of allied individuals over broad, community-level collectivism. Conceptually, the power of the broader group and the important bonds of community solidarity might seem to be sacrificed in the community counter-institution model, but the individual freedom inherent in autonomous models may in fact invite deeper feelings of allegiance to the broader group project than the "empowerment" model typically does.

Community counter-institution models likely work best as organizing tools when there are easy ways for community members to move from curious outsiders to active affinity group members, but, understandably, existing participants in a community counter-institution often want to exercise some caution before allowing the group's name or reputation to be harmed by one person's negligence or misdeeds. Toward striking such a balance, Mayday requires that a person spend at least six months on a committee of the organization and to subsequently be approved by consensus of the current collective in order to join the collective.[392] SRLP, similarly,

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387. *See, e.g.*, Huertas-Noble, *supra* note 19, at 266 (describing empowerment as a "collective, participatory process that redistributes power and wealth").

388. *See supra* notes 289–94 and accompanying text.

389. *See supra* notes 293–94 and accompanying text.

390. *See supra* notes 270–73 and accompanying text.

391. *See* discussion *supra* Part I.B.3.

392. *See supra* note 309 and accompanying text.

requires a commitment to work a minimum number of hours per month for a year to join the collective.[393]

A decentralized, autonomous community counter-institution model creates opportunities for new, potentially novel approaches to developing community service programs. Food Not Bombs programs, for instance, provide thousands of free meals while simultaneously reducing waste and promoting healthy food and environmental causes at almost no cost.[394] If Occupy Sandy had limited itself to simply the immediate needs of low-income, storm-impacted communities, there may not have been a participatory, documentary film that captured the disaster from the perspective of the local residents, or a community benefits agreement campaign in a Sandy-impacted neighborhood, or an effort to launch a group of worker-owned cooperatives with local residents.[395] Similarly, if it were not for its affinity group-driven model, Common Ground Collective may not have devoted resources to its unobvious but widely-used free bicycle project.[396]

> b. *Community Counter-Institutions Return Community Organizing and Movement-Building to the Central Focus of the Community Group, Even While They Provide Essential Community Services*

The potential of the community counter-institution and the affinity group structure to give primacy to organizing and movement-building even while they provide community services is at the core of the community counter-institution model. While CED groups have been able to develop large-scale affordable housing projects, education, social service, and other essential programs, they often come at the cost of minimizing the importance of confrontational community organizing and mass-movement building.[397] The effectiveness of mass organizing through the autonomous model became nationally known through the Occupy Movement, which was able to develop hundreds of autonomous projects in nearly no time through a model that was constantly organizing and allowing small groups of people to generate their own projects, subject only to consensus; similarly, a large, confrontational mass Movement for Black Lives has been able to spread across the country through networked, autonomous organizing.[398] The community counter-institution holds the promise of allowing varied projects to come from

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393. *See supra* note 291 and accompanying text.

394. *See FAQ*, FOODNOTBOMBS, http://foodnotbombs.net/new_site/faq.php [https://perma.cc/6S9A-ZM7N].

395. *See supra* notes 249–59 and accompanying text.

396. *See supra* note 274 and accompanying text.

397. *See* discussion *supra* Parts I.B.1, I.B.2, I.B.4, and I.C.1.

398. *See supra* notes 331–34 and accompanying text.

autonomous affinity groups operating within the same broader effort, tied together by community and the consensus process, such as some of the best of what Common Ground Collective, Occupy Sandy, SRLP, and others have developed.

This is, of course, not to say that every project undertaken in an affinity group structure is important.[399] Clearly the anti-authoritarian approach sacrifices certain types of experience and sophistication for autonomy, direct community project design and implementation, and the potential for confrontational organizing. For anti-authoritarian activists, an organizing effort that mobilizes people to join a community project with meaningful control by those community members can be a success even when it fails to really gain traction or produce an impressive result. This is the complete opposite of what so many of CED groups have ultimately come to do; they may find success building tangible community assets like affordable housing, but they often do so by sacrificing meaningful community involvement and a commitment to organizing in their communities for more substantial change.

B.   Challenges for Community Counter-Institutions

The criticisms of CED and community social justice organizations that have been explored in this article hold those groups to a high standard, at least in part because critics have a decades-long record to analyze. Community counter-institutions are largely still quite new, and anti-authoritarian activists are still experimenting with quite different models. To develop successful community counter-institutions that have deep community roots, provide essential community services, and effectively organize for social change, anti-authoritarian activists developing such projects must meet at least four challenges: meaningful community acceptance and participation; accountability; internal power dynamics; and the ability to develop substantial community projects.

1.   Community Counter-Institutions Must Work to Get Meaningful Community Acceptance and Participation

CED projects were not all created nor led by people from the low-income communities and communities of color that they typically serve, but most either did come out of those communities, or worked for years to forge community connections and develop meaningful community participation and varying degrees of community control.[400] Anti-authoritarian activists

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399. *See, e.g.*, *supra* note 204 (describing a choreographed dance "flash mob" planned early in the history of Occupy Wall Street).

400. *See generally* discussion *supra* Part I.A.

have never been as all-white nor as privileged as some of their detractors have claimed,[401] but anti-authoritarian activism has not infrequently failed to live up to its horizontalist ideals.[402] Many within the Occupy Movement, especially women, people of color, and people with childcare or family-care responsibilities, felt marginalized by the General Assembly process.[403] Many felt that when they had questions or wanted to express their opinions, the people most familiar with the movement's elaborate hand gestures and rituals would tell them it was not their turn to speak, using hand gestures and "telling them that their most passionately held beliefs are not 'on process.'"[404] This cast many people—often less educated, less comfortable with bureaucracy, often people of color, sometimes people with mental health or substance abuse issues—as disruptive outsiders.[405] Perhaps to the credit of the anti-authoritarian model, these issues were debated openly, but such intractable debates over process and inclusiveness led many to feel that the General Assemblies had turned into "an exercise in futility."[406]

The groups highlighted in Part III have made significant efforts to do better than mass anti-authoritarian efforts like the General Assemblies of the Occupy Movement, but community counter-institutions must remain vigilant of maintaining deep roots in low-income communities and communities of color. Even when a group of people first forming a community counter-institution are unquestionably part of their community, they must do a better job of explaining their model to people who may be totally unfamiliar with anti-authoritarian principles, and they should work to create models that are grounded in anti-authoritarian principles but do not require hours of training with a thirty-page handbook full of charts and diagrams in order to engage with the group. As Mayday aims to do,[407] community counter-institutions should create multiple ways for people to participate in the project and develop their members' understanding of anti-authoritarian principles and the group's structure over time, and not solely cater to veteran activists.

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401. *See supra* note 221 and accompanying text.

402. *See supra* notes 165–66 and accompanying text.

403. Hannah Chadeayne Appel, *People Before Process: The Bureaucracies of Anarchy Pt. 2*, SOCIAL TEXT (Dec. 14, 2011), http://socialtextjournal.org/people_before_process_the_bureaucracies_of_anarchy_part_ii/ [https://perma.cc/PFN6-P7WL].

404. *Id.*

405. *Id.*

406. *Id.*

407. *See supra* note 304 and accompanying text.

2.   *Community Counter-Institutions Must Develop Tools for Accountability in a Decentralized Structure*

Neither the large-group consensus process nor the affinity group-style decentralized project are particularly good tools for ensuring accountability or efficiency on a project. Efforts that could be critical for the success of an organization may be given to a working group that is dysfunctional or inexperienced, and the broader community counter-institution may not find out about a critical mistake or delay until it is too late. Just as much as the most hierarchical non-profit, community counter-institutions need to develop ways to make sure that essential tasks—whether related to programming, legal compliance, or maintenance of the collective—are taken seriously and done to the standard and with the efficiency expected by the broader group.

Anti-authoritarian groups are not always good at ensuring such accountability, and community counter-institutions are working to develop new tools to achieve greater accountability in a decentralized structure. For instance, Common Ground Collective had a centralized body that dealt with legal and financial matters,[408] SRLP requires that one full-time employee serve in each working group in order to ensure that some highly trusted people are involved, but do not control, all parts of the decentralized group,[409] and both Mayday and SRLP require some length of commitment to the organization before being invited to be a full member.[410] To the extent that all of these put obstacles in the way of easy community access and a fully prefigurative structure, they may be imperfect compromises.

3.   *Community Counter-Institutions Must Recognize How Power Continues to Persist Within Their Groups and Watch for "the Tyranny of Structurelessness"*

In *The Tyranny of Structurelessness*, an early-1970s feminist essay still widely discussed among anti-authoritarian activists, Jo Freeman argues that because radical feminist consciousness-raising groups prided themselves on a lack of formal rules, unwritten rules, informal hierarchies, and friendship cliques created interpersonal power dynamics with no less of an oppressive hierarchy than other groups, just with intra-group power relations obscured, "a smokescreen for the strong or the lucky to establish unquestioned hegemony over others."[411] Being alert to how cliques can lead others to be

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408. *See supra* note 273 and accompanying text.

409. *See supra* note 291 and accompanying text.

410. *See supra* notes 291, 309 and accompanying text.

411. Jo   Freeman,   *The   Tyranny   of   Structurelessness*,   JOFREEMAN.COM, http://www.jofreeman.com/joreen/tyranny.htm   [https://perma.cc/72GZ-L497].   Freeman's

2016]

marginalized within the group is essential for community counter-institutions, perhaps especially for groups that aim to bring together people from diverse backgrounds, across race, class, gender, sexual orientation, age, and other identity categories. Such divisions were apparent within the Occupy Movement, and women, people of color, and others were sometimes made to feel unwelcome.[412] Community counter-institutions that seek to have participation from volunteers, board members, and staff, all with varying time commitments and backgrounds, need to be attuned to these dynamics and must work to ensure that no participants are marginalized within the group.

4.   Community Counter-Institutions Must Learn to do Big Things, which Sometimes May Require Money

Although market-based CED is imperfect, efforts by community groups to develop projects outside of a market-expansion framework—in the form of community benefits agreements, worker co-ops, and other projects that try to go beyond market-based CED—rarely achieve the scale of results that are commonplace in market-based CED. CED projects have created billions of dollars of affordable housing developments, major community facilities, scores of small businesses, social enterprises, job-training facilities and other employment engines, and this work has been, for the most part, undertaken with some level of collaboration with, and sometimes leadership from, low-income communities of color. Community counter-institutions have the potential to create more radical, confrontational, prefigurative community organizing efforts, but there are far fewer examples of anti-authoritarian activists developing large-scale affordable housing or service programs on their own.

Community counter-institutions will need to grow their capacities to undertake such large-scale projects, and further develop mechanisms that will allow them to do so without forsaking their commitments to anti-authoritarian principles. Community counter-institutions have, at times, failed or made bad decisions when their projects require expertise or sophistication, such as when Common Ground Collective became involved with the Woodlands Complex based on an oral promise from a landlord.[413] And when their projects require resources, community counter-institutions—like Common Ground Collective, Occupy Sandy, and SRLP—

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essay was first presented as a talk at the Southern Female Rights Union in May 1970, then printed multiples times in slightly different versions. *Id*. Although Freeman's premise is generally accepted by anti-authoritarians, Freeman's conclusion—that inequalities are inevitable and formal group structures are better—is not. GORDON, *supra* note 126, at 61–65.

412. *See supra* notes 400–05 and accompanying text.

413. *See supra* notes 277–79 and accompanying text.

have tended to rely on either public donations following a catastrophic storm or more traditional non-profit funding sources. Funding is undoubtedly a major challenge for community counter-institutions to approach the scale of traditional CED projects, but innovative models are within reach: cooperatively-owned businesses that use profits not only to pay worker-owners but also to support community organizing and community development;[414] community-based equity crowdfunding through Title III of the JOBS Act;[415] hybrid ventures like Mayday that use profits from a social justice-minded business to partially underwrite a community counter-institution;[416] cooperative investment in real estate development like that done by the NorthEast Investment Cooperative in Minneapolis[417] could be imagined as a mechanism, perhaps in combination with a community land trust or a similar system of community-ownership, for a community counter-institution to develop affordable housing; collaboration between progressive CED organizations and community counter-institutions in ways that leverage the strengths of each while remaining true to their respective principles and goals; and investment-side innovations like time-banking, online barter networks, and local currencies point in still other directions for community counter-institutions to explore.

Developing their capacities to undertake large projects without sacrificing their anti-authoritarian principles is critical, as the more community counter-institutions start to undertake larger community projects, the greater the pressure they will face to conform to non-profit sector and market norms. Even more importantly, if these projects cannot achieve a meaningful scale, anti-authoritarian activists risk a double failure of their political experiment: not only would these efforts fail to challenge the status quo, but in the process of developing those efforts and "living their values," they may have implicitly conceded the traditional progressive demand for increased government spending on social welfare programs to those who would leave the ninety-nine percent with plenty of mutual aid, and little or no social safety net. As anti-authoritarian activists continue to develop new community counter-institution models, they are coming to recognize this challenge and, at their best, are striving to find new ways to expand their ability to provide community services while remaining focused on their core missions of using prefigurative politics to build community power for social change.

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414. *See generally* Krishna, *supra* note 19 (arguing that worker cooperatives should go beyond the one-worker, one-vote floor to prioritize connecting to social movements).

415. SECURITIES ACT § 4(a)(b), 15 U.S.C § 77d (2012).

416. *See supra* notes 306–07 and accompanying text.

417. *See* NORTHEAST INVESTMENT COOPERATIVE, http://www.neic.coop/ [https://perma.cc/4LJV-X5PZ].

C. Transactional Social Change Lawyers and Community Counter-Institutions

CED lawyers can play supportive, collaborative roles with community counter-institutions in many of the same ways that they do for more traditional CED clients. As they do for traditional CED clients, these lawyers can provide long-haul,[418] house counsel[419] representation to community-counter institutions, working with them on legal matters including start-up issues around choice-of-entity and tax exemption questions, providing legal support for their programming and organizing campaigns, as well as help with corporate, tax, employment, and other ongoing compliance matters. Although many of these areas of law will be familiar to CED lawyers, to the extent these groups represent a shift away from the CED model, perhaps their lawyers should be called by a broader name, like transactional social change lawyers.

Within these areas of transactional law, community counter-institutions face certain unique legal issues different from those of CED clients, issues that transactional social change lawyers are well-equipped to help them confront. First, community counter-institutions that want to consider forming corporate or non-profit corporate entities or that want to seek tax exemption or form worker-owned co-ops will require significant legal attention to their structures. These groups will need guidance on the ways that anti-authoritarian models are able to mesh with—and sometimes not easily able to mesh with—existing corporate and tax law. Developing cooperative, non-profit, and other corporate structures that aim to be as true as possible to the anti-authoritarian principles, consistent with corporate and other relevant laws, and that meet the real-life goals of a specific group is challenging, and community-counter institutions, like other CED clients, expect lawyers who will develop those structures collaboratively, with full client participation, and in a way that creates governance and other documents that will be comprehensible to community members of varying levels of sophistication who may become interested in the group in the future.

For groups that are considering corporate formalities, transactional social change lawyers can help demystify the law for clients but should aim to do so with a broadly critical lens. For instance, a group that is both considering 501(c)(3) status but also critical of the way that tax exemption does not always work to the advantage of low-income communities will benefit from a two-part analysis that considers not only the benefits and burdens of

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418. *See generally* Susan D. Bennett, *On Long-Haul Lawyering*, 25 FORDHAM URB. L.J. 771 (1998).

419. *See generally* Glick & Rossman, *supra* note 49.

applying for tax exemption but also presents ways that group could use its decision-making process as the basis for an organizing effort. The lawyer might ultimately prepare an application for tax exemption, but before that might also speak at a community forum designed to educate and organize people around the inequities of tax law as a part of that process. Irrespective of whether a community counter-institution wants to remain unincorporated, transactional social change lawyers have skills that can help it to design and implement internal accountability mechanisms, but only to the extent the lawyer has a deep understanding of anti-authoritarian principles. As community counter-institutions evolve to take on increasingly substantial community projects, transactional social change lawyers can play an important role not only in ordinary legal work—helping groups with the transactional legal work necessary to create community land trusts, worker co-ops, and all sorts of community projects—but also can help architect such projects with an eye to consistency with anti-authoritarian principles.

In addition, transactional social change lawyers working with community counter-institutions may consider other models of collaborative representation beyond typical CED legal practice models. For example, lawyers may consider models in which they join community counter-institutions as members, through a legal or technical assistance working group. Transactional social change lawyers could also consider introducing the new tools and structures created in the community counter-institution context to more traditional CED groups as potential options for their organizations. Progressive CDCs and other community-based non-profits may well be interested in greater transparency and horizontalism, moving beyond anti-discrimination policies to more robust anti-oppression statements, and adopting other tools developed in anti-authoritarian contexts into their organizations if counseled on these possibilities. There could indeed be something of a slow shift from traditional CDCs toward community counter-institution models over time, as a generation of activists who came of age politically in the course of the Occupy Movement and the Movement for Black Lives both develop their own community-based, activist projects and also bring their experiences with anti-authoritarian principles to leadership roles within more traditionally-organized community, labor and advocacy groups.[420]

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420. *See Translating Anarchy*, OCCUPY WALL STREET (Sept. 12, 2013), http://occupywallst.org/article/translating-anarchy-occupy-wall-street/ [https://perma.cc/W3K5-ZQ7P] ("[A]n entire generation of radical youth came of political age in a broad-based, horizontal, anti-capitalist context and that this early exposure to direct democracy and direct action will carry over into the politics of the social movements to come.").

CONCLUSION

The Occupy Movement, like all mass movements, was imperfect. Large-scale mobilizations of people make strategic missteps, miss opportunities, and let egos and personal squabbles interfere with good intentions. The innovations of anti-authoritarian activism have not made recent social movements any more able to avoid these challenges than the social movements of the past. Recent demosprudence scholarship suggests that even though social movements may fail to create large-scale social change on their own terms, they do have the ability to create shifts in our culture, shifts that can later result in the judicial system ratifying those cultural changes into law.[421] Social movements surely can transform the broader culture, but they often leave their most indelible marks on activists themselves, who take a deep passion for, and understanding of, those movements' goals and histories with them after the mass mobilizations fade.

Community activists in the 1960s and 1970s—many of them so deeply impacted by the civil rights movement, the Black Power movement, and other social movements—aimed to revitalize low-income communities of color through community-controlled organizations that provide community services and promote neighborhood self-sufficiency, giving birth to CED as a social change strategy. CED developed in the context of political, grassroots community activism, but over time community groups engaged in CED have come to exist in a fraught, contradictory middle ground between capital and community. Today, these groups "are pressured by capital to produce exchange values in the form of capitalist business spaces and rental housing. They are pressured by communities to produce use values in the form of services, home ownership, and green spaces."[422] Although the CED model has found success, especially in building affordable housing, CED has too often become apolitical and driven by government programs, losing touch with its activist and community roots.

A generation of activists who came of age politically in the course of the Occupy Movement, the Movement for Black Lives, and other anti-authoritarian-influenced social movements have begun to develop new community-based models that turn away from mainstream CED and look instead to anti-authoritarian ideas for their guiding principles. Community counter-institutions hold the potential to create more politically-engaged, confrontational community groups that commit to anti-authoritarian principles and prioritize organizing while still providing services as an

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421. Guinier & Torres, *supra* note 17, at 2796 (asserting that social movements activists create a "transformation of the culture—[making] the actions of the Supreme Court seem appropriate and long overdue").

422. Stoecker, *supra* note 8, at 6.

essential part of their work. Developing new tools that balance commitments to anti-authoritarian principles with effective community services and internal accountability structures is a critical challenge in the struggle for social change that community counter-institutions can undertake in collaboration with transactional social change lawyers.