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ARTICLE

LEGAL AID AFFAIRS: COLLABORATING WITH LOCAL GOVERNMENTS ON THE SIDE

JESSE NEWMARK*

INTRODUCTION 199
I. WHY LOCAL GOVERNMENT? 200
A. *Inherent Strengths and Weaknesses of Local Government* .. 201
1. Inherent Strengths 201
a. *Enhanced Democratic Participation* 201
b. *Community Building, Self-Definition, and Local Conditions* 203
c. *Experimental Innovation* 205
d. *Other Proximity Benefits* 206
2. Inherent Weaknesses 207
a. *Majoritarian Tyrannies and Parochialism* 208
b. *Limited Impact and Local Corruption* 208
c. *Inherent Strength Disputes* 209
B. *Existing Positives and Negatives of Local Government* 210
1. Existing Positives of Local Government 210
a. *Local Power and Activity* 211
b. *Innovative and Progressive Policies* 212
i. Integrating and Empowering Immigrants 212
ii. International Affairs and Human Rights 215
iii. Corporate Regulation for Workers, the Environment, and More 216
iv. Tenant Rights, Housing, and the Foreclosure Crisis 219

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v. Public Health, Safety, and Electoral Reform .. 220
c. *State and Federal Inaction and Harmful Policies* . 222
i. Problematic Federal Policies 222
ii. Problematic State Policies 225
2. Existing Negatives of Local Government 228
a. *Harmful Local Policies* 228
i. Excluding and Attacking Immigrants 228
ii. Ignoring Rights and an Infamous History 230
b. *Progressive Federal and State Policies* 231
c. *Significant Local Limits* 235
i. Legal and Economic Background Rules and Policies 235
ii. Direct Legal Limits: Preemption, Home Rule, and More 244
C. *Responses, Conclusions, and Suggestions* 247
1. Responses 247
a. *Legal Limits are Limited* 248
b. *Not So Limited Impact* 249
i. Important Internal Impacts 249
ii. Extralocal Effects 251
iii. Critical Counternarratives and Other Intangibles 252
iv. Subsequent Spread 253
v. Modest Measures Matter 256
c. *Background Limits Leave Room* 256
d. *Positive Limits on Harmful Local Action* 257
i. Judicial Protections in Theory and (to a Lesser Extent) Practice 257
ii. Practical Limits 261
iii. Reasons for Acceptance 263
e. *States and the Federal Government Face Similar Limits* 264
2. Suggestions 267
a. *Background Changes: End Exclusion, Enable Annexation, etc.* 267
b. *Change Direct Legal Limits: More Ely, Less Preemption et al.* 269
c. *Economic Decentralization* 271
d. *Certain Control at Higher Levels or More Local Power* 273
3. Conclusion 276
II. WHY LEGAL AID ATTORNEYS? 279
A. *Reasons for Our Involvement* 279
1. Necessity 279

a. *Shift to Local and Collaborative Government* 279
b. *Important Issues May Require Collaboration* 281
2. Feasibility 282
a. *Compared to the State and Federal Alternatives* .. 282
b. *Existing Connections and Shared Goals* 282
3. Effective and Beneficial 283
a. *Compared to Traditional Legal Aid* 283
i. Individual Client Concerns 284
ii. Limits to Litigation and Adversarial Advocacy 286
b. *Compared to Other Options* 290
i. CED, Community, and Collaborative Lawyering 290
ii. Extralegal Lawyering 293
c. *Other Benefits* 295
i. Benefits from Collaboration Generally 295
ii. Benefits from Legal Aid Attorneys 296
iii. Benefits from Local Government 299
iv. Benefits to All Involved 300
v. Benefits from Collaboration Generally 302
B. *Arguments Against Our Involvement* 303
1. Feasibility Concerns 303
a. *Funding and Time Limits* 303
b. *Local Government Conflicts* 305
2. Effectiveness Concerns 306
a. *Reconsidering Traditional Legal Aid* 306
i. Importance of Individual Services 306
ii. Importance of Litigation and Adversarial Advocacy 308
b. *Compromise and Cooption* 310
C. *Responses and Conclusion* 311
1. Responses 311
a. *Still Feasible for Some of Us, Some of the Time* .. 311
b. *Still Effective, Even Considering Cooption and Other Concerns* 313
c. *One of Many Legitimate Options Worthy of Our Consideration* 315
2. Conclusion 317
III. COLLABORATION STRATEGIES AND CASE STUDIES 320
A. *Collaboration Strategies* 320
1. Choice of Local Government and Project 320
2. Pre-Collaboration Coalitions and Preparation 323
3. Particular Partners: Universities, Unions, and More ... 325
4. Client Communities and Opponents 330

5. Initial Local Government Contacts 332
6. Ongoing Considerations: Media, Monitoring, Migration, and More 334

B. *Collaboration Case Studies* 335

1. Others' Projects 336
   a. *Immigration and Human Rights* 336
   b. *Employment and Economic Decentralization* 337
   c. *Housing and Development* 339
   d. *Public Health, Education, and the Environment* 340
2. Personal Experience 341
   a. *The Oakland City ID Card Coalition* 341
   b. *Fighting Fraud Against Immigrants* 347
   c. *Foreclosures, Evictions, and Housing Conditions* 353
3. Suggestions 357

CONCLUSION 361

This Article examines collaboration between legal aid attorneys and local government as a strategy for progressive social change. Suggesting such collaborations, of course, involves a jurisdictional choice to work at the local level, instead of with the states or federal government. This Article therefore first examines the inherent strengths and weaknesses of local action, synthesizing the extensive existing literature and considering such important factors as democratic participation, experimental innovation, majoritarian tyrannies, and government capture. This Article then compares recent policymaking by the three levels of government across a range of vital policy areas, from immigration to the foreclosure crisis. It also addresses the significant constraints on local action, including preemption, equal protection, unequal subsidies, and global markets.

Second, this Article explains why legal aid attorneys in particular should work with cities to promote positive action on behalf of our client communities. This requires us to weigh the unique benefits and synergies that aid attorneys, local government, and collaborative action would bring to the table, against the significant downsides, including risks of undue compromise and cooption. Aid attorney involvement in these collaborations would also take time away from traditional legal aid and other strategies to help our client communities, such as community development or law and organizing. This Article therefore compares the relative positives and negatives of these legal models for social justice.

Next, this Article discusses specific ways in which aid attorneys might promote successful collaborations with local government. Among other strategies, it considers how to choose appropriate projects for collaboration and effectively involve partners. This Article then concludes by exploring relevant collaborations that have already taken place. First, it summarizes the existing clinical scholarship, including successful partnerships to promote

human rights, protect day laborers, and ban big-box stores. It also presents this Author's own collaborative experiences, working first as a legal aid lawyer and then at the city attorney's office in Oakland, California. These include efforts to create a city ID card, fight fraud against immigrants, and stop illegal evictions by multinational banks and other problem property owners.

INTRODUCTION

I started writing this Article with a small idea, inspired by my recent work experience: that collaborations between legal aid attorneys and local governments could be an effective strategy for progressive social change, positively impacting underrepresented communities and with important indirect benefits for all involved. To my surprise, and the dismay of my friends, family, and sleep schedule, I soon realized that this small idea implicated some very big underlying issues and longstanding academic debates, from constitutional law to critical legal theory. Thus, like CEO compensation packages, my Article grew exponentially—from the manageable kitten I had envisioned, into a shockingly fat cat.

I have therefore divided the Article into three more easily digestible parts, likely of interest to different readers. In the first section, I explain my choice of local instead of higher levels of government for collaboration. Like many advocates, I had long leaned local but never given this preference the critical consideration it deserved. First, I examine the inherent strengths and weaknesses of local government, drawing on the extensive existing literature—from the federalism debate at our country's origin, to the recent localist resurgence. Among other vital factors at issue are democratic participation, experimental innovation, majoritarian tyrannies, and government capture. I then investigate the more contingent, currently existing conditions that impact the desirability of local action. Here, I compare recent policymaking by cities, states, and the federal government, in areas of great social importance: immigration, human rights, and corporate regulation, among others. These policies range from the inspiringly innovative and progressive, to the depressingly discriminatory and harmful. I also assess the relative power, for good or ill, of the three levels of government at this point in history, considering such legal and economic constraints as preemption, equal protection, unequal subsidies, and global markets. Ultimately, I wind up where I started but better informed, concluding that local government will often, but not always, be the right place to work for meaningful change.

In the second section, I turn from political theory, legal doctrine, and current events to the more practical question for practitioners: Why should legal aid attorneys, in particular, work with local government? On the one hand, we need to do so if we want to positively influence the collaborations that are taking place with or without us. Equally, solving some of the complex social problems facing our client communities may require such partnerships. Aid attorneys and local governments also have certain unique attributes, existing

relationships, and shared goals, important to helping our communities and each other. On the other hand, those of us who regularly battle local officials may not be welcomed with open arms, or might find those arms unduly compromising. Even local level collaborations may also be too time consuming for direct service lawyers, already underfunded and overwhelmed by massive client need. Indeed, simply asking aid attorneys to do more touches on an open wound. For decades, critics have questioned the value of traditional legal aid, arguing that our time could be better spent on community development or law and organizing, for instance. I therefore gnaw over these bones of contention, weighing the various lawyering strategies against one another and my own proposal. In the end, I conclude that these strategies have similar shares of pros and cons—as becomes clear, once we subject the strategies to equal critique. The strategies also share more pros and cons than we normally admit. Accordingly, with no obvious strategy winner, we must consider situational factors and not judge ourselves or each other too harshly, as we select legal strategies for social justice.

With these foundational questions out of the way, I delve into the details of my proposal. In the third section, I discuss specific strategies for best implementing local government collaborations—from choosing the appropriate government actor and project, to effectively involving partners and clients. I hope that these practical considerations will help interested aid attorneys maximize the pros and minimize the cons of this particular model. Last, to concretely illustrate points from throughout the Article and perhaps inspire future action, I discuss numerous real world examples of relevant collaborations across a range of policy areas. In addition to synthesizing case studies from the existing literature, I describe a few of my own collaborative experiences—first as a legal aid lawyer and then as a deputy city attorney (of sorts) here in Oakland, which puts me in the relatively unique position of having worked on both sides. I also make some suggestions for future collaborations. Without further ado then, and hopefully not much about nothing, let us begin.

I. Why Local Government?

In suggesting that direct service attorneys collaborate more with local governments, I emphasize work at the local level, instead of with state, national, or even supranational authorities. Theoretically, of course, we could collaborate with all of the above; but as a practical matter, our fixed and limited resources mean that devoting more time to one likely comes at the expense of the others. Ultimately, I find that the best justification for my jurisdictional choice is that local level collaborations will be most feasible for legal aid lawyers in particular, given our significant time constraints. As an initial matter, however, it is important to examine the positives and negatives of local government generally, relative to the higher level alternatives. This analysis is usefully divided, in turn, into an assessment of the strengths and weaknesses arguably inherent to local government, and those that currently exist but are historically contingent.

A. *Inherent Strengths and Weaknesses of Local Government*

In some ways, addressing the inherent strengths and weaknesses of local government is too big a task for this Article. Many of these factors have already been the subject of extensive analysis and debate, dating back to our country's origins. Drawing general conclusions is also difficult given the vast differences between the tens of thousands of local governments in the United States.[1] Our localities range from great metropoli bigger than states, to small towns with mere hundreds of residents. They include rural towns, inner cities, suburbs, and suburbs of suburbs.[2] Cities are then further divided into agencies, authorities, and special districts.[3] Nonetheless, I will attempt to concisely review the voluminous existing discussion as to the relative value of local government. Likewise, notwithstanding the significant differences among localities, I hope to still reasonably compare their general strengths and weaknesses with those of higher level governments.

1. Inherent Strengths

Many of the inherent strengths of local government were first articulated by our so-called "founding father" federalists, in their arguments for greater state and less federal power. Modern proponents of local government power—or "localists"[4]—have noted other inherent positives. Cumulatively, these include enhanced democratic participation, community building and self-definition, knowledge of and tailoring to local conditions, experimental innovation, and an array of other proximity-based benefits.

a. *Enhanced Democratic Participation*

From Thomas Jefferson to Justice Louis Brandeis, influential minds have seen "local governments as crucial to the survival of American democracy," because they allow for more meaningful political participation than higher levels of government.[5] Most basic, each individual vote has a greater relative

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[1] *See* Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 1992 & n.23 (2000).

[2] *See* Gerald E. Frug, *Is Secession from the City of Los Angeles a Good Idea?*, 49 UCLA L. REV. 1783, 1784 (2002) (noting that Los Angeles County encompasses 88 cities, including one city with 91 residents and another with 3.8 million); Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 348 (1990) (discussing characteristics of some of these locality types).

[3] *See* Cashin, *supra* note 1, at 1992 ("In the New York metropolitan area alone there are over 2000 separate governmental units."); Frug, *supra* note 2, at 1786 (noting that Los Angeles County "has more than two hundred independent special districts and public authorities").

[4] *See* Rick Su, *A Localist Reading of Local Immigration Regulations*, 86 N.C. L. REV. 1619, 1629 (2008) ("[L]ocalism can be understood as a reflection of federalism.").

[5] Cashin, *supra* note 1, at 1998 (discussing Jefferson); *see also* Richard C. Schragger,

impact at the local level, since fewer people are involved.[6] Similarly, the smaller political scale means that a higher percentage of the electorate can interact directly with each other and their political representatives.[7] In turn, this heightened individual importance and more meaningful interaction should inspire increased civic participation[8] and better educate the public on the political process.[9]

According to localists, this stands in stark contrast to the average citizen's involvement with the federal government. In 1835, Alexis de Tocqueville famously "hailed local political participation and warned of the way centralization induces a drowsy reliance on 'a powerful stranger.'"[10] Contemporary scholars contend that local participation is even more critical "[i]n our modern democracy, where far less than the majority of eligible citizens vote and many have no meaningful participation in the political process."[11] Indeed, at 3.5 million square miles and over 308 million people,[12] it is unsurprising that the federal government allows for only "modest engagement by members of the citizenry beyond Washington-based, inside-the-beltway . . . organizations."[13] Equally important, claim proponents, regular participation in local government affairs can "counteract[ ] the conditions of loneliness and alienation that exist in

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The Anti-Chain Store Movement, Localist Ideology, and the Remnants of the Progressive Constitution, 1920-1940, 90 IOWA L. REV. 1011, 1044-45 (2005) (discussing Brandeis).

[6] *See* Cashin, *supra* note 1, at 1999 (discussing claims by Professor Carol M. Rose); Briffault, *supra* note 2, at 397 ("At the national or state level, the individual may well conclude that his voice will be drowned out by millions of others . . . .").

[7] *See* Matthew J. Parlow, *Progressive Policy-Making on the Local Level: Rethinking Traditional Notions of Federalism*, 17 TEMP. POL. & CIV. RTS. L. REV. 371, 373 (2008) ("It is far more likely that average citizens may interact with their city councilmember or mayor than their state legislator or governor, or their congressperson, senator, or President.").

[8] *See* Briffault, *supra* note 2, at 397 ("In small units, each citizen has a greater share of power. The resulting enhanced sense of 'citizen effectiveness' presumably will lead to more participation . . . ." (quoting R. DAHL & E. TUFTE, SIZE AND DEMOCRACY 41 (1973))).

[9] *See* Sheryll D. Cashin, *Federalism, Welfare Reform, and the Minority Poor: Accounting for the Tyranny of State Majorities*, 99 COLUM. L. REV. 552, 575-76 (1999) (noting the claim "that participation in local government is an especially desirable form of civic education"); Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 1 (1990) (same).

[10] David J. Barron, *Foreword: Blue State Federalism at the Crossroads*, 3 HARV. L. & POL'Y REV. 1, 7 (2009) (quoting ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 92 (Phillips Bradley ed., Henry Reeve & Francis Bowen trans., Alfred A. Knopf 1987) (1835))).

[11] elena Lynch, *Industrial Areas Foundation*, 50 N.Y.L. SCH. L. REV. 571, 575 (2006) (discussing participation through community organizations).

[12] *See* U.S. Census Bureau, State & County QuickFacts, USA, http://quickfacts.census.gov/qfd/states/00000.html (last visited June 9, 2012).

[13] Catherine Powell, *Dialogic Federalism: Constitutional Possibilities for Incorporation of Human Rights Law in the United States*, 150 U. PA. L. REV. 245, 260 (2001) (discussing federal adoption of human rights treaties).

modern metropolitan society,"[14] where the dominant free-market paradigm and privatization of time and space have left little room for public life.[15]

As mentioned, federalists first made many of these arguments in favor of the states, not local government. However, because the participation benefits derive from the smaller scale, they should be even greater at the local level.[16] To be sure, the tiniest towns might be too small to enable real political engagement, but most of us live in reasonably sized municipalities. In fact, with some cities larger than modern states[17]—"indeed, more like the federal government in 1790[ ] than a city"[18]—meaningful civic participation might require even further decentralization in these locales.[19]

b. *Community Building, Self-Definition, and Local Conditions*

In addition to enhancing participation in government affairs, there is evidence that the more constant and direct interaction among residents of smaller jurisdictions creates extra-political community.[20] Indeed, "[i]t seems a tautology to claim that smaller environments enhance opportunities for building connections between individuals, and hence for building a collective identity or sense of community."[21] Local communities can then define themselves through their policy choices and reflect such shared values externally.[22] Cities

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[14] Cashin, *supra* note 1, at 2001 (discussing claims by Professor Gerald E. Frug).

[15] *See* Audrey McFarlane, *Fighting for the High Ground: Race, Class, Markets and Development Done Right in Post Katrina Recovery*, 14 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 77, 85 (2007) ("We do not have a robust notion of the public interest or the common good. The corollary is an unquestioned belief in free markets."); Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342, 445 (2004) ("Markets . . . frequently lack adequate spaces for the public exchange of ideas.").

[16] *See* Stanimir N. Kostov, *Increasing the Role of Local Governments in Infrastructure Projects in Russia and Bulgaria as a Tool for Environmental Protection*, 33 WM. & MARY ENVTL. L. & POL'Y REV. 349, 364 (2008) ("Of course, an even more efficient and democratic solution would be to transfer most of the power to the municipal units . . . .").

[17] *See* Frug, *supra* note 2, at 1787 (noting that Los Angeles has a larger population than half of the states).

[18] Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1765 (2002).

[19] *See* David J. Barron, *The Promise of Tribe's City: Self-Government, The Constitution, and a New Urban Age*, 42 TULSA L. REV. 811, 814 (2007) ("The democratic city of the future, [Robert A.] Dahl argued, should have a population of no more than 200,000 . . . ."); Frug, *supra* note 2, at 1787 (noting that "smaller cities have more active democracies" than very large ones); Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607, 649 (1997) ("The neighborhood would be the optimal level for city government.").

[20] *See* Cashin, *supra* note 1, at 2002 ("As an empirical matter, the community rationale seems to have [some] evidentiary basis . . . .").

[21] *Id.*

[22] *See* Chad A. Readler, *Local Government Anti-Discrimination Laws: Do They Make a

thereby become known for these values, informing our decisions of where to live, work, and visit.[23] At the political and cultural extremes, certain locales even enjoy international fame (or infamy) for these self-imposed characteristics.[24] National institutions, of course, "are structurally incapable of reflecting distinctly different community values."[25] States, on the other hand, may sometimes reflect certain shared values—Utah and Montana, for instance, are well-known for their residents' religious and political beliefs, respectively. But like the federal government, more diverse, higher population states such as California or Texas are equally unable to reflect, for instance, the very different values of San Francisco and Orange County, or Austin and Houston.

Beyond being more expressive, local policy choices may also be more effective, since local governments and residents are closest to, and therefore may best know, local conditions.[26] They can then "formulate solutions tailored to [their] unique local circumstances."[27] The federal government, to the contrary, could not possibly tailor its policies to the widely divergent local conditions throughout the country.[28] In fact, there is some empirical evidence that "local administration produces better, more tailored policy outcomes."[29] This potential benefit may be especially important given the significant variation in local conditions relevant to important policy issues, such as immigration.[30]

Difference?, 31 U. MICH. J.L. REFORM 777, 790 (1998) ("[L]ocal ordinances reflect the shared values of their communities . . . ."); Cristina M. Rodríguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 605 (2008) (noting that many cities with sanctuary laws "possess and promote a self-conception as immigrant-friendly").

[23] *See* Kristine Shaw, *Local Sexual Orientation Non-Discrimination Laws: A Means of Community Empowerment*, 10 CORNELL J.L. & PUB. POL'Y 385, 394 (2001) ("People choose to live in Ithaca and Tompkins County today because of the existence of this [anti-discrimination] law and because of what it says about this community.").

[24] *See* Rodríguez, *supra* note 22, at 615 (noting the claim that "localities today enjoy international personality" (internal quotation marks omitted)). Compare, for instance, global perceptions of San Francisco, California, and Birmingham, Alabama: the former is known as a bastion of liberalism, while the latter is associated with civil rights era injustice.

[25] *Id.* at 595.

[26] *See* Lobel, *supra* note 15, at 382; Sheila Foster, *Environmental Justice in an Era of Devolved Collaboration*, 26 HARV. ENVTL. L. REV. 459, 480 (2002) (arguing that communities "closest to the problem" have important "expertise and knowledge").

[27] Cashin, *supra* note 9, at 575 (noting this argument); *see also* Powell, *supra* note 13, at 255 (same).

[28] *See* Cashin, *supra* note 9, at 580 (noting that political realities in Congress force imposition of identical solutions in areas with very different problems); *cf.* Peter H. Schuck, *Taking Immigration Federalism Seriously*, 2007 U. CHI. LEGAL F. 57, 70 (2007) ("The federal government, however, must try somehow to integrate 50 different situations into a single one-size-fits-all national policy.").

[29] Cashin, *supra* note 9, at 580.

[30] *See* Rodríguez, *supra* note 22, at 609 (explaining that "[t]he effects of immigration are felt differently in different parts of the country," such that "the viability of different immi-

c. *Experimental Innovation*

Perhaps the most discussed rationale in support of decentralized government is that it allows for greater experimentation. As Justice Brandeis explained of the states: "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."[31] Seizing upon this famous federalist argument, localists draw the logical "the more, the merrier" conclusion for, paradoxically, going smaller: "If the fifty states serve as such laboratories, then certainly the tens of thousands of local governments nationwide offer enticing opportunities for experimentation and reform."[32]

According to this experimentation rationale, we can learn from both local successes and failures, without jeopardizing the entire nation or even a single state.[33] Not only is there less risk to local action, but many more policies can be simultaneously tested, "increas[ing] the likelihood of discovering how best to solve difficult social problems."[34] This decreased risk and increased policy pool may be particularly critical to addressing complex social problems, where the actual effects of would-be solutions are so uncertain.[35] Scholars are in fact monitoring the real world impact of local action in such important policy areas.[36]

Successful experiments can then spread from locality to locality, to the states, or to the nation. Certainly, variation among localities, and between localities and higher levels of government, may limit what we can generalize from the results of a policy in any particular locale. But many cities and towns

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gration strategies[ ] will vary"); Matthew Parlow, *A Localist's Case for Decentralizing Immigration Policy*, 84 DENV. U. L. REV. 1061, 1071 (2007) (noting that "different states and local governments are affected in drastically different manners" by immigration).

[31] *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

[32] Parlow, *supra* note 30, at 1070; *cf.* Barron, *supra* note 10, at 2 ("State governments are central in their own right . . . . They suffer from the same hostility towards local innovation that afflicts all central governments.").

[33] *See* Parlow, *supra* note 7, at 385; Benjamin J. Richardson, *Environmental Law in Postcolonial Societies: Straddling the Local-Global Institutional Spectrum*, 11 COLO. J. INT'L ENVTL. L. & POL'Y 1, 58 (2000) ("[L]ocal government offers the chance to experiment with new policies without compelling the whole nation to follow suit . . . .").

[34] Cashin, *supra* note 9, at 555 (discussing the states).

[35] *See id.* at 578; Louise G. Trubek, *Public Interest Lawyers and New Governance: Advocating for Healthcare*, 2002 WIS. L. REV. 575, 598 (2002).

[36] *See* Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 467-68 (2001) (discussing the "growing body of research suggesting that living wage policies have significantly contributed to poverty alleviation in many cities" and do "not produce significant negative economic consequences in terms of workforce reduction, business relocation, and increased municipal costs").

share common problems and circumstances.[37] Successful policies can therefore spread first to similar local jurisdictions, increasing the relevance of the experimental results little by little, until they are sufficiently informative to merit state or federal consideration. Each successive government or polity can also take advantage of the time and resources invested by prior jurisdictions; spared from reinventing the policy wheel, these later actors can instead devote their energies to improving or tweaking it to accommodate local conditions.

There is also reason to believe that local governments will naturally be more creative in their policy choices, given the great diversity in local conditions—like the Galapagos islands to Darwin's finches.[38] For better or worse, we have recently seen such creativity in important policy areas, as discussed in detail below. A plethora of wide-ranging policies of course further benefits experimentation. Such innovation may be especially important in light of our stagnant federal government, with its very conservative (literally, if not politically) two-party system.

d. *Other Proximity Benefits*

Localists also note a number of other inherent local government strengths that result from the increased proximity of citizens to each other and their representatives. First, some contend that "because citizens are closer to and more in touch with their local governments, they can better monitor and hold accountable their elected and appointed officials and mitigate against the capture of their local government by special interest groups."[39] Critical at a time when large corporate actors seem to dictate federal and state policies,[40] local government may also be more resistant to capture by these interests in particular. Because of proximity, lobbying at the local level is less resource and time demanding, and therefore open to a wider range of organizations and individuals. For instance, there are no travel costs and fewer political actors to meet with at the local level. Thus, "one-sided lobbying . . . might be more likely to occur at the state" and federal levels, where only wealthy interests "have the resources

[37] *See* Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267, 315-16 (1998) ("Locales may be diverse and changing, but they are not unique. To the extent that there are similarities in their current situations or the kinds of changes they face, the efficient search for large improvements to current practice, or for early warning that apparently promising alternatives are in fact dead ends, starts with the experience of units facing analogous problems.").

[38] *See* Foster, *supra* note 26, at 482 (discussing, in the context of environmental law, "the creativity of local solutions that recognize the unique ecology, economics, and demographics of the places in which these problems reside").

[39] Parlow, *supra* note 7, at 374.

[40] *Cf.* Kirsten H. Engel, *Harnessing the Benefits of Dynamic Federalism in Environmental Law*, 56 EMORY L.J. 159, 179 & n.105 (2006) (noting that "excessive interest group influence" has proven "particularly difficult" to address, because of Supreme Court decisions on campaign contributions and spending).

to overcome structural impediments to effective lobbying."[41]

Second, in contrast to the widely discussed difficulties with "top-down" policymaking, it is arguably easier to implement and enforce policies at the local level.[42] Again, because of proximity to the government and place of enactment, it is easier for concerned local individuals and organizations to monitor what actually happens. Where the "enforcee" is local as well, proximity may further increase compliance through the power of social norms and potential for shame from direct personal interactions.[43] The greater perceived legitimacy of local policies, as a result of the more meaningful political participation discussed above, may also improve implementation and enforcement.[44]

Finally, proximity and a smaller geographic scale arguably increase the quality of local policies, as "there are psychological and anthropological indications that scale matters for successful engagement—the smaller the scale, the easier it is for people to communicate and to reach sustainable solutions."[45] Because of their small size, local governments may also be able to act more quickly—and therefore be more responsive to their communities and changing circumstances—than larger institutions afflicted with bureaucratic inertia.[46]

2. Inherent Weaknesses

The debate as to the intrinsic merits of local government, however, is far from one-sided. Historic figures and contemporary scholars have noted significant inherent weaknesses, including tyranny by majority factions, self-interested parochialism, limited power and uniformity, and local capture and corruption. These critics also dispute many of the supposed local strengths.

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[41] Clayton P. Gillette, *Local Redistribution, Living Wage Ordinances, and Judicial Intervention*, 101 NW. U. L. REV. 1057, 1115-16 (2007).

[42] *See* Scott L. Cummings, *Law in the Labor Movement's Challenge to Wal-Mart: A Case Study of the Inglewood Site Fight*, 95 CAL. L. REV. 1927, 1979-81 (2007) (discussing these problems and noting that local advocacy is "one potential response").

[43] *See generally* Victor B. Flatt, *Act Locally, Affect Globally: How Changing Social Norms to Influence the Private Sector Shows a Path to Using Local Government to Control Environmental Harms*, 35 B.C. ENVTL. AFF. L. REV. 455 (2008) (discussing how local governments can use social norms to bring about voluntary environmental change).

[44] *See* Gaylynn Burroughs, *More than an Incidental Effect on Foreign Affairs: Implementation of Human Rights by State and Local Governments*, 30 N.Y.U. REV. L. & SOC. CHANGE 411, 444-45 (2006) (noting that "creation of a human rights culture from the bottom up . . . has the potential to make human rights more legitimate").

[45] Lobel, *supra* note 15, at 383.

[46] *See* Kostov, *supra* note 16, at 364 ("Because lower levels of government are normally burdened with less bureaucratic red tape, they would also be able to react more quickly to issues that require immediate attention."); *cf.* Foster, *supra* note 26, at 496 ("'Localists' counter that decentralized decision-making, in general, promotes the efficient provision of public goods and services . . . .").

a. *Majoritarian Tyrannies and Parochialism*

While Jefferson espoused the civic benefits of local democracy, James Madison advocated for a powerful national government, in part because it could prevent tyranny by majority factions.[47] According to Madison, these "majority factions in smaller units of government would dominate and oppress minority groups,"[48] whereas "the range of parties and interests that would exist within the territorial jurisdiction of . . . a large national government would be so wide that no single faction, or small group of factions, could exercise power for selfish purposes."[49] Thus, argue modern Madisonians, local governments are more likely to oppress and less likely to redistribute resources to ethnic minorities, the poor, and other marginalized groups.[50] According to one scholar, "[t]he political science literature offers some empirical evidence to support Madison's intuition" and the predicted adverse consequences.[51]

Just as tyrannical majorities could cloud the positive possibilities of local democracy, self-interested parochialism may overshadow the benefits of local community building and self-definition. According to parochialism theory, fragmented local governments "foster[ ] a narrow conception of self-interest that blinds citizens" to the good of the region as a whole.[52] Local electorates therefore make small-minded decisions, without regard for the wellbeing of neighboring jurisdictions—selfishly snatching as many benefits and excluding as many burdens as possible.

b. *Limited Impact and Local Corruption*

Of course, local policies will typically apply to smaller geographic areas and impact fewer people than would identical action at the state or federal levels. Local governments may therefore be less able to address the important issues that extend beyond their borders, such as climate change and wealth inequality.[53] Likewise, localities arguably lack the size and power to confront certain

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[47] *See* Cashin, *supra* note 9, at 577 (noting that Madison was particularly concerned as to cities); Keith Aoki et al., *(In)visible Cities: Three Local Government Models and Immigration Regulation*, 10 OR. REV. INT'L L. 453, 503 (2008).

[48] Cashin, *supra* note 1, at 1987.

[49] Clare Huntington, *The Constitutional Dimension of Immigration Federalism*, 61 VAND. L. REV. 787, 829 n.166 (2008) (quoting DAVID L. SHAPIRO, FEDERALISM: A DIALOGUE 44-45 (1995)).

[50] *See* Cashin, *supra* note 9, at 554-56 (noting that "racial biases" and "biases against welfare recipients" seem "to heighten as decisions are moved closer to the people," and that voters have been more willing "to accept redistributive spending at the national level").

[51] Cashin, *supra* note 1, at 1987.

[52] *Id.* at 2033; *see also* Richardson, *supra* note 33, at 56 ("[C]itizen participation in local government is sometimes believed to foster selfish decision-making. This is commonly denoted by the sentiment of 'not in my backyard' (NIMBY).").

[53] *See* Richardson, *supra* note 33, at 21 ("[A] romanticizing of local environmental management ignores the need for national or global institutions for addressing environmental

root causes of our social problems: regional, national, and global actors and policies. For example, even the largest cities may be too small to meaningfully challenge gigantic multinational corporations, responsible for so much social harm.[54] Nor can local governments directly change the national and global macroeconomic policies and institutions now allowing, if not causing, massive poverty and resource inequality.[55] Accordingly, an emphasis on local government may leave these forces unchallenged and their consequences unabated.[56] Local action can be similarly problematic where regional or national uniformity is desired, as each locality can make its own unique policy choice.[57] Moreover, some scholars claim that local governments are intrinsically more corrupt and subject to certain kinds of capture, such as the outside influence of private developers and oligarchic capture from within by "local political elites."[58] The recent salary scandal in the City of Bell, California, provides a striking example of such corruption.[59]

c. *Inherent Strength Disputes*

Anti-localists also give reason to be skeptical of the alleged local government strengths. First, predictions of greater political participation are at least partially undermined by empirical evidence of increased voter turnout at suc-

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problems that transcend local niches . . . ."); Robert A. Schapiro, *Not Old or Borrowed: The Truly New Blue Federalism*, 3 HARV. L. & POL'Y REV. 33, 42 (2009) ("Some kind of national policy is essential [for global warming].").

[54] *See* Schragger, *supra* note 5, at 1085 ("[T]ransnational corporations exercise significant economic power that is effectively beyond the competence of decentralized government."); Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 486 (2001) (noting concerns as to "the effectiveness of local organizing in light of the increasing consolidation of corporate power").

[55] *See* Cummings & Eagly, *supra* note 54, at 485-86 (discussing claims that local action "fails to offer a coherent challenge to the[se] larger institutional structures").

[56] *See* Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 986 (2007) (calling it a "fantasy that change can be brought about through small-scale, decentralized transformation"); Briffault, *supra* note 2, at 440 ("[L]ocalism tends to assure that . . . the privileged position of business in American life will remain unexamined and unchallenged." (footnote and internal quotation marks omitted)).

[57] *See* Schuck, *supra* note 28, at 67 (noting this concern); Powell, *supra* note 13, at 248, 264 (same, with regard to foreign affairs). *Compare* Readler, *supra* note 22, at 790, 806 (claiming that divergent local policies unduly burden corporations who must accommodate the inconsistent demands), *with* Edward A. Zelinsky, *Maryland's "Wal-Mart" Act: Policy and Preemption*, 28 CARDOZO L. REV. 847, 874-75 (2006) (arguing that corporations can adjust to such variations or choose not to do business in particular places).

[58] Richardson, *supra* note 33, at 56; *see also* Cashin, *supra* note 9, at 577 (noting evidence "that state and local governments are more susceptible to interest group capture").

[59] *See High Salaries Stir Outrage in Bell*, L.A. TIMES, http://latimes.com/news/local/bell (last visited June 9, 2012).

cessively higher levels of government, with local elections ranking dead last.[60] Second, local community building and self-definition may not be desirable at all, given extensive race and class-based segregation. In particular, privileged communities often discriminatorily define themselves in terms of wealth and whiteness, as discussed in more detail below. Likewise, the limited mobility of the less affluent, who are effectively excluded from many locales, undermines the notion that we can each choose our preferred community based on its expressed values.[61]

Third, calling into question the experimentation rationale, the informative value of local policymaking is limited to the extent that contingent and problematic background factors act as compounding variables. As discussed in detail below, local action is currently impacted by inadequate local resources, massive interlocal inequality, substantial subsidies to already privileged locales, and selective grants of legal power. Thus, the successes or failures of local policies only tell us that they succeed or fail within this particular, and particularly problematic, system. There are also institutional reasons to doubt the efficiency and quality of decentralized decisionmaking, including diseconomies of scale, smaller local official and employee pools from which to select, and the potential for duplicative policies and institutions.[62]

B. *Existing Positives and Negatives of Local Government*

Complicating this analysis of local government, at least as important as any inherent strengths and weaknesses are the positive and negative characteristics of local government right now—*i.e.* the historically contingent but currently existing factors relevant to whether cities are the best places to focus our present energies. As with the intrinsic merits debate, there are important factors to consider on both sides.

1. Existing Positives of Local Government

Starting with the positives, local governments currently have significant policymaking power, and many are not afraid to use it. Numerous localities have

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[60] *See* Cashin, *supra* note 9, at 576 ("[A]s an empirical matter, citizen participation in national politics is stronger than it is in state and local races . . . ."); Briffault, *supra* note 2, at 397-98 ("[V]oter turnout is usually higher for presidential elections than for state-wide elections, and greater for state-wide contests than for local ones.").

[61] *See* Cashin, *supra* note 1, at 2045 ("[C]itizens relegated to poor urban neighborhoods often have little choice about where they can live or work . . . ."); Briffault, *supra* note 2, at 422 ("[S]uch a system provides fewer benefits for residents whose mobility is constrained by the . . . costs of moving and by local exclusionary regulations.").

[62] *See* Schuck, *supra* note 28, at 67 (noting the pro-centralization arguments of "increasing returns to regulatory scale" and "administrative expertise and competence"); Readler, *supra* note 22, at 805-06 (discussing the disadvantages of overlapping regulations); Trubek, *supra* note 35, at 586 (arguing that decentralized advocacy is "more expensive and difficult to coordinate, thus inefficient").

also used this power in innovative and progressive ways, in an array of important policy areas and in line with our goals as legal aid attorneys. Importantly, these localities have done so at a time when states and the federal government are regularly failing to act or acting in harmful ways.

a. *Local Power and Activity*

Local governments unquestionably exercise substantial power relevant to critical social issues.[63] Localities have long held authority in such important areas as land use, education, transportation, and public safety. As one scholar explains, these services are "vital to the preservation of life (police, fire, sanitation, public health), liberty (police, courts, prosecutors), property (zoning, planning, taxing), and public enlightenment (schools, libraries)."[64] Local governments thus "address[ ] many basic human necessities"[65] and "provide essential services that affect citizens' day-to-day lives."[66]

These traditional powers are also relevant to contemporary issues not so obviously connected thereto. For instance, cities are "primary agents of integration" for recent immigrants, "because they run the schools, hospitals, and other institutions through which integration occurs."[67] Likewise, local governments can use their authority over police officers and other civil servants to either protect or harass immigrants. Cities have also used their traditional powers to regulate corporations for the sake of lower income workers, small businesses, public health, and the environment—for instance, by zoning out big-box retailers[68] and regulating development to reduce greenhouse gases.[69]

Even outside of these traditional powers, local governments have been able to act extensively to address critical social issues, from housing and employment[70] to areas typically controlled by the federal government.[71] Again as to

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[63] *See* Briffault, *supra* note 9, at 112 ("Local governments have considerable fiscal and policy-making responsibility and extensive regulatory authority."); Schragger, *supra* note 5, at 1085 ("[L]ocal governments may govern in numerous areas of important policy concern . . . .").

[64] Parlow, *supra* note 7, at 373 (quoting ROBERT L. LINEBERRY, EQUALITY AND URBAN POLICY: THE DISTRIBUTION OF MUNICIPAL PUBLIC SERVICES 10 (1977)).

[65] Aoki, *supra* note 47, at 459.

[66] Parlow, *supra* note 7, at 373.

[67] Rodríguez, *supra* note 22, at 637.

[68] *See infra* notes 121-125 and accompanying text.

[69] *See* Judi Brawer & Matthew Vespa, *Thinking Globally, Acting Locally: The Role of Local Government in Minimizing Greenhouse Gas Emissions from New Development*, 44 IDAHO L. REV. 589, 591 (2008) (arguing that local land use and zoning powers are important to reducing greenhouse gas emissions from new development).

[70] *See* Readler, *supra* note 22, at 784 ("In the area of employment law, . . . it has become increasingly clear that local governments are active and important players.").

[71] *See* Su, *supra* note 4, at 1625 ("Few issues in American law are considered as thoroughly committed to the federal government as that of immigration."); Powell, *supra* note

immigration, "the past few years have seen more than one hundred cities and counties adopt and/or consider laws targeted at . . . immigration within their boundaries."[72] "[L]ocal governments are increasingly [becoming] involved in international affairs" as well,[73] by "participat[ing] directly in international trade activities"[74] and "bringing international rights into the domestic context."[75]

b. *Innovative and Progressive Policies*

Local governments are also using this power in innovative ways, with creative policies across the political spectrum.[76] As Professor David Barron has described the recent trend: "It was in the cities and towns . . . that real change seemed to be happening. It was there that the tired partisan debates so dominant in national political discourse seemed to give way to a more robust and innovative discourse focused on solving real problems."[77] Many of these innovations have been excitingly progressive,[78] in the face of federal and state inaction or opposition.[79] Here, I will focus on several areas of particular importance to legal aid lawyers.

i. Integrating and Empowering Immigrants

Perhaps most prevalent in progressive local policymaking (and certainly most discussed in the academic and mainstream literature) are the many pro-immigrant actions that cities have taken, often to help undocumented immi-

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13, at 255 ("[T]he predominant view is that the federal government has a virtual monopoly in foreign affairs and in the development of . . . public international law . . . .").

72 Parlow, *supra* note 7, at 376-78; *see also* Huntington, *supra* note 49, at 795 ("[L]ocalities have begun to assert an increasingly important and visible role in this field.").

73 Aoki, *supra* note 47, at 459.

74 Michael J. Wishnie, *Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism*, 76 N.Y.U. L. REV. 493, 499 (2001).

75 Huntington, *supra* note 49, at 818.

76 *See* Parlow, *supra* note 30, at 1070 ("Local governments have proven to be incubators for innovative policies in a variety of areas . . . ."); Barron, *supra* note 19, at 811 (noting "novel regulations" by central cities).

77 Barron, *supra* note 10, at 6; *see also* Parlow, *supra* note 7, at 382 ("[L]ocal governments have been more willing to advance innovative laws and/or policies that the federal and state governments are unwilling or unable to effect.").

78 *See* Barron, *supra* note 10, at 1 ("[O]n issue after issue . . ., it was state and local leaders who often took the lead in proposing creative, progressive responses to the nation's most pressing problems.").

79 *See id.* (noting opposition by federal actors); Powell, *supra* note 13, at 288 (noting that cities are helping to fill a human rights "vacuum" left by the federal government); Robin S. Golden & Sameera Fazili, *Raising the Roof: Addressing the Mortgage Foreclosure Crisis Through a Collaboration Between City Government and a Law School Clinic*, 2 ALB. GOV'T L. REV. 29, 36 (2009) ("[L]ocal actors may even be willing to engage in these confrontations against federal and state policies.").

grants in particular.[80] Not only are "policymakers in urban settings often tak[ing] stronger pro-immigrant positions than . . . lawmakers at the national level,"[81] but such positive policies have surfaced in "unexpected places" across the country: in small towns, "the South,"[82] and "[m]any of the leading immigration destination cities."[83]

First, led by Los Angeles in 1979, "many cities have passed sanctuary—or non-cooperation—laws that designate their respective boundaries as safe-havens for undocumented immigrants" and "prevent[ ] [city] employees from enforcing federal immigration laws or coordinating with immigration enforcement."[84] These laws thereby enable undocumented residents to communicate with local police, without fear that they will be reported to and then deported by federal officials. Unsurprisingly, in enacting laws that protect immigrants from federal authorities, local governments have either skirted or openly transgressed federal statutes.[85] Cities have also adopted similar but solely expressive resolutions, "declar[ing] the rights of immigrant workers" and "supporting legalization for undocumented immigrants."[86]

Moreover, "[m]any municipalities have gone [a] step further,"[87] providing affirmative support to their immigrant communities. Cities from New Haven to San Francisco "have issued municipal identification cards to all residents, regardless of immigration status."[88] Like sanctuary ordinances, these cards "encourag[e] immigrants to trust public officials"[89] and "help overcome reluctance to report crimes."[90] The cards also "ensure that residents have access to local services"[91] and financial institutions, enabling "residents to open bank accounts, check out library books, and utilize parks . . . regardless of their immi-

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[80] *See* Parlow, *supra* note 7, at 376-78 (discussing these laws).

[81] Rodríguez, *supra* note 22, at 577.

[82] Bill Ong Hing, *Answering Challenges of the New Immigrant-Driven Diversity: Considering Integration Strategies*, 40 BRANDEIS L.J. 861, 862 (2002).

[83] Schuck, *supra* note 28, at 63.

[84] Parlow, *supra* note 30, at 1067; *see also* Rodríguez, *supra* note 22, at 601-05.

[85] *See* Rodríguez, *supra* note 22, at 601 ("Congress passed two provisions that prohibited local governments from preventing their employees from voluntarily conveying information regarding any individual's immigration status to federal authorities."); Su, *supra* note 4, at 1636 (discussing these federal "anti-sanctuary measures").

[86] Victor Narro, *Impacting Next Wave Organizing: Creative Campaign Strategies of the Los Angeles Worker Centers*, 50 N.Y.L. SCH. L. REV. 465, 511-12 (2006) (discussing a Los Angeles ordinance and noting that other cities then passed similar resolutions); *see also* Parlow, *supra* note 30, at 1067 n.47 (noting a similar resolution in Boston).

[87] Aoki, *supra* note 47, at 493-94.

[88] Huntington, *supra* note 49, at 804.

[89] Rodríguez, *supra* note 22, at 579.

[90] Huntington, *supra* note 49, at 804 (quoting Community Services, New Haven's Elm City Resident Cards-Fact Sheet, http://cityofnewhaven.com/pdf_whatsnew/municpalidfactsheet.pdf).

[91] *Id.*

gration status."[92] Although these ID programs do not violate federal law, they certainly fly in the face of the REAL ID Act's anti-immigrant intent. Localities have also taken steps to help immigrant day laborers in particular. The small Southern towns of "Herndon, Virginia, and Garland, Texas, for example, utilized local public funds to open day labor centers, providing a safe and centralized location for hiring temporary workers."[93] In urban Los Angeles, a councilmember introduced an ordinance to transfer these costs to the corporations that benefit from day laborers, "requir[ing] all new Home Depots and other home improvement stores to provide funding for the creation and operation of day laborer centers on their property."[94]

Cities across the country are also working to improve cultural and linguistic access for recent immigrants, both by helping immigrants adapt to English-speaking U.S. culture, and by adapting themselves to the cultures and languages of their newer residents. For instance, in Fountain Inn, South Carolina, and Detroit, Michigan, police officers are "lining up to learn" Spanish.[95] Equally inspiring, the "small school district of Storm Lake, Iowa . . . sends out the school newsletter in three languages and routinely conducts PTA meetings simultaneously in English, Spanish, and Laotian."[96] Some locales have even willingly invested their own money to accommodate increasing numbers of school-aged immigrant children.[97] And New York City officials recently helped implement a college scholarship program for undocumented immigrants unable to receive state or federal financial aid.[98] Other cities are helping immigrants "establish their own businesses"[99] and "find jobs, homes, . . . and even rides to the doctor."[100] Finally, city governments are continuing a long tradition of allowing at least lawful resident immigrants to vote in some or all local elections,[101] and New Haven's mayor has proposed allowing undocumented

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[92] Aoki, *supra* note 47, at 494 (discussing the New Haven ID card program).

[93] *Id.*; *see also* Rodríguez, *supra* note 22, at 596-600 (discussing local government involvement in day labor centers).

[94] Narro, *supra* note 86, at 495.

[95] Hing, *supra* note 82, at 876; *see also id.* at 890 ("Jefferson County police have been prompted to put pocket Spanish guides in every cruiser and to require each officer to take several hours of basic Spanish classes.").

[96] *Id.* at 887.

[97] *See id.* at 883 (noting "voter approval of a bond to build a $20,000,000 middle school to accommodate the expected growth" in Beardstown, Illinois).

[98] Kirk Semple, *Illegal Immigrants Get Scholarships While Aid Bill Idles*, N.Y. TIMES, Mar. 8, 2012, http://nytimes.com/2012/03/09/education/as-aid-bill-lingers-illegal-immigrants-get- scholarships.html.

[99] Hing, *supra* note 82, at 873.

[100] *Id.* at 884 (discussing programs in Louisville, Kentucky, and Sioux City and Muscatine, Iowa).

[101] *See* Aoki, *supra* note 47, at 509; Rodríguez, *supra* note 22, at 579.

immigrants to vote as well.[102]

ii. International Affairs and Human Rights

Legal scholars also document extensive progressive local policymaking with an international edge. Some intrepid cities have tried to directly intercede in foreign affairs.[103] Although Massachusetts' boycott was most well-known, "at least nineteen cities . . . [also] passed laws restricting public procurement from companies [doing] business in Burma,"[104] in an effort to sanction the country for its serious human rights abuses. More common, cities have turned to international law to address domestic problems,[105] by "'adopt[ing]' human rights treaties and other international norms."[106] Localities thereby "bypass federal resistance" and democratically "put[ ] these standards to work right in [their] own communities."[107] For instance, many cities have adopted the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, "despite the fact that the United States is in dubious international company . . . for having thus far failed to ratify CEDAW."[108] At least one city "has sought actually to implement some of the provisions of CEDAW, . . . by investigating and issuing reports relating to systematic discrimination against women."[109] Cities have also expressively invoked international norms where local implementation is not possible, calling on the states or federal government to take action. For example, to challenge anachronistic U.S. diversions from death penalty norms, "a handful of cities have urged their states, and in some cases the federal government, to support a moratorium, relying on the United

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[102] Associated Press, CBS N.Y., Dec. 20, 2011, *New Haven Mayors Seeks to Extend Voting Rights to Illegal Immigrants*, http://newyork.cbslocal.com/2011/12/20/new-haven-mayor-seeks-to-extend-voting-rights-to-illegal-immigrants (noting Mayor DeStefano's argument that "noncitizens, including illegal immigrants, already work and pay taxes in the city and that allowing them to vote in municipal elections would encourage them to participate more in the community").

[103] *See* Burroughs, *supra* note 44, at 414, 418-20 (discussing "outward-looking" state and local policies that "focus[ ] on promoting human rights in other countries").

[104] Wishnie, *supra* note 74, at 499 n.32.

[105] *See* Burroughs, *supra* note 44, at 416-18 (discussing these "inward-looking" attempts to "improve human rights within the United States").

[106] Powell, *supra* note 13, at 245; *see also* Caroline Bettinger-López, *Human Rights at Home: Domestic Violence as a Human Rights Violation*, 40 COLUM. HUM. RTS. L. REV. 19, 71 (2008) (discussing local treaty implementation strategies).

[107] Burroughs, *supra* note 44, at 411 (quoting Amnesty International USA); *see also* Powell, *supra* note 13, at 273-74 (discussing "state and local efforts to implement international obligations that the federal government . . . [has] not fully implemented").

[108] Aoki, *supra* note 47, at 473; *see also* Powell, *supra* note 13, at 277-78 (noting that the U.S. is the only industrialized country yet to ratify CEDAW).

[109] Schapiro, *supra* note 53, at 49; *see also* Burroughs, *supra* note 44, at 417 ("There is also some evidence that these analyses are translating into change on the ground.").

Nations Commission on Human Rights."[110]

Relatedly, numerous cities have passed their own "cutting-edge civil rights laws,"[111] to promote important human rights ignored or rejected by the states and federal government. Local governments have implemented anti-discrimination ordinances that protect a "wider range of characteristics" than state and federal laws, and have created local agencies to enforce these rights.[112] Gay rights have been a particular area of local emphasis, and a particularly important one given state and federal inaction and opposition. Not only do "numerous municipalities . . . prohibit discrimination on the basis of sexual orientation,"[113] but many cities have taken affirmative steps to ensure more equal benefits, by providing for gay marriage or domestic partnerships.[114] Similarly, localities with ID programs have tried to reduce sexual-minority stigma by permitting "gender- or sex-neutral identification cards."[115]

iii. Corporate Regulation for Workers, the Environment, and More

Challenging the dominant neoliberal paradigm, local governments have also imposed innovative regulations on corporations, for the sake of lower income workers, local business, public health, and the environment. Hundreds of municipalities have adopted "living wage" ordinances.[116] "[P]remised on the simple proposition that no one who works should live in poverty,"[117] such ordinances require businesses to pay a minimum wage that the locality deems sufficient for a reasonable standard of living—a wage substantially higher than state or federal minimums. These local laws are critical to the working class at

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[110] Powell, *supra* note 13, at 246, 282-83 (discussing initiatives by the cities of Baltimore, Philadelphia, Santa Cruz, and Yellow Springs).

[111] Barron, *supra* note 19, at 811.

[112] Readler, *supra* note 22, at 777, 790 (noting that these additional characteristics include "marital status, military status, and income level").

[113] Shaw, *supra* note 23, at 391 (discussing passage of such a law in Tompkins County, New York); Grant Schulte, *Lincoln Mayor to Request Citywide Vote on Ordinance Protecting Gays from Discrimination*, THE REPUBLIC, May 31, 2012, http://therepublic.com/view/story/c0e23aac7837467282452beb0a7f0022 (noting recent adoption of such ordinances by city councils in both Omaha and Lincoln, Nebraska, although the latter's ordinance is likely to soon be subject to a citywide referendum).

[114] *See* Parlow, *supra* note 7, at 375 & nn.25-26; Parlow, *supra* note 30, at 1070; *cf.* Ryan J. Stanton, *Ann Arbor Supporting ACLU in Federal Lawsuit Opposing Domestic Partner Benefits Ban*, ANN ARBOR.COM, Jan. 24, 2012, http://annarbor.com/news/ann-arbor-supporting-aclu-in-federal-lawsuit-opposing-domestic-partner-benefits-ban (discussing a City of Ann Arbor resolution to support an ACLU lawsuit against Michigan's ban on domestic partnership benefits).

[115] James McGrath, *Are You a Boy or a Girl? Show Me Your REAL ID*, 9 NEV. L.J. 368, 400 (2009) (discussing San Francisco's ID cards); *see also infra* note 949 and accompanying text.

[116] *See* Lynch, *supra* note 11, at 576.

[117] Cummings, *supra* note 36, at 465.

a time when "millions of Americans are working for a living, but remain under the poverty level as the value of the minimum wage continues to erode."[118] Although most of the ordinances impose the living wage only on businesses receiving local contracts, a few notable urban cities cast a much wider net.[119] At least one city, Santa Fe, New Mexico, is affirmatively enforcing its wage laws with lawsuits.[120]

In part to promote worker rights, but also to protect local business and the environment,[121] "cities and counties of all sizes" are also using their powers to regulate or even ban "big box" stores like Wal-Mart.[122] Innovative yet pragmatic, cities have taken a variety of approaches in doing so, adjusting to local political and legal realities. While some locales have used "municipal zoning laws to . . . preclude [big-box] development" entirely, others have employed conditional use permits to require "mitigation measures" like "enhanced wages and benefits."[123] "In one unique case, . . . the tiny Bay Area suburb of Hercules" even "exercise[d] eminent domain to take land owned by Wal-Mart."[124] These big-box fights are all the more notable given the unfortunate scarcity of such challenges to unfettered corporate growth. They also continue a long tradition of local resistance to big business, starting with the anti-chain store movement of the 1930s.[125] Although the chains ultimately won that battle, the big-box fights continue the war against the new, even more consolidated and powerful, corporate powers that be. To protect workers, small businesses, public health, and local economic independence, respectively, cities have also

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[118] Parlow, *supra* note 7, at 379-80 ("In this regard, these cities attempted to remedy a glaring problem in the economic health of the city—something that the state and federal governments had failed to address.").

[119] *Id.* (comparing the typical "contractor model of living wage laws" with the "blanket" laws in New Orleans, Berkeley, San Francisco, and Santa Fe).

[120] *See* Associated Press, *Santa Fe Sues Retailer Over Living Wage*, KRQE.COM, Mar. 31, 2012, http://krqe.com/dpp/news/business/santa-fe-sues-retailer-over-living-wage.

[121] *See* Cummings, *supra* note 42, at 1951.

[122] Daniel J. Curtin, Jr., *Regulating Big Box Stores: The Proper Use of the City or County's Police Power and its Comprehensive Plan—California's Experience*, 6 VT. J. ENVTL. L. 31, 34 (2005).

[123] Cummings, *supra* note 42, at 1951-52; *see also* George Lefcoe, *The Regulation of Superstores: The Legality of Zoning Ordinances Emerging from the Skirmishes between Wal-Mart and the United Food and Commercial Workers Union*, 58 ARK. L. REV. 833, 841-47 (2006) (discussing various local options to ban or regulate big-box stores); David Zahniser, *L.A. Council Votes too Late to Block Chinatown Wal-Mart Project*, L.A. TIMES, Mar. 24, 2012, http://articles.latimes.com/2012/mar/24/local/la-me-walmart-chinatown-20120324 (noting that the Los Angeles city council voted unanimously to temporarily ban large chain stores from opening in L.A.'s Chinatown neighborhood, in an effort to prevent a proposed Wal-Mart store).

[124] Cummings, *supra* note 42, at 1978.

[125] *See generally* Schragger, *supra* note 5 (discussing this movement in depth).

passed anti-sweatshop laws,[126] promoted "buy local" campaigns,[127] banned certain alcohol and tobacco advertising targeting inner-city communities,[128] and even implemented local currencies.[129]

Similarly, cities are making genuine inroads against corporate ill-effects in the environmental arena,[130] taking the lead in "policy areas such as climate change" where the federal government has failed to act.[131] Employing aspects of the aforementioned treaty implementation strategy, a coalition of mayors created and joined a "Climate Protection Agreement, which advances the goals of the Kyoto Protocol"[132]—the global climate change treaty that the U.S. has refused to sign. The Agreement thereby "impos[es these] new ("foreign") obligations on domestic government actors,"[133] *i.e.* corporations. The City of Pittsburgh also recently invoked its police powers to ban natural gas drilling within its borders.[134] Making the city's objection to undue corporate power at the expense of the environment crystal clear, the ordinance: (1) "eliminate[s] corporate 'personhood' rights within the city"; (2) "remove[s] the ability of corporations to override community decision-making"; and (3) "recognize[s] legally binding rights of nature."[135] For the sake of the environment, cities and counties have also banned single-use plastic bags[136] and promoted "smart growth."[137]

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[126] *See* Narro, *supra* note 86, at 479-81 (discussing a Los Angeles law).

[127] *See About Shop Oakland and Oakland Grown Campaign*, SHOP OAKLAND, http://shopoakland.com/oaklandgrown.htm (last visited June 9, 2012).

[128] *See* Ross D. Petty et al., *Regulating Target Marketing and Other Race-Based Advertising Practices*, 8 MICH. J. RACE & L. 335, 380 (2003).

[129] *See* Marisol Bello, *Communities Print Their Own Currency to Keep Cash Flowing*, USA TODAY, Apr. 10, 2009, http://usatoday.com/money/economy/2009-04-05-scrip_N.htm.

[130] *See* Barron, *supra* note 19, at 811; Foster, *supra* note 26, at 472-80.

[131] Parlow, *supra* note 7, at 375; *see also* Engel, *supra* note 40, at 160 (same).

[132] Aoki, *supra* note 47, at 472; *see also* Judith Resnik, *Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry*, 115 YALE L.J. 1564, 1646 (2006) (noting that the agreement also encourages "federal and state governments to meet Kyoto targets").

[133] Resnik, *supra* note 132, at 1581 (discussing these climate laws and CEDAW).

[134] *See* PITTSBURGH, PA., CODE ch. 618 (2010).

[135] Mari Margil & Ben Price, *Pittsburgh Bans Natural Gas Drilling*, YES!, Nov. 16, 2010, http://yesmagazine.org/people-power/pittsburg-bans-natural-gas-drilling; *see also* Mari Margil, *Can Communities Reclaim the Right to Say "No" to Corporations?*, YES!, Aug. 24, 2011, http://yesmagazine.org/people-power/the-right-to-say-no ("So far, over 100 communities across the U.S. have . . . adopt[ed] ordinances that challenge the structure of law that grants corporations rights that override local, democratic decision making.").

[136] *See* Associated Press, *California: Ban on Plastic Bags Spreads*, N.Y. TIMES, Nov. 17, 2010, http://nytimes.com/2010/11/17/us/17brfs-BANONPLASTIC_BRF.html (noting an L.A. County ban impacting 1.1 million people, as well as bans in other California cities).

[137] Curtin, Jr., *supra* note 122, at 35.

iv. Tenant Rights, Housing, and the Foreclosure Crisis

Local governments have been at the forefront of tenant rights for some time now. Most notable, cities across the country try to ensure stable and affordable rental housing through local eviction and rent control laws. At least in California, these protections become progressively more progressive as we move down the centralization ladder. The federal government provides almost no protections; as far as the federal government is concerned, private property owners can withdraw the roof or raise the rent at any time, for almost any reason.[138] The state does a bit more, procedurally requiring one or two months notice to tenants prior to these life-altering actions.[139] Local laws, on the other hand, often impose real substantive limits, prohibiting landlords from evicting tenants or substantially increasing the rent unless they have good cause to do so.[140]

These extraordinary ordinances have become even more critical during the recent foreclosure crisis, as national financial institutions try vigorously and often illegally to evict preexisting tenants from their properties. Looking again at California, the state legislature has done almost nothing and the federal government only slightly better, with recent legislation that gives post-foreclosure tenants a grand total of ninety days before banks can boot them from their homes.[141] Eviction control ordinances from Oakland to Los Angeles, however, often protect tenants' rights to stay in their homes indefinitely.[142] Moreover, progressive city officials have brought lawsuits against the banks and their brokers to enforce these local laws.[143]

Local governments and officials have also taken other innovative steps to try

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[138] The federal Fair Housing Act only prohibits certain discriminatory evictions. *See* 42 U.S.C. §§ 3601-19, 3631 (1968).

[139] *Compare* CAL. CIV. CODE §§ 827, 1946 (2004) (requiring thirty or sixty days notice prior to a change in lease terms or termination of a tenancy), *with* CAL. CODE CIV. PROC. § 1161 (2012) (requiring only three days notice before starting an eviction in certain situations). State law also prohibits discriminatory and retaliatory evictions. *See* CAL. CIV. CODE § 1942.5 (2003); CAL. GOV. CODE §§ 12955-12956.2 (2011).

[140] *See, e.g.*, OAKLAND, CAL., MUN. CODE ch. 8.22 (2010); L.A., CAL., MUN. CODE ch. 15 (2011); MERCED SUN-STAR, *Our View: Ordinance Protects Renters*, Nov. 9, 2011, http://mercedsunstar.com/2011/11/09/2114055/our-view-ordinance-protects-renters.html (noting the City of Merced's recent enactment of an eviction control law "that offers better protection than federal law for renters facing eviction after a foreclosure"). Sadly, the state has only undermined these local efforts—for instance, prohibiting rent controls on single family dwellings, apartments that become vacant, and units built after 1995. *See* CAL. CIV. CODE §§ 1954.50-1954.535 (1995) (Costa Hawkins Rental Housing Act).

[141] *See* Protecting Tenants at Foreclosure Act of 2009, PUB. L. NO. 111-22, 123 Stat. 1632, 1660-62. California did add improved notice requirements for post-foreclosure evictions. *See* CAL. CODE CIV. PROC. § 1161c (2010).

[142] *See supra* note 140.

[143] *See infra* notes 975-977 and accompanying text.

to prevent and then address the foreclosure crisis. "[L]ocal governments were relatively quick to crack down on predatory lending" in the first place,[144] in an unsuccessful effort to head off the crisis. Since then, cities have tried to respond to the devastating harms from the foreclosure flood. Cities have used state and local laws to put the costs of dealing with the resulting vacant and blighted housing where they belong—on the deed-holding banks. In fact, through such fines, Chula Vista, California, funds a self-sustaining enforcement program.[145] Oakland has collected many thousands of dollars in fines as well, as at least partial compensation for its debilated neighborhoods. Cities have also mandated bank reporting of foreclosed properties, so officials can more easily identify and inspect them.[146] Taking it even further, the Cook County Sheriff directed his officers not to evict any more foreclosed-upon families in Chicago.[147]

v. Public Health, Safety, and Electoral Reform

Cities have taken meaningful steps to tackle other important public health and safety issues as well. While "[t]he federal government did little to address the growing rolls of" U.S. residents without health insurance, "localities began to develop their own systems for providing coverage to those who lacked it."[148] These efforts are particularly impressive given the substantial costs and legal risk "that federal courts would strike down such efforts for conflicting with federal law."[149] Local agencies have also been at the "the forefront of healthcare policy development," "designing . . . healthcare coverage and delivery systems" and "seeking innovations that are both quality-based and cost-effective."[150] Most notable, San Francisco uses community clinics to ensure that all of its residents receive medical care.[151]

Other cities have tried to make at least localized repairs to broken state and federal systems of crime and punishment. Some locales are wisely waving initial peace flags in the never ending but always spending war on drugs, which has devastated U.S. cities and our developing country neighbors.[152] For in-

[144] Barron, *supra* note 10, at 1.

[145] *See Chula Vista Turns Foreclosures Around*, W. CITY, May 2010, http://westerncity.com/Western-City/May-2010/Chula-Vista-Turns-Foreclosures-Around.

[146] *See, e.g.*, OAKLAND, CAL., MUN. CODE ch. 8.54 (2010).

[147] *See* John Leland, *Sheriff in Chicago Ends Evictions in Foreclosures*, N.Y. TIMES, Oct. 8, 2008, http://nytimes.com/2008/10/09/us/09chicago.html.

[148] Barron, *supra* note 10, at 1.

[149] *Id.*; *see also* Parlow, *supra* note 7, at 375 n.29 (noting a federal-preemption-based suit against San Francisco's health care ordinance).

[150] Louise G. Trubek & Maya Das, *Achieving Equality: Healthcare Governance in Transition*, 29 AM. J.L. & MED. 395, 415, 411 (2003).

[151] *See* HEALTHY SAN FRANCISCO, PROGRAM BROCHURE (2009), *available at* http://healthysanfrancisco.org/files/PDF/HSF_Brochure_ENG_0509.pdf.

[152] *See* Jesse Newmark, Note, *A Look Inward: Blurring the Moral Line Between the*

stance, while a recent California proposition failed to legalize marijuana statewide, Oakland passed an ordinance authorizing large-scale marijuana distribution.[153] Not only might such regulated production and retail help satisfy the demand that now fuels the destructive black-market trade, but it could provide much needed jobs and tax revenue to struggling cities. To at least partly address our continued incarceration of about half a million people on drug charges,[154] other localities have implemented drug courts focused on rehabilitation.[155] Conversely, local governments have banned what they reasonably see as the bigger and more solvable threats to their communities: handguns and automatic firearms.[156]

Cities and counties have also implemented creative and progressive public education policies. Fittingly, some locales promote education decentralization through "small school" initiatives.[157] Many of these schools offer innovative curricula and after-school programs; some promote collaborative school administration as well, with "parents, community residents, and teachers" working together to improve education, and even receiving training to facilitate this process.[158] Local school districts have also tried to address tremendous race and class-based segregation within their jurisdictions, with voluntary school integration policies—notwithstanding federal court decisions making such strategies difficult and risky.[159] Last but not least, localities have enacted progressive electoral reforms that are critical for long-term change, curbing campaign contributions by corporations[160] and imposing term limits on effectively

Wealthy Professional and the Typical Criminal, 119 HARV. L. REV. 2165, 2169 (2006); Martha Mendoza, *US Drug War Has Met None of its Goals*, SEATTLE TIMES, May 13, 2010, http://seattletimes.nwsource.com/html/nationworld/2011855945_apfaileddrugwar.html ("In Ciudad Juarez, the epicenter of drug violence in Mexico, 2,600 people were killed last year in cartel-related violence, making the city of 1 million . . . one of the world's deadliest.").

153 *See* Malia Wollan, *Oakland's Plan to Cash in on Marijuana Farms Hits Federal Roadblock*, N.Y. TIMES, Mar. 2, 2011, http://nytimes.com/2011/03/03/us/03oakland.html (noting, however, that the city later "voted to stall the plan," following threats from county and federal law enforcement agencies).

154 *See* HUMAN RIGHTS WATCH, INCARCERATED AMERICA 1 (2003), http://hrw.org/backgrounder/usa/incarceration/us042903.pdf.

155 *See generally* Michael C. Dorf & Charles F. Sabel, *Drug Treatment Courts and Emergent Experimentalist Government*, 53 VAND. L. REV. 831 (2000).

156 *See* Parlow, *supra* note 30, at 1070.

157 *See infra* note 1008 and accompanying text; Ash Vasudeva et al., OAKLAND UNIFIED SCHOOL DISTRICT NEW SMALL SCHOOLS INITIATIVE EVALUATION 3-8 (2009), 13http://srnleads.org/resources/publications/ousd/docs/ousd_final_report.pdf.

158 Lobel, *supra* note 15, at 457 n.532.

159 *See infra* note 566 and accompanying text.

160 *See* Erwin Chemerinsky, *Campaign Spending and Judicial Elections: The Impact of* Citizens United, PUB. L.J., Fall 2010, at 1, 8-9, http://publiclaw.calbar.ca.gov/LinkClick.aspx?fileticket=-BdHUe8Om74%3d&tabid=1351; *cf.* Nathan Carrick, GAITHERSBURG PATCH, *Gaithersburg Elections Board Defies Supreme Court*, Oct. 26, 2011, http://gaither-

unoustable incumbents.[161]

c. *State and Federal Inaction and Harmful Policies*

In contrast to these exciting local laws and actions, the states and federal government have often been inactive, or worse, in the same policy areas. Again, a comprehensive analysis is not possible here; but for the sake of comparison, I will review some notable and representative examples.

i. Problematic Federal Policies

Perhaps due to the inherent problems of bureaucratic inertia and corporate capture discussed above, we seem to live "[i]n an era when the federal government . . . [is] unable or unwilling to address a variety of pressing societal problems."[162] Worse, when the United States does act, it tends towards a conservative agenda—at least relative to the rest of the Western world. And "[t]he policy areas of the greatest importance to Americans and the progressive agenda—public education, health care, immigration, and global climate change—are those suffering most."[163]

Starting again with immigration, critics on both sides of the figurative fence vigorously condemn the federal government's flawed policies,[164] which result in millions of immigrants living and working here but unable to obtain lawful status. For instance, due to statutory changes in the late 1990s, many immigrants otherwise entitled to become lawful residents through U.S. citizen family members or spouses can no longer complete the process here in the United States. Instead, in a classic Catch-22, they would have to interview at the U.S. consulate in their country of origin, but thereby simultaneously subject themselves to certain legal bars to reentry.[165] Even those immigrants able to com-

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sburg.patch.com/articles/gaithersburg-elections-board-defies-supreme-court-precedent (noting that Gaithersburg city officials "voted 4-1 to limit the amount candidates can donate to their own campaigns, flying in the face of . . . a 1976 U.S. Supreme Court ruling").

[161] *See* Parlow, *supra* note 7, at 375; Parlow, *supra* note 30, at 1070.

[162] Schapiro, *supra* note 53, at 33.

[163] Kathleen Sebelius & Ned Sebelius, *Bearing the Burden of the Beltway: Practical Realities of State Government and Federal-State Relations in the Twenty-First Century*, 3 HARV. L. & POL'Y REV. 9, 10 (2009); *see also* Jennifer Gordon, *Concluding Essay: The Lawyer is not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133, 2138 (2007) (noting that both federal courts and agencies have become more conservative).

[164] *See* Parlow, *supra* note 30, at 1061 ("[B]oth sides seem to agree on one premise: that the current federal immigration system is broken.").

[165] *See generally* Julie Mercer, Comment, *The Marriage Myth: Why Mixed-Status Marriages Need an Immigration Remedy*, 38 GOLDEN GATE U. L. REV. 293 (2008) (discussing and persuasively criticizing these statutory changes); *cf.* Brian Bennett, *Obama Administration Proposes Changes to Legal Status Applications*, L.A. TIMES, Mar. 30, 2012, http:// latimes.com/news/politics/la-pn-new-rules-would-make-legal-residency-easier-for-illegal-

plete the residency process may have to wait a decade or more, depending on the visa allowances for their country of origin.[166] Sadder still, millions of other immigrants, without qualifying family members, have lived and worked here for decades with no way to obtain legal status—as the last "amnesty" was granted by President Reagan in 1986.[167] This federal failure is especially frustrating given the strong ethical and economic reasons to open borders entirely.[168]

Adding insult to injury, the federal government has instead devoted its efforts to workplace raids—detaining and deporting undocumented workers, to the detriment of local communities.[169] As one scholar explains: "The fallout from these raids, . . . includes children left without guardians, heightened anxiety in immigrant communities . . . resulting in further retreat into the so-called 'shadows,' and drop-off in commerce in [these] communities."[170] The federal government has also raided public benefits and legal protections for immigrants. In passing a 1996 welfare bill, "forty-four percent of the overall estimated federal savings, derived from the provisions that would deny benefits to indigent legal immigrants."[171] Likewise, Congress and the Supreme Court have

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immigrants-20120330,0,4561746.story (discussing a proposed rule change by the Obama administration that would enable applicants to "claim the time apart from a spouse, child or parent would create 'extreme hardship' and allow them to remain in the U.S. as they begin the process").

[166] *See* Bureau of Consular Aff., U.S. Dep't of State, Pub. No. 9514, Visa Bulletin (June 8, 2011), http://travel.state.gov/pdf/visabulletin/VisaBulletin_July2011.pdf.

[167] *Cf.* Peter J. Spiro, *Learning to Live with Immigration Federalism*, 29 CONN. L. REV. 1627, 1646 (1997) (expressing pessimism as to the likelihood of an amnesty anytime soon).

[168] *See* Bill Ong Hing, *Immigration Policy: Thinking Outside the (Big) Box*, 39 CONN. L. REV. 1401, 1439-41 (2007) (discussing these reasons).

[169] The Obama administration has recently taken some steps to curtail deportation of undocumented immigrants "who have strong ties to the U.S. and no criminal record." Bennett, *supra* note 165. However, the new policy "has been applied very unevenly" by immigration authorities, who "have sustained a fast pace of deportations, removing nearly 400,000 foreigners in each of the last three years." Julia Preston, *Deportations Under New U.S. Policy Are Inconsistent*, N.Y. TIMES, Nov. 12, 2011, http://nytimes.com/2011/11/13/us/politics/president-obamas-policy-on-deportation-is-unevenly-applied.html.

[170] Rodríguez, *supra* note 22, at 603 n.159. During my time as a legal aid attorney at Centro Legal de la Raza, U.S. Immigration and Customs Enforcement ("ICE") raided a small Oakland cabinet shop owned by an undocumented immigrant. ICE detained the shop owner and his workers, then arrested his pregnant wife while she was dropping off their six-year-old daughter at school, thereby traumatizing the entire community. The husband was charged with multiple felonies, simply for employing other undocumented workers. The family is also likely to be deported, despite our legal representation and their having lived here for more than a decade. *See* Katy Murphy, *Oakland Schools to Defend Students Here Illegally*, OAKLAND TRIB., Jan. 10, 2008, http://insidebayarea.com/timesstar/localnews/ci_7930996.

[171] Wishnie, *supra* note 74, at 511.

cut legal recourse for undocumented workers whose rights are violated by their employers.[172] And the REAL ID Act prohibits states from issuing drivers' licenses to undocumented immigrants.[173] This precludes these drivers from getting automobile liability insurance, to all of our detriment.[174] Congress has also twice tried to disincentivize local sanctuary ordinances.[175]

The federal government has failed equally on other significant human rights. As mentioned, the United States declined to sign the Kyoto Protocol or join the rest of the world in adopting CEDAW.[176] The U.S. has also been particularly resistant both to "so-called 'positive rights,' such as rights to education, housing, food, and water,"[177] and to international law generally.[178] Moreover, mirroring their attacks on undocumented immigrants, Congress and the courts have denied workplace protections to gay and lesbian employees,[179] and use the REAL ID Act to "bar[ ] any state from removing gender or sex from identification cards" for the sake of "its gender variant citizens."[180] Undermining race equality, federal courts have also struck down local school desegregation efforts.[181]

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[172] *See* Michael J. Wishnie, *Prohibiting the Employment of Unauthorized Immigrants: The Experiment Fails*, 2007 U. CHI. LEGAL F. 193, 214 (2007) ("The [Court] . . . ma[de] it absolutely clear that employers of undocumented workers are in many instances immune from ordinary labor law liability."); Narro, *supra* note 86, at 498-99 (same).

[173] *See* Sebelius & Sebelius, *supra* note 163, at 25.

[174] *Cf.* Robert Faturechi & Joel Rubin, *L.A. County Sheriff Would Back 'Sensible' Plan to Issue Driver's Licenses to Illegal Immigrants*, L.A. TIMES, Feb. 24, 2012, http://articles.latimes.com/2012/feb/24/local/la-me-baca-20120224 (noting that the Los Angeles County sheriff, police chief, and city attorney have each expressed support for making driver's licenses available to undocumented immigrants, citing the public safety benefit of having more insured drivers).

[175] *See* Parlow, *supra* note 30, at 1067.

[176] *See supra* notes 108 & 132 and accompanying text; Resnik, *supra* note 132, at 1645; *cf.* Bettinger-López, *supra* note 106, at 52 ("The United States has declined to ratify most international human rights treaties . . . .").

[177] Burroughs, *supra* note 44, at 412 (footnote omitted).

[178] *See* Powell, *supra* note 13, at 259 (discussing some federal courts' "reluctance and open hostility" to international law).

[179] *See* Readler, *supra* note 22, at 779-80.

[180] McGrath, *supra* note 115, at 370. The federal Defense of Marriage Act also "bars the federal government from recognizing same-sex marriages. Kirk Semple, *U.S. Drops Deportation Proceedings Against Immigrant in Same-Sex Marriage*, N.Y. TIMES, June 29, 2011, http://nytimes.com/2011/06/30/us/30immig.html. The Obama administration has announced that it views the Act as unconstitutional and will not defend it in courts, *id.*, but also "said it would continue to enforce the measure until it was repealed by Congress or the court found it to be unconstitutional." Joe Davidson, *Obama Administration Allows Health Coverage for Same-Sex Spouse*, WASH. POST, Mar. 26, 2012, http://washingtonpost.com/blogs/federal-eye/post/obama-administration-allows-health-coverage-for-same-sex-spouse/2011/04/15/gIQAddI4cS_blog.html.

[181] *See infra* note 566 and accompanying text; *cf.* James S. Liebman & Charles F. Sabel,

Finally, our refusal to sign the Kyoto Protocol is unfortunately representative of federal inaction and obstruction generally with regard to the environment and other policy areas crying out for corporate regulation.[182] For instance, while local living wage ordinances flourished, the federal minimum wage stagnated; despite a recent increase, it is still lower in real terms than it was for most of the 1960s and 1970s.[183] Likewise, when it comes to federal labor law, "[t]he combined weaknesses in coverage and biased enforcement" arguably have "an anti-union effect," responsible for "the decline of the American labor movement."[184] The federal government has even been unwilling to confront the corporations responsible for the foreclosure crisis, bailing out banks but not homeowners and passing on the opportunity to impose real regulatory reform.[185] Perhaps worst of all, the Supreme Court recently removed longstanding restrictions on campaign financing by corporations, thereby ensuring their continued political dominance.[186]

ii. Problematic State Policies

Predictably, with fifty states, there has been substantial variance in recent state action. However, it is still worth considering certain notable trends and instances of inaction and ill-advised policymaking. First, state "laws restricting the rights or benefits of [undocumented] immigrants outnumber[ ] laws benefit-

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A Public Laboratory Dewey Barely Imagined: The Emerging Model of School Governance and Legal Reform, 28 N.Y.U. REV. L. & SOC. CHANGE 183, 200 (2003) ("There was nothing half-hearted about the Court's retreat from an expansive program of desegregation . . . .").

[182] Schapiro, *supra* note 53, at 42 (discussing global warming).

[183] *See* KAI FILION, ECON. POL'Y INST., MINIMUM WAGE ISSUE GUIDE (2009), http://epi.org/publication/issue_guide_on_minimum_wage.

[184] Yungsuhn Park, *The Immigrant Workers Union: Challenges Facing Low-Wage Immigrant Workers in Los Angeles*, 12 ASIAN L.J. 67, 90 (2005); *see also* Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879, 1909 (2007) (discussing a National Labor Relations Act provision biased in favor of employers).

[185] *See* Golden & Fazili, *supra* note 79, at 32 n.7 (noting the lack of federal action as to the foreclosure crisis); *cf.* Schapiro, *supra* note 53, at 42-43 (discussing federal inaction as to "misconduct in the student loan and subprime mortgage markets").

[186] *See* Chemerinsky, *supra* note 160, at 4-5 (discussing the impact of the Supreme Court's decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010)); James Vicini, *Supreme Court Permits No Limits on State Campaign Funds*, REUTERS, June 25, 2012, http://in.reuters.com/article/2012/06/25/us-usa-campaign-court-idINBRE85O0P520120625 (discussing the Supreme Court's application of *Citizens United* to strike down "a century-old law in Montana that set limits on business spending for political campaigns in the state" (citing *Am. Tradition P'ship, Inc. v. Bullock*, — S. Ct. ——, No. 11-1179, 2012 WL 2368660 (June 25, 2012))); *cf.* Ronald Chen & Jon Hanson, *The Illusion of Law: The Legitimating Schemas of Modern Policy and Corporate Law*, 103 MICH. L. REV. 1, 4 (discussing "how the schemas and scripts behind our laws manage, through illusion, to legitimate institutions, outcomes, policies, and laws that, in fact, reflect the situational power of large commercial interests").

ing them by a 2-1 ratio."[187] As if harsh federal statutes were not enough, states have enacted their own anti-immigrant criminal laws. Over objections by its two biggest cities, Arizona recently passed anti-immigrant legislation making "the failure to carry immigration documents a crime,"[188] although the Supreme Court ultimately struck down this portion of the legislation as preempted.[189] Likewise, although it is already a federal offense to reenter the U.S. after being deported, states have criminalized "illegal entry" across their own borders.[190] Other states have instead focused on enforcing existing federal law, by "enter[ing] into agreements with the federal government permitting state law enforcement officers to arrest and detain non-citizens on immigration charges."[191] Arizona's legislation goes even further, "requir[ing] state officers to make a 'reasonable attempt . . . to determine the immigration status' of any person they stop, detain, or arrest on some other legitimate basis, if 'reasonable suspicion exists that the person is an [immigrant] and is unlawfully present in the United States.'"[192]

States have also yanked public benefits such as health coverage, voting rights, and in-state college tuition from their undocumented residents,[193] and passed nativist legislation shunning non-English languages and cultures. The latter include discriminatory "English only" ordinances,[194] and education-related attacks on ethnic studies and teachers with accents.[195] States have tried to exclude undocumented workers from their economies as well. Arizona, for instance, imposes strict penalties—including the pulling of business licenses—

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[187] Daniel C. Vock, *With Feds Stuck, States Take on Immigration*, STATELINE.ORG, Dec. 17, 2007, http://stateline.org/live/details/story?contentId=264483.

[188] Kirk Semple, *In Trenton, Issuing IDs for Illegal Immigrants*, N.Y. TIMES, May 16, 2010, http://nytimes.com/2010/05/17/nyregion/17idcard.html.

[189] *See Arizona v. U.S.*, — S. Ct. ——, No. 11-182, 2012 WL 2368661, at *8-10 (June 25, 2012). The Court also struck down as preempted provisions of Arizona's legislation that would have: 1) made it a misdemeanor for an undocumented immigrant to solicit or engage in work, *see id.* at *10-12; and 2) authorized state police "officers who believe an [immigrant] is removable by reason of some 'public offense' . . . to conduct an arrest on that basis." *Id.* at *13.

[190] *See* Rodríguez, *supra* note 22, at 592 & n.105.

[191] Huntington, *supra* note 49, at 788; *see also* Rodríguez, *supra* note 22, at 591-92 (discussing various anti-immigrant measures).

[192] *Arizona*, 2012 WL 2368661, at *15 (quoting Ariz. Rev. Sat. Ann. § 11-1051(B)). The Supreme Court upheld this provision against the federal government's initial facial challenge, but expressly did "not foreclose other preemption and constitutional challenges to the law as interpreted and applied after it goes into effect." *Id.* at *17.

[193] *See* Rodríguez, *supra* note 22, at 593 & n.108.

[194] *See id.* at 583.

[195] *See* Valerie Strauss, *Arizona Strikes Again: Now It Is Ethnic Studies*, WASH. POST, May 4, 2010, http://voices.washingtonpost.com/answer-sheet/history/arizona-strikes-again-now-it-i.html.

on companies that employ undocumented immigrants.[196] Although ultimately stopped by the federal courts and state political shifts, it would be remiss not to mention "California's infamous Proposition 187, which would have excluded unauthorized immigrants and their children from most state benefits and institutions (including the public schools)."[197]

Attacking other human rights as well, Californians recently undercut progressive local legislation by banning gay marriage statewide, with a voter initiative upheld by the state courts. Other states have passed similar constitutional amendments.[198] Also acting on unjustified public fear and anger, Oklahoma recently "convey[ed] an official government message of disapproval and hostility toward [Islamic] religious beliefs" and international law, with a constitutional amendment prohibiting state courts from considering Islamic or international law when deciding cases.[199] Further, while the federal courts deserve bad Samaritan blame for declining to use the Constitution to stop them, the states hold direct responsibility for "allow[ing] tremendous race disparities in the application of the death penalty, in violation of international law."[200] With regard to workers' rights, both state and federal agencies—and the legislatures that fund and appoint them—are responsible for the "sluggish processing" of employee claims that arguably "destroys any real possibility of enforcement."[201] Meanwhile, Indiana recently became the twenty-third state to pass a so-called "right to work" law, significantly impeding union efforts to organize and negotiate improved conditions for workers.[202] Finally, some states are disinvesting in the poor more broadly,[203] and undermining local efforts to protect the environment.[204]

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[196] *See* Huntington, *supra* note 49, at 802.

[197] Rodríguez, *supra* note 22, at 595.

[198] *See California's Proposition 8 (Same-Sex Marriage)*, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/subjects/c/californias_proposition_8_samesex_marriage/index.html (last visited June 9, 2012).

[199] *Awad v. Ziriax*, 754 F. Supp. 2d 1298, 1301-03 (W.D. Okla. 2010), *aff'd*, 670 F.3d 1111 (10th Cir. 2012).

[200] Powell, *supra* note 13, at 280 & n. 145.

[201] Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 418 (1995); *see also* Ashar, *supra* note 184, at 1903 ("[C]ommentators note the overall ineffectiveness of the administrative agencies charged with enforcing labor laws.").

[202] Mark Guarino, *With Indiana 'Right to Work' Vote, a GOP Thumb in the Eye to Unions*, CHRISTIAN SCI. MONITOR, Jan. 26, 2012, http://csmonitor.com/USA/Politics/2012/0126/With-Indiana-right-to-work-vote-a-GOP-thumb-in-the-eye-to-unions.

[203] Cashin, *supra* note 9, at 553.

[204] *See* Margil & Price, *supra* note 135 (noting "state laws pre-empting municipalities from taking any steps to reign in the [natural gas] industry").

2. Existing Negatives of Local Government

This, however, is only one side to the modern story. There are also significant contemporary cons to local policymaking, including some serious enough to make one wonder whether local government is ever the place to seek progressive change. First, in many of the important policy areas discussed above, the roles are sometimes reversed, with cities enacting harmful policies and the states and federal government playing a mediating role. Cities are also significantly limited by various legal, political, and economic rules and policies beyond their control.

a. *Harmful Local Policies*

As mentioned, local governments have innovated on both fringes of the political spectrum. Unsurprisingly then, creative progressive policies in one locale often have their polar and disturbing opposites in another. Again, I will synthesize some of these policy trends and note particularly egregious examples in the important areas that we have been investigating.

i. Excluding and Attacking Immigrants

In contrast to the many municipal policies of acceptance, "nativist reactions to immigration" have also found "vivid expression" in "local political processes."[205] Indeed, local governments have a shameful past of "widespread . . . regulations to either 'quarantine' immigrants within specific neighborhoods, or prevent their landing altogether."[206] Certain cities have unfortunately seen fit to bring this baggage into the modern day. Like states, some localities have accepted authorization from the federal government to "investigate immigration cases" and "detain individuals for immigration violations."[207] For instance, undermining the progressive policies of two of its largest cities, Alameda County recently joined U.S. Immigration and Customs Enforcement's "secure communities" program. Worse than euphemistic, ICE's strategy of immigration enforcement by local officials in fact decreases community safety, by discouraging immigrant cooperation with police and increasing the potential for racial profiling.[208]

Cities and towns have also enacted their own laws to "discourage the presence of unauthorized migrants."[209] As one scholar summarizes: "Acting upon politically manipulated fear and supposition rather than solid evidence, numerous . . . local governments recently introduced legislation to enforce linguistic assimilation, deny constitutional and civil rights, and prohibit 'illegal immi-

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[205] Rodríguez, *supra* note 22, at 581.

[206] Su, *supra* note 4, at 1649 (footnote omitted).

[207] Rodríguez, *supra* note 22, at 591.

[208] *See* Schuck, *supra* note 28, at 74-75 (noting these and other arguments against such enforcement by local officials); Huntington, *supra* note 49, at 789 (same).

[209] Huntington, *supra* note 49, at 802-03.

grants' from accessing public services, housing, and employment."[210] Like the state laws discussed, certain city ordinances penalize employers who hire undocumented workers.[211] Other local laws even attack the right to a roof over head, by prohibiting landlords from renting to undocumented immigrants.[212] Employers and landlords who violate these ordinances can lose their business and rental licenses.[213] Municipalities use English-only ordinances to "broadcast local resistance to immigrants" as well.[214] And cities have specifically targeted immigrant day laborers, with local laws that "limit[ ] their ability to look for work" or "subject [them] to harassment" by police and private citizens.[215] Marietta, Georgia, for instance, "passed an ordinance prohibiting day laborers and contractors from gathering on city streets to arrange for work."[216] Other local laws prohibit providing goods and services to undocumented workers through day laborer assistance centers.[217]

Cities have also used facially neutral laws and policies to persecute immigrant workers and residents. For instance, Redondo Beach, California, recently invoked its ordinance "forbidding the 'solicitation of employment from streets'" to arrest, detain, and prosecute day laborers in a "massive crackdown."[218] Other cities use anti-loitering laws "to remove congregations of immigrant day-laborers in public spaces."[219] Similarly, local governments have redefined what "constitutes 'overcrowding'" or a "family" in zoning codes, to exclude "low-income, predominantly Hispanic immigrants who are more likely to share housing with extended family members."[220] Particularly cutthroat, one such revision by the City of Santa Ana, California, "would have instantly rendered more than half of the immigrant households in the community illegal."[221] There are also "accounts that [local] communities have rejected bond issues to

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[210] Aoki, *supra* note 47, at 481-82.

[211] *See* Rodríguez, *supra* note 22, at 569, 593 & n.107.

[212] *See* Huntington, *supra* note 49, at 803 (noting that localities in California, Georgia, and Texas have passed such ordinances); Su, *supra* note 4, at 1643 (discussing the infamous City of Hazelton ordinance); Monica Davey, *Nebraska Town Votes to Banish Illegal Immigrants*, N.Y. TIMES, June 21, 2010, http://nytimes.com/2010/06/22/us/22fremont.html (discussing a local law requiring tenant "occupancy licenses").

[213] *See* Schuck, *supra* note 28, at 84 & n.86; Rodríguez, *supra* note 22, at 593 & n.107.

[214] Su, *supra* note 4, at 1650; *see also* Parlow, *supra* note 30, at 1065 (noting that English-only ordinances are "intended—at least in part—to discourage undocumented immigrants from availing themselves of social services provided by the particular locality").

[215] Narro, *supra* note 86, at 487; *see also* Rodríguez, *supra* note 22, at 598 n.135 ("Local government officials . . . make it a habit of fining and arresting day laborers.").

[216] Hing, *supra* note 82, at 881.

[217] *See* Huntington, *supra* note 49, at 803 & n.62 (discussing the City of Hazelton ordinance).

[218] Narro, *supra* note 86, at 490-91.

[219] Su, *supra* note 4, at 1650.

[220] *Id.* at 1650 & n.98.

[221] *Id.*

build new schools in part because residents perceived the benefits [thereof] as going primarily to . . . immigrant children."[222] Finally, some localities have inverted the symbolic strategies of their progressive counterparts, passing resolutions that call for the federal government to halt "all immigration—legal and undocumented."[223]

ii. Ignoring Rights and an Infamous History

Local "activism at [the international] level does not inevitably fall on the 'progressive' side of the ledger" either.[224] As to foreign affairs, for instance, Miami-Dade County, Florida, passed an "ordinance requiring recipients of cultural grants to affirm that they had no business with Cuba"[225] Cities have also rejected certain human rights—gay rights, in particular. A "Cincinnati city charter amendment . . . removed [gay residents] from protection under municipal anti-discrimination ordinances."[226] Similarly, the El Paso city council recently "let stand a voter-approved ban on health insurance benefits for domestic partners of municipal workers,"[227] although it later reversed course.[228]

Also, it would be remiss not to mention especially widespread and egregious past policies, as they may carry some informative value as to what we can expect from cities today. The civil rights era, in particular, "demonstrated the dangerous potential of unchecked local power" directed against minority groups,[229] as cities used zoning and other laws to "mandate racially segregated residential patterns."[230] The states were of course equally discriminatory and "federalism rhetoric was often used . . . to provide a race-neutral framework," where the real "substantive end was racial subordination."[231] Given the analo-

[222] *Id.* at 1651.

[223] Hing, *supra* note 82, at 881.

[224] Resnik, *supra* note 132, at 1668.

[225] *Id.* at 1652 n.432 (noting a federal court's injunction of the ordinance).

[226] Readler, *supra* note 22, at 808.

[227] *Across the USA News from Every State*, USA TODAY, Nov. 18, 2010, http://usatoday.com/printedition/news/20101118/states18_st.art.htm.

[228] Juan Carlos Llorca, *El Paso Restores Gay and Unwed Couples' Benefits*, STAR-TELEGRAM, June 14, 2011, http://star-telegram.com/2011/06/14/3150000/el-paso-council-to-vote-on-gay.html#ixzz1Qcc8KYyw.

[229] Schapiro, *supra* note 53, at 35. Local governments also then targeted gay residents with facially neutral laws—banning certain sex acts and criminalizing "sexual intercourse between persons not married to each other." *Ex parte Lane*, 58 Cal. 2d 99, 105 (1962) (striking down the city ordinance).

[230] Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739, 740-44 (1993) ("[S]everal southern and border cities enacted strict racial zoning ordinances designating separate residential districts for whites and blacks.").

[231] Cashin, *supra* note 9, at 568; *see also* Schapiro, *supra* note 53, at 34 (noting that federalism "offered a convenient shield" for local obstruction of federal civil rights efforts).

gies, localist rhetoric might be used in the same way: to provide a legitimizing façade for discriminatory action. We may also need to be especially concerned in the current economy, as minority groups make easy scapegoats for unemployed anger. As one advocate recently predicted: "There will come a time when state budgets are not so flush, and when episodic American nativism returns. Then, more states will try to balance their budgets on the backs of indigent immigrants."[232] The same could be warned of local governments facing tough times and as to other minority groups.

b. *Progressive Federal and State Policies*

Like harmful city policies, progressive federal and state action also calls into question the relative desirability of working with local government. Sticking with the civil rights era for its historical significance, it was the federal government that contested racially discriminatory state and local action. The executive branch and the courts "each used the authority of the federal government to force states to accept suffrage for African Americans, the desegregation of public schools, and the slow, uphill march of the civil rights movement through the 1960s."[233] Historically, the federal government has also "been far more interventionist than . . . state governments on behalf of . . . the poor."[234] Roosevelt's New Deal, for example, provided at least minimum safety nets for millions of working people. The first important environmental protections and prison reforms can also be credited to Congress and the courts.[235] Crossing over to the recent past, a 1982 Supreme Court decision guaranteed a critical right to millions living within our borders: "[A]t least 65,000 [undocumented] students graduate from American high schools each year—a phenomenon that stems in part from . . . *Plyler v. Doe*, which essentially restrains states from denying public education to unauthorized immigrants."[236]

With such important and reformist federal action, it is unsurprising that "[t]hroughout much of the twentieth century, progressives relied on a dominant federal government to ensure that their policies were successfully implemented."[237] In fact, it may be this history of progressive action, moreso than any

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[232] Wishnie, supra note 74, at 497-98 (footnotes omitted).

[233] Sebelius & Sebelius, supra note 163, at 9 (referring to various Presidents); see also Charles F. Sabel & William H. Simon, Destabilization Rights: How Public Law Litigation Succeeds, 117 HARV. L. REV. 1015, 1022 (2004) (noting "the Herculean effort of the federal courts to desegregate the nation's public schools").

[234] Cashin, supra note 9, at 594.

[235] See Bradley C. Karkkainen, Environmental Lawyering in the Age of Collaboration, 2002 WIS. L. REV. 555, 555-56 (2002) (discussing "[t]he first thirty years of large-scale federal environmental law successes"); Sabel & Simon, supra note 233, at 1029-43 (discussing prison and mental health institution reform).

[236] Rodríguez, supra note 22, at 606 (footnotes omitted) (citing *Plyler v. Doe*, 457 U.S. 202 (1982)).

[237] Sebelius & Sebelius, supra note 163, at 9; see also Cummings, supra note 42, at 1979

current positives, that keeps social justice lawyers generally predisposed in favor of the federal government. However, today also, the federal government sometimes acts progressively in certain areas. The President and Congress finally implemented—and the Supreme Court upheld—health care reform, albeit with massive concessions. And according to at least one scholar, "the federal government remains the leader in passing and enforcing anti-discrimination laws in private employment."[238] Congress also ensures certain critical protections for undocumented immigrants, by precluding states from denying "access to emergency health care and short-term non-cash disaster relief."[239] Likewise, some federal judges still see it as their duty to shelter the most fragile rights from a harsh political climate. For instance, the Ninth Circuit continues to monitor and protect the rights of millions in California state prisons,[240] and Judge Vaughn Walker recently upheld the right of all people to marry against California's Proposition 8.[241] Only expressive but equally inspiring, Judge Harry Pregerson invokes the Constitution against unjust federal immigration law, dissenting in cases where the deportation of undocumented parents effectively forces their U.S. citizen children either to leave the country or be separated from their families.[242]

Turning to the states, some scholars view their progressive policies as positively, on the whole, as I have portrayed local action. As Professor Robert Schapiro summarizes: "In areas ranging from student loans to climate change, from gay marriage to international law, states have been leaders in advancing significant policy objectives . . . ."[243] Certain states have taken important steps to benefit their immigrant residents. Indeed, "the evidence strongly suggests that the largest immigrant-receiving states" are "consistently more generous" than Congress.[244] For instance, "Alaska, Maine, New Mexico, Oregon, and the District of Columbia have policies restricting local law enforcement of federal

("The classical model of law reform emphasized the creation of universal rules codified at the federal level.").

238 Readler, supra note 22, at 780.

239 Schuck, supra note 28, at 91.

240 See *Brown v. Plata*, 131 S. Ct. 1910, 1922-23 (2011) (upholding a three-judge district court order requiring the state to reduce its prison population).

241 See *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 927 (N.D. Cal. 2010), *aff'd*, *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012).

242 *See Memije v. Gonzales*, 481 F.3d 1163, 1164-66 (9th Cir. 2007) (Pregerson, J., dissenting); HUMAN RIGHTS WATCH, FORCED APART (BY THE NUMBERS) 4 & n.6 (2009), http://hrw.org/sites/default/files/reports/us0409web_0.pdf; Kevin R. Johnson, *Judge Harry Pregerson on the "Unconscionable" Breaking Up of a Family*, IMMIGRATIONPROF BLOG, Mar. 20, 2011, http://lawprofessors.typepad.com/immigration/2011/03/judge-harry-pregerson-on-the-unconscionable-breaking-up-of-a-family.html.

243 Schapiro, supra note 53, at 34-35

244 Schuck, supra note 28, at 60.

immigration law."[245] Other states have preempted local attempts to deny housing and employment based on immigration status, by prohibiting cities from "requiring landlords to monitor tenants' immigration status" and "forbidding businesses from using a federal database to verify the immigration status of potential employees."[246]

States have taken notable affirmative steps to integrate their immigrant residents as well. North Carolina, for instance, implemented "innovative strategies designed to train agency officials to understand the Latino immigrant experience by exposing [them] to aspects of the aesthetic and political cultures of the immigrants' home societies."[247] States have also provided rights and benefits denied by Congress and the federal courts. For instance, California reinstated, via state law, the remedies for workplace violations that the U.S. Supreme Court has denied to undocumented immigrants (except the remedy of reinstatement itself which is, unfortunately, preempted by federal work requirements).[248] State attorneys general have also "aggressively sought to protect immigrant workers, even when it has put them at odds with federal immigration policy."[249] Similarly, some state legislatures have "gone beyond quietly flouting [federal] policy": "Despite the REAL ID Act . . . eight states continue to issue driver's licenses to residents regardless of their immigration status."[250] More important than just driving privileges, these policies reduce the likelihood of routine traffic stops leading to deportation; otherwise, undocumented immigrants are subject to police detention for driving without a license and subsequent ICE holds. As mentioned, immigrants with drivers' licenses can also obtain the car insurance essential to everyone's wellbeing.

To some extent extending the federal protections of *Plyler v. Doe*,[251] but in contrast with Congress's recent rejections of the DREAM Act,[252] numerous states have also "passed laws permitting certain undocumented students who . . . graduate[ ] from their primary and secondary schools to pay the same [in-state college] tuition as their classmates."[253] "[E]ven more remarkable," given the short-term costs of such laws, these states include those "in which most undocumented immigrants live."[254] California also recently passed a bill

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[245] Huntington, supra note 49, at 802 n.57.

[246] Id. at 803 n.61, 804 (referring to California and Illinois laws, respectively).

[247] Rodríguez, supra note 22, at 585; see also infra notes 913-917 and accompanying text (discussing the North Carolina intiative in more detail).

[248] See Narro, supra note 86, at 504.

[249] Schuck, supra note 28, at 63.

[250] Id. at 63, 61; see also Sebelius & Sebelius, supra note 163, at 26.

[251] 457 U.S. 202 (1982).

[252] See Brad Knickerbocker, DREAM Act for Minors in the US Illegally Stopped in the Senate, Christian Sci. Monitor, Dec. 18, 2010, http://csmonitor.com/USA/Politics/2010/1218/DREAM-Act-for-minors-in-the-US-illegally-stopped-in-the-Senate.

[253] Schuck, supra note 28, at 62; see also Huntington, supra note 49, at 803-04.

[254] Schuck, supra note 28, at 62-63 & n.17 (referring to California, Texas, New York, and

that allows undocumented students to apply for state financial aid for college.[255] Equally charitable, despite a 1996 federal law authorizing cuts, "[s]tates were surprisingly reluctant to restrict immigrant eligibility for [welfare] benefits."[256] In fact, many decided to supplement federal benefits for ineligible immigrants.[257]

States have also taken notable progressive action with respect to other human rights. As mentioned, Massachusetts famously "barr[ed] state agencies from purchasing goods from companies doing business with [Burma],"[258] to pressure the country "to protect the human rights of [its] citizens."[259] Similarly, California has passed laws providing additional "recovery rights" to victims of the Holocaust[260] and Armenian Genocide.[261] Like localities, certain states have also "taken the initiative in extending rights to gays and lesbians."[262] In 2011, New York became the sixth and largest state to allow same-sex marriage.[263] In addition, at least some states have stepped up to smack down corporations. It is a California law that allows local governments to fine banks $1,000 per property per day for foreclosure-based blight.[264] Following in its cities' footsteps, California's attorney general also "launched an investigation aimed at protecting . . . the tens of thousands of tenants facing eviction from [foreclosed-upon]

Illinois); see also Rodríguez, supra note 22, at 605 (noting that "states not normally considered to be solicitous of unauthorized immigration" have also passed such laws).

[255] *See Semple*, *supra* note 98 (noting also that similar proposals are pending in New York).

[256] Wishnie, supra note 74, at 515.

[257] Schuck, supra note 28, at 61, 85; see also Huntington, supra note 49, at 804 ("New York offers health care for unauthorized migrants without health insurance who are diagnosed with cancer.").

[258] Aoki, supra note 47, at 476.

[259] Burroughs, supra note 44, at 418-19; see also Resnik, supra note 132, at 1581 (noting that the ban was because of Burma's "use of forced labor").

[260] See Resnik, supra note 132, at 1652.

[261] See *Movsesian v. Victoria Versicherung AG*, 629 F.3d 901, 903 (9th Cir. 2010).

[262] Schapiro, supra note 53, at 44.

[263] Nicholas Confessore & Michael Barbaro, New York Allows Same-Sex Marriage, Becoming Largest State to Pass Law, N.Y. TIMES, June 24, 2011, http:/nytimes.com/2011/06/25/nyregion/gay-marriage-approved-by-new-york-senate.html.

[264] See CAL. CIV. CODE § 2929.3 (2008); *see also* Alejandro Lazo, *Two Former Countrywide Executives Settle California Lawsuit for $6.5 Million*, L.A. TIMES, Feb. 3, 2011, http://articles.latimes.com/2011/feb/03/business/la-fi-mozilo-settlement-20110203 (discussing the $6.5 million settlement of a California lawsuit against Countrwide Financial Corporation for predatory lending); Lily Leung, U-T SAN DIEGO, *City Attorney to Hire Loan-Scam Investigator*, Mar. 24, 2012, http://utsandiego.com/news/2012/mar/24/tp-city-attorney-to-hire-loan-scam-investigator (noting that the City of San Diego is using funds from California's settlement with Countrywide "to hire a half-time investigator to look into loan-modification and foreclosure scams").

buildings."[265] Similarly, New York's attorney general responded to student loan and subprime mortgage misconduct by "operat[ing] as the vigorous market watchdog that the national Securities and Exchange Commission refused to be."[266] And trying to hold corporations at least partly accountable for the public costs of inadequate wages, Maryland passed a statute requiring "Wal-Mart [to] expend a minimum percentage of its Maryland payroll on health care for [its] Maryland employees."[267]

Finally, states have enacted other progressive legislation for the public well-being. For instance, to the benefit of millions living in lower income school districts, certain states provide greater rights to an adequate or equal public education than does the federal government.[268] Whereas, for both the public health and animal rights, California passed the Prevention of Farm Animal Cruelty Act.[269] Like cities, states have also taken steps, albeit smaller, to decriminalize marijuana.[270]

c. *Significant Local Limits*

Probably the most compelling reason to reconsider working with local governments, however, is that various complicated and interrelated factors are likely to limit what cities are willing and able to do. Foremost among these factors is a particular set of legal and economic background rules and policies that significantly impact local governments, with serious negative consequences.

i. Legal and Economic Background Rules and Policies

Selective Subsidies and Power Grants — To begin with, we have long provided tremendously large, wide-ranging, and "unfair subsidies to [certain] suburbs, and therefore mostly to privileged white people"—subsidies "in housing, public services, and transportation" and "mounting to scores of billions of dollars annually."[271] Starting in the 1950s, federal programs "promoted the creation of homogenous white suburbs" and "facilitated the development of segre-

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[265] Press Release, Cal. Att'y Gen., Brown Investigates Whether Tenants' Rights are Violated in Foreclosures (June 28, 2010), http://oag.ca.gov/news/press_release?id=1941; *see also* Gretchen Morgenson, N.Y. TIMES, *Massachusetts Sues 5 Major Banks Over Foreclosure Practices*, Dec. 1, 2011, http://nytimes.com/2011/12/02/business/major-banks-face-new-foreclosure-suit.html.

[266] Barron, supra note 10, at 1-2; see also Schapiro, supra note 53, at 42-43 (detailing the New York attorney general's efforts to regulate corporate lending practices).

[267] Zelinsky, supra note 57, at 847 (noting, however, that the act was held preempted).

[268] See Briffault, supra note 9, at 24-37 (discussing relevant state court decisions).

[269] See Tracie Cone, Calif. Lawmakers Rally on Animal Welfare Issues, GUARDIAN, June 1, 2009, http://guardian.co.uk/world/feedarticle/8534863.

[270] See Marijuana and Medical Marijuana, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/subjects/m/marijuana/index.html (last visited June 9, 2012).

[271] William W. Goldsmith, Fishing Bodies out of the River: Can Universities Help Troubled Neighborhoods?, 30 CONN. L. REV. 1205, 1245-46 (1998).

gated and locationally deficient black inner city neighborhoods," by funding certain kinds of housing and transportation at the expense of others.[272] Today, affluent locales continue to "garner the largest share of federal, state, and regional public investments that fuel growth."[273] Suburbs receive "massive, disproportionate infrastructure investments," such as "new roads and highways [and] expensive wastewater treatment systems";[274] and their homes are subsidized by substantial tax breaks.[275]

Exacerbating these subsidies, states have established legal background rules that, taken together, incentivize and enable affluent localities to maintain their privileged positions. First, states make cities dependent on local property taxes "to provide most of the funding for local government services,"[276] such as public schools, emergency medical services, and law enforcement. Instead of sharing revenue to provide these critical services, localities are also authorized and expected "to spend the money they raise from taxes solely on [their own] local residents."[277] With widely varying property values, local taxation is thus organized "in a way that enables exclusive suburbs to offer better services to their residents than those offered by neighboring jurisdictions."[278]

At the same time, state laws "empower[ ] individual cities to engage in exclusionary zoning."[279] As mentioned, authority over land use has long been committed to local governments. Unfortunately, more affluent localities use this power in a plethora of ways to exclude the poor and keep the rich, and the states allow them to do so. Indeed, because of their dependence on property taxes, cities are incentivized to zone for higher value properties and lower need residents, to grow their tax bases and limit social service expenditures, respectively.[280] Among the specific techniques used to zone out affordable housing,

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[272] Dubin, supra note 230, at 752-54; see also Briffault, supra note 2, at 380-81 ("State programs contributed to the building and maintenance of the highways connecting the suburbs to the cities, the financing of suburban water and sewer systems and the funding of suburban schools.").

[273] Cashin, supra note 1, at 2009; see also Cashin, supra note 9, at 585-86.

[274] Cashin, supra note 1, at 2003.

[275] See Edward L. Glaeser, If the Tea Party Went Downtown, N.Y. TIMES, Mar. 15, 2011 (criticizing the home mortgage interest deduction), http://economix.blogs.nytimes.com/2011/03/15/if-the-tea-party-went-downtown; John Foster-Bey, Bridging Communities: Making the Link Between Regional Economies and Local Community Development, 8 STAN. L. & POL'Y REV. 25, 29 (1997) (noting the use of tax dollars to promote "low mortgage down payments on suburban homes").

[276] Cashin, supra note 1, at 1992-93 (quoting PAUL KANTOR, THE DEPENDENT CITY REVISITED: THE POLITICAL ECONOMY OF URBAN DEVELOPMENT AND SOCIAL POLICY 164 (1995)).

[277] Frug, supra note 2, at 1792; see also Briffault, supra note 2, at 365.

[278] Frug, supra note 18, at 1771; see also Briffault, supra note 9, at 21.

[279] Frug, supra note 2, at 1792 (discussing California law).

[280] See Cashin, supra note 9, at 589 ("[S]tate governments have created a socio-political environment in which suburban jurisdictions are rationally motivated to use highly exclu-

locales often "forbid multifamily development," impose "density standards," or set minimum "lot size" requirements.[281] Cities also use "reverse exclusionary zoning"—i.e. "government-induced gentrification"—to push out existing lower income communities.[282] Further, wealthier municipalities regularly exclude industries and uses that would harm their local health, such as "landfills and other environmental hazards," leaving these burdens for poorer jurisdictions.[283]

As mentioned, cities also use zoning standards to exclude lower income immigrant families in particular.[284] In fact, cities may have extra incentive to do so because of other unjust background policies. Specifically, there is a "large and systematic mismatch . . . between the revenues that immigrants generate for [the federal] government and the expenditures that [decentralized] governments make on behalf of immigrants."[285] Most notable, most, notably honest, undocumented immigrants pay into social security, notwithstanding their ineligibility to receive social security benefits. These unclaimed payments therefore benefit present and future retirees nationwide.[286] Immigration also benefits all of us through increased federal tax revenues and lower consumer prices. But while these benefits are dispersed across the country, immigrant receiving locales bear a disproportionate burden of the social service costs—for instance, to public hospitals and schools.[287] This is not to say that immigrants are in fact a net burden on these locales (indeed, there is substantial evidence to the contrary).[288] It simply means that the background rules could more fairly distribute

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sionary zoning and developmental policies . . . ."); Cashin, supra note 1, at 2015 (noting that affluent communities regulate for "expensive homes and commercial properties with low service needs" and "wall out social needs associated with lower-cost housing").

[281] Elizabeth K. Julian, Fair Housing and Community Development: Time to Come Together, 41 IND. L. REV. 555, 571-72 (2008).

[282] Dubin, supra note 230, at 768-73, 778-79 (discussing examples such as rezoning to build luxury condominiums or designating a community a historic district).

[283] Julian, supra note 281, at 572; see also Dubin, supra note 230, at 765-68, 778 (discussing "disparate siting of environmentally degrading uses" in minority communities); Sheila R. Foster & Brian Glick, Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment, 95 CAL. L. REV. 1999, 2002 (2007) (noting the tendency to impose these harmful externalities of economic growth on vulnerable communities).

[284] See supra notes 220-221 and accompanying text.

[285] Peter H. Schuck, Some Federal-State Developments in Immigration Law, 58 N.Y.U. ANN. SURV. AM. L. 387, 390 (2002); see also Huntington, supra note 49, at 817 ("[T]here is evidence to suggest that state and local governments bear a disproportionate cost in absorbing the consequences of immigration.").

[286] See Edward Schumacher-Matos, How Illegal Immigrants are Helping Social Security, WASH. POST, Sept. 3, 2010, http://washingtonpost.com/wp-dyn/content/article/2010/09/02/AR2010090202673.html.

[287] See Schuck, supra note 28, at 70, 80; Su, supra note 4, at 1667-68 (noting that North Carolina counties are responsible for the costs of jails, social services, and hospitals, and discussing the role this may play in motivating anti-immigration measures).

[288] See Huntington, supra note 49, at 805 n.70 ("[A] study conducted by the University of

burdens to match the benefits, and thereby reduce any local incentive to exclude immigrants.

Together with these tax and zoning powers, rules regarding city formation complete the tragic trifecta. In particular, "states have encouraged the proliferation of new municipalities through . . . laws that make it easy to incorporate."[289] By incorporating as independent municipalities, wealthier geographic pockets can officially cut the threads tying them to their poorer surroundings, thereby increasing their tax bases relative to service expenses. States have also reduced the practical impediments to such self-serving separation. Infrastructure needs such as roads and sewage are "beyond the fiscal capacity of many smaller localities to supply by themselves," but states enable such locales to overcome these hurdles, by "permit[ting] the creation of special districts,"[290] enabling "interlocal contracts,"[291] and facilitating "financing to build new, often duplicative infrastructure."[292]

In light of these pernicious power grants, it would be easy to see local power as the problem—period. But it is in fact the selective grant of these powers and not others that maintains the disturbing status quo. Even within the areas of municipal finance, land use, and formation, states simultaneously prohibit local action that could turn the system on its head. First, as to finances, "all states . . . limit the type and amount of taxes localities may impose and mandate that they spend local funds for state-designated purposes."[293] Equally unequal as to zoning, while states grant substantial authority to exclude, they limit local power to do the reverse, regularly striking down "inclusionary zoning" ordinances.[294] For instance, "[l]ocal governments cannot establish maximum floor area ratios (which might limit the development of 'McMansions')[,] even

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Arizona found that immigrants . . . produce a net economic benefit within Arizona."); Brian Martinez, *UC Irvine: Immigration Made Southern California Stronger*, ORANGE COUNTY REG., June 7, 2012, http://ocregister.com/news/california-357825-percent-southern.html ("The large influx of Asian and Latino immigrants into Southern California in the past 50 years has resulted in less crime, lower joblessness and more stable property values, according to a study by University of California, Irvine."); John M. MacDonald & Robert J. Sampson, *Don't Shut the Golden Door*, N.Y. TIMES, June 19, 2012, http://nytimes.com/2012/06/20/opinion/the-beneficial-impact-of-immigrants.html ("[I]n the regions where immigrants have settled in the past two decades, crime has gone down, cities have grown, poor urban neighborhoods have been rebuilt, and small towns that were once on life support are springing back.").

[289] Cashin, *supra* note 9, at 588-89.

[290] Cashin, *supra* note 1, at 1992 (quoting KANTOR, *supra* note 276, at 164).

[291] Briffault, *supra* note 2, at 381.

[292] Cashin, *supra* note 9, at 589.

[293] David J. Barron & Gerald E. Frug, *Defensive Localism: A View of the Field from the Field*, 21 J.L. & POL. 261, 264 (2005).

[294] *See id.* at 279-80; Frug, *supra* note 18, at 1832.

though they may impose minimum ones" to exclude affordable housing.[295] Similarly, "cities in many states cannot, without state permission . . . establish rent control, regulate condominium conversion, or impose a temporary moratorium [on] . . . rapidly escalating development."[296]

The same bias characterizes city formation. While states empower wealthier quarters to incorporate, the surrounding communities are shortchanged: they are often precluded from initially preventing or later annexing unjust incorporations, to more evenly distribute tax benefits and service burdens. Inordinately affluent municipalities are therefore "easy to create," but "protected from reorganization or elimination" for the greater good.[297] Piedmont, California, provides a striking example of such insulation. The tiny town of about 10,000 residents is geographically surrounded by the City of Oakland. The median Piedmont property value is over one million dollars and the average family makes almost $170,000 a year, with only 2.4% of residents living below the poverty line.[298] But outside the bubble, Oakland depends on taxes from homes worth half as much, to provide services to families living on less than one-third the income and almost eight times more likely to be living in poverty.[299] Unsurprisingly, with no fear of annexation, Piedmont shares certain infrastructure with Oakland, but does not share its property taxes or share in Oakland's social service burdens.[300]

In sum, localities already receiving unequal subsidies are made dependent on local property taxes for critical services like education. They are thereby incentivized to pursue high-value residences while excluding high-need residents. They are also legally empowered to do so, through exclusionary zoning and easy incorporation. At the same time, these localities and their neighbors are often precluded from using inclusionary ordinances or annexation to prevent or remedy the resulting inequalities, to which we now turn.

Tragic Results — With these problematic background rules and policies in place, it is no surprise that we see such ill effects as massive interlocal inequality, white flight from cities to suburbs, constrained local policy choices, a lack of interlocal cooperation, and shamefully high levels of race and class-based segregation. Taken together, these maladies may seriously undermine local autonomy and its possibilities for progressive action.

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[295] Barron & Frug, *supra* note 293, at 279.

[296] Frug, *supra* note 18, at 1832.

[297] Briffault, *supra* note 9, at 112, 77; *see also* Cashin, *supra* note 9, at 587 n.145.

[298] *See* U.S. CENSUS BUREAU, STATE & COUNTY QUICKFACTS, PIEDMONT, CALIFORNIA, http://quickfacts.census.gov/qfd/states/06/0656938.html (last visited June 9, 2012).

[299] *See* U.S. CENSUS BUREAU, STATE & COUNTY QUICKFACTS, OAKLAND, CALIFORNIA, http://quickfacts.census.gov/qfd/states/06/0653000.html (last visited June 9, 2012).

[300] *See Piedmont, California*, WIKIPEDIA, http://en.wikipedia.org/wiki/Piedmont, California (last visited June 9, 2012) ("Piedmont . . . does not have its own public library or federal post office; these services are shared with Oakland. Property taxes on Piedmont real estate are not shared with Oakland.").

Severe interlocal wealth inequality has existed for some time. "In 1987 the per capita income of city residents was 59% of their suburban neighbors."[301] And given local responsibility for public education, this inequality filters down to the classroom: "Within a particular state the disparity in assessed valuation per capita between the wealthiest and poorest school district may be on the order of 100 to 1 . . . ."[302] Such interlocal inequality is, of course, far from a "pure market phenomenon," given the selective subsidies and unfair policies discussed.[303]

Making matters worse, as cities "generally burdened with higher taxes, older infrastructure and weaker services" declined, "rational (and economically independent)" residents and businesses left them behind for more affluent suburbs,[304] in a great urban escape. The "legal rules, in short, create[d] a sprawl machine—a legally generated incentive to move out of town."[305] Such sprawl may undermine the aforementioned possibility of local democratic participation acting as a counterweight to excess modern privatism. This is because "fragmented residential suburbs create a sense of alienation rather than community," due to "the automobile culture on which they depend." Such suburbs also lack "public fora that promote citizen-to-citizen contact."[306] Thus, at least in these locales, "local political action tend[s] not to build up public life," but instead contributes to "pervasive privatism."[307]

Faced with this interlocal inequality, resulting flight, and underlying background policies, less-affluent locales arguably have very limited options. Indeed, some contend that they "have little choice but to pursue a *single* interest—economic development within their boundaries."[308] Specifically, "the scarcity of local resources relative to local needs forces [cities] to turn to external sources for financial support,"[309] via an attraction-based model of local de-

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[301] Poindexter, *supra* note 19, at 609 n.5 ("Some cities fared even worse."); *see also* Foster-Bey, *supra* note 275, at 30 ("Central cities currently have poverty rates substantially higher than the national average; these rates are also generally much higher than the rates for surrounding suburban communities.").

[302] Briffault, *supra* note 9, at 19-20.

[303] Cashin, *supra* note 1, at 2005; *see also id.* at 2009-10 (noting studies suggesting "that the disproportionate allocation of . . . funding to [affluent] communities does have a significant effect on their competitive position relative to other communities").

[304] Poindexter, *supra* note 19, at 616.

[305] Frug, *supra* note 2, at 1792; *see also* Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 335-36 (1999) (explaining how this "movement from central cities and inner-ring suburbs to outer suburbs" has been supported by the aforementioned background laws and policies).

[306] Cashin, *supra* note 1, at 2046 (discussing this argument).

[307] Briffault, *supra* note 9, at 1-2.

[308] Barron & Frug, *supra* note 293, at 265 (emphasis added) (discussing this claim); *see also* Briffault, *supra* note 2, at 421-22.

[309] Briffault, *supra* note 2, at 355.

velopment. Localities thus try to woo "'footloose' investors and industries,"[310] such as "national retailers" and "service centers for large . . . corporations."[311] They also try to attract "certain types of people—preferably professional, upper middle class residents and tourists."[312] This single-minded pursuit and "intens[e] . . . interlocal competition" arguably leaves cities to the whims of the wealthy interests that they court.[313] Local governments are therefore compelled to offer an array of "financial and regulatory incentives to lure private development,"[314] such as infrastructure subsidies and tax breaks.[315] Likewise, cities are pressured to keep taxes low but gentrification high to entice affluent residents.[316] These pressures are only exacerbated by a global economic system where "fixed cities" face "hyper-mobile capital."[317]

Perversely, while local governments almost must invest in attracting wealthy interests, they are arguably precluded from protecting the environment or devoting resources to their less affluent residents. For the reasons discussed, wealthier "residents and firms can too easily escape redistributive burdens [and impinging regulations] by emigrating" to neighboring jurisdictions.[318] According to some, "the promise of redistribution [also] attracts more beneficiaries from outside the locality," such that redistributive locales will become "welfare magnets" and "lose the interjurisdictional competition for residents and tax base."[319] Thus, to avoid such an influx of indigent individuals, cities may start

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[310] Foster & Glick, *supra* note 283, at 2021.

[311] Briffault, *supra* note 2, at 411 n.290.

[312] McFarlane, *supra* note 15, at 91; *see also* Scott L. Cummings, *Recentralization: Community Economic Development and the Case for Regionalism*, 8 J. SMALL & EMERGING BUS. L. 131, 142 (2004) (noting subsidies to attract big-box development); McFarlane, *supra* note 305, at 332 (discussing development aimed at the "global elite").

[313] Briffault, *supra* note 2, at 411 n.290; *see also* Foster & Glick, *supra* note 283 at 2021-22 (discussing developers' "tremendous bargaining advantages" over cities).

[314] Angela Harris et al., *From "The Art Of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CAL. L. REV. 2073, 2090 (2007); *see also* McFarlane, *supra* note 305, at 331 (discussing these tactics).

[315] *See* Schragger, *supra* note 5, at 1091 (discussing subsidies offered to Wal-Mart).

[316] *See* Briffault, *supra* note 2, at 408.

[317] McFarlane, *supra* note 305, at 330; *see also* Harris, *supra* note 314, at 2088-90 (discussing the negative impacts of globalization on local government).

[318] Gillette, *supra* note 41, at 1070 (noting this claim); *see also* Briffault, *supra* note 2, at 408 (arguing that cities tend not to "engage in innovative redistributive programs" for this reason); Robert A. Kagan, *Trying to Have it Both Ways: Local Discretion, Central Control, and Adversarial Legalism in American Environmental Regulation*, 25 ECOLOGY L.Q. 718, 730 (1999) (noting this argument as to the environment).

[319] Gillette, *supra* note 41, at 1059 (discussing these predictions); *see also* Spiro, *supra* note 167, at 1644 ("[S]tates may well fear an influx of [immigrants] seeking public benefits where they are more generous than other states.").

a race to the redistributive bottom.[320] Further, while one might have hoped that poor neighborhoods and residents would at least indirectly benefit from any desirable business development or affluent residents gained by city concessions, studies have found that this is generally not the case.[321]

Sadly, as a result of all the above—and, to be fair, a broader national history of wealth inequality and racism—we see "cities and suburbs highly segregated by race and class."[322] As Professor Sheryll D. Cashin explains: "Not surprisingly, the four-decade movement of suburban development—with the attendant proliferation of new, homogeneous polities that are maximally empowered to exclude non-desirable entrants—has been accompanied by dramatically increased concentrations of minority poverty in inner-cities."[323] Some scholars diagnose this de facto strain of segregation as particularly resistant, arguing that "local government law has played a key structural role in fashioning a more durable system of racial and economic inequality than de jure racial discrimination could."[324] Despite the end of race-explicit segregation, "residential separation in 1990 ha[d] remained at essentially the same levels as in the 1960s."[325]

Perhaps more troubling, evidence suggests that this racial segregation is the result not only of the background rules and policies discussed, but also of existing individual desires for such communities: "For many white citizens," at least, "racial factors appear to be fundamental in defining their preferences and interests in choosing where to live."[326] These discriminatory preferences thereby "animate[ ] the formation of new local polities and the locational choices of mobile citizens."[327] As mentioned, such prejudiced preferences seriously undermine the alleged local benefit of self-defining communities, since " 'community' effectively means the desire for racial and socioeconomic homogenei-

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[320] *See* Wishnie, *supra* note 74, at 554 (expressing this concern as to state and local immigration policies).

[321] McFarlane, *supra* note 305, at 332-33, 345-48; *see also* Cummings, *supra* note 312, at 142.

[322] Harris, *supra* note 314, at 2081; *see also* Cummings, *supra* note 312, at 141 ("[O]vert racial discrimination, federal urban policies, and local land use decisions have all interacted to construct urban racial and economic segregation.").

[323] Cashin, *supra* note 9, at 589 (noting that "poor African-Americans have borne the brunt of this trend"); *see also* Cashin, *supra* note 1, at 1987 (same).

[324] David D. Troutt, *Katrina's Window: Localism, Resegregation, and Equitable Regionalism*, 55 BUFF. L. REV. 1109, 1145 (2008); *see also* Julian, *supra* note 281, at 571 ("[O]ne of the most effective replacements for old de jure segregationist strictures has been local land use policy . . . ."); Dubin, *supra* note 230, at 755 (same).

[325] Dubin, *supra* note 230, at 757; *see also* Cashin, *supra* note 1, at 1995 (noting that geographic segregation of the poor and affluent increased between 1970 and 1980).

[326] Cashin, *supra* note 1, at 2016-17; *see also id.* at 1994 ("[R]ecent empirical literature on locational choice suggests that race, as opposed to the mix of services and taxes a jurisdiction offers, is the strongest of the factors that influence locational decisions.").

[327] *Id.* at 2019.

ty."[328] In addition, this desire may only increase with actual segregation, as it further "reduces citizen contact with different types of people," and therefore our capacity "to empathize with the 'other.'"[329]

The existence of such "socially and/or economically distinct municipalities" also exacerbates a fragmentation-based collective action problem "well-known in the local governance literature."[330] Inordinately wealthy jurisdictions, in particular, have less incentive to cooperate for the good of the region or their poorer neighbors,[331] even though "studies suggest that [even] the favored quarter ultimately would be better off by being part of a region with a more even distribution of resources and burdens."[332] Instead, such affluent locales can: (1) selfishly benefit from the positive externalities of adjacent cities—for instance, "ready access to the city as a place to work, shop, sell and enjoy recreational and cultural amenities";[333] but (2) avoid any of the "undesirable land uses" tied to some of these positive perks;[334] while they (3) impose their own negative externalities on the exploited neighbors, such as pollution from suburban commuters.

Finally, given all of these problems, some scholars conclude that less-affluent local governments in fact lack any real power or autonomy. As Professor Richard Briffault explains, focusing on inadequate finances: "State legislation and case law may create the legal structure for substantial local autonomy," but "for a substantial number of localities fiscal incapacity makes a mockery of local control."[335] Other scholars emphasize the autonomy-limiting impacts of interlocal competition,[336] unequal service demands,[337] and externalities,[338] as well as the resulting virtuous and vicious cycles in which suburbs and cities respectively spin.[339] In turn, these limits on local power may spin the truth—such that when cities do make "decisions," they tell us little about their actual preferences. Instead, local actions and policies may "be simple reflections of the legal and incentive structure of localism."[340] Nor can we easily judge a

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[328] *Id.* at 2046.

[329] *Id.* at 2019-20.

[330] *Id.* at 2019, 1988, 1997; *see also* Readler, *supra* note 22, at 807 ("Spillover effects undermine . . . arguments in favor of local control.").

[331] *See* Cummings, *supra* note 312, at 148 ("Why would any revenue-rich suburb want to share with its less-fortunate neighbors?").

[332] Cashin, *supra* note 1, at 2041.

[333] Briffault, *supra* note 2, at 408, 369.

[334] *Id.*

[335] Briffault, *supra* note 9, at 3, 38.

[336] *See* Briffault, *supra* note 2, at 415.

[337] *See id.* at 349-50; Golden & Fazili, *supra* note 79, at 78.

[338] *See* Barron & Frug, *supra* note 293, at 265 ("A key constraint on local autonomy is the very fact that other local governments have independent powers of their own.").

[339] *See* Cashin, *supra* note 1, at 2012; Foster-Bey, *supra* note 275, at 29.

[340] Su, *supra* note 4, at 1648.

city's choices by that city's condition, when the latter is due more to unjust external factors than particular local policies.[341] Indeed, some contend that the local winners and losers are so predetermined that increasing local power within the current system would only exacerbate existing disparities.[342] Local autonomy thus becomes "more of an obstacle to achieving social justice . . . than a prescription for [its] attainment"; and localism itself takes the blame for the mess we are in.[343]

ii. Direct Legal Limits: Preemption, Home Rule, and More

Local governments are also more directly limited by certain legal doctrines. First, courts often hold that municipal policies are preempted by state and federal laws.[344] States are of course equally subject to federal preemption, but local governments are "doubly limited" since they can be preempted by both higher level actors.[345] And state courts have been wholesale retailers in the preemption department as well, "rely[ing] heavily" on preemption "to strike down innovative local policy-making."[346] Particularly frustrating for localists, these rulings are often based on "field" or "implied" preemption—*i.e.* where there is not even any express legislative or executive intent to preempt local policymaking.

Local governments are also simultaneously limited by the initial authority granted, or withheld, by their respective states. The unfortunate cities still governed under "Dillon's Rule," for instance, "may only do things on [their] own that are inextricably connected to the city's 'business.'"[347] To exercise any other power, such cities "must have been given specific and express authority by state statute."[348] Cities operating under more expansive "home rule," on the other hand, have all powers not "expressly exempted from the delegation of local authority."[349] However, some state courts have construed these exemp-

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[341] *See* McFarlane, *supra* note 305, at 333-34. Of course, to the extent this is true, local democratic participation becomes an exercise in futility for those living in less affluent localities. Nor would poor cities enjoy the privilege of defining their own community character, which would instead reflect external impositions.

[342] *See* Richardson, *supra* note 33, at 55; Briffault, *supra* note 9, at 1 ("Localism reflects territorial economic and social inequalities and reinforces them with political power."); McFarlane, *supra* note 305, at 335 (same).

[343] Briffault, *supra* note 9, at 2; *see also* Cashin, *supra* note 1, at 1988 ("Localism, or the ideological commitment to local governance, has helped to produce . . . regions stratified by race and income."); Troutt, *supra* note 324, at 1146 ("It is time localism . . . be recognized as the primary agency behind resegregation . . . .").

[344] *See* Parlow, *supra* note 7, at 381.

[345] Su, *supra* note 4, at 1637; *see also* Barron, *supra* note 10, at 2 (same).

[346] Parlow, *supra* note 7, at 383-84.

[347] Barron, *supra* note 19, at 816.

[348] *Id.*

[349] Barron & Frug, *supra* note 293, at 272 (discussing Massachusetts).

tions broadly.[350] Thus, "[c]ities do not have autonomy—even under home rule—to make their own decisions on a wide variety of matters that affect city residents."[351]

Predictably then, localities often find themselves preempted when innovating in areas traditionally subject to exclusive federal control, such as foreign affairs and immigration.[352] In *Crosby v. National Foreign Trade Council*, for instance, the Supreme Court held both the state and "local 'Burma laws' preempted by federal statute."[353] But courts have constrained local action in other areas as well. Overturning human rights at home, the California Supreme Court recently held that San Francisco's "local issuance of marriage licenses to same-sex couples . . . was not within the municipality's authority."[354] Other state courts have "found local anti-discrimination ordinances invalid because they either went beyond the limits of state law or regulated areas preempted by state law"; and state legislatures have rejected city requests for permission to provide such protections.[355]

Municipal "efforts to protect their residents' quality of life—against, for example, hazardous waste, pesticides, and water pollution—have [also] been preempted by state and federal law."[356] State courts regularly "invalidat[e] local environmental regulations on the ground that they go further than state regulations."[357] Federal courts have held the same as to federal laws—for instance, recently finding that a federal interstate commerce act preempted a local government agency's "rules aimed at limiting air pollution created by idling trains."[358] Other cities face similar constraints under Dillon's Rule. For example, New York City's "bold vision for reducing greenhouse gas emissions"

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[350] *Id.*

[351] Frug, *supra* note 18, at 1789.

[352] *See* Parlow, *supra* note 30, at 1071 ("[P]reemption thwarts local experimentation and innovation in immigration reform."); Engel, *supra* note 40, at 169 & n.50 (noting preemption of local human rights laws).

[353] Wishnie, *supra* note 74, at 499 n.32.

[354] Parlow, *supra* note 7, at 381 n.67 (discussing *Lockyer v. City and County of San Francisco*, 95 P.3d 459, 488 (Cal. 2004)); *see also* Readler, *supra* note 22, at 794 ("The Minnesota court considered the issue of benefits to same sex partners a statewide matter . . . and refused to give the local government much deference." (discussing *Lilly v. City of Minneapolis*, 527 N.W.2d 107, 108 (Minn. Ct. App. 1995))).

[355] Readler, supra note 22, at 793, 789; *see also* Schulte, *supra* note 113 (noting that, in response to recent adoption of anti-discrimination ordinances by Omaha and Lincoln, the Nebraska attorney general's office issued a legal opinion that the cities had no authority to do so).

[356] Frug, *supra* note 18, at 1832.

[357] Barron & Frug, *supra* note , at 272 (discussing Massachusetts); *see also* Margil, *supra* note 135 (discussing a recent court decision finding state preemption of a local ban on gas drilling and fracking).

[358] *Ass'n of Am. R.Rs. v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1095-98 (9th Cir. 2010).

through an "innovative congestion pricing plan" died when the "state legislature refused to provide the city with the necessary authority to implement it."[359]

Local attempts to improve conditions for lower income workers, tenants, and neighborhoods have met similar fates. Courts have relied on both preemption and home rule to strike down living wage ordinances,[360] and affordable housing initiatives such as eviction and rent controls.[361] California courts, for instance, found cities precluded from requiring private developers to provide a set amount of affordable housing[362] or landlords to "obtain certificates of eviction before seeking repossession of rent-controlled units."[363] In 2005, the California Supreme Court also struck down as preempted Oakland's prescient attempt to rein in predatory lending.[364] The Court did so over a persuasive dissent arguing that the city had a special interest in imposing stricter standards than the rest of the state, given the particularly severe impact of predatory lending in its communities.[365]

These legal limits even impact areas traditionally committed to local control, such as land use, education, and public safety. As mentioned with regard to land use, "state decision-making regularly overrides cities' efforts to provide affordable housing and to protect their environment from pesticides."[366] Likewise, "[l]ocal control of education is a cherished ideal, but in fact state law controls much of educational policy."[367] Also sniping on public safety, states have preemptively shot down local gun control laws.[368] Finally, an assortment of other jurisprudential strings can tether local policymaking. Although out of fashion, courts still occasionally don the dormant Commerce Clause of the U.S. Constitution to interfere with local attempts to regulate business.[369] More democratic but no less constraining, voters also regularly pass statewide proposi-

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[359] Barron, *supra* note 10, at 3.

[360] *See* Gillette, *supra* note 41, at 1059 & nn.8-9 (discussing Massachusetts).

[361] Barron & Frug, *supra* note 293, at 272; *see also* Gillette, *supra* note 41, at 1092 & n.136 ("Courts have narrowly construed local authority to restrict landlords' ability to convert their property to condominiums or to control rental prices.").

[362] *See Palmer/Sixth St. Props., L.P. v. City of Los Angeles*, 175 Cal. App. 4th 1396, 1399-1401 (2009) (finding state law preemption); *see also* Gillette, *supra* note 41, at 1093 & n.137 ("Courts have limited the ability of localities to impose on developers exactions for infrastructure that would benefit the entire locality . . . .").

[363] *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 152 (1976).

[364] *Am. Fin. Servs. Ass'n v. City of Oakland*, 34 Cal. 4th 1239, 1244 (2005).

[365] *See id.* at 1265-76 (George, C.J., dissenting).

[366] Frug, *supra* note 18 at 1789.

[367] *Id.* at 1833.

[368] *See Firearms Preemption Laws*, NAT'L RIFLE ASS'N INST. FOR LEGIS. ACTION, Dec. 16, 2006, http://nraila.org/news-issues/fact-sheets/2006/firearms-preemption-laws.aspx (noting that "46 states have enacted 'firearm preemption laws'" precluding local restrictions).

[369] *See, e.g.*, *Macy's Dep't Stores v. City and County of San Francisco*, 143 Cal. App. 4th 1444, 1449-51 (2006); *Six Kingdoms Enters. v. City of El Paso, Tex.*, No. EP-10-CV-485-KC, 2011 WL 65864, at *7-8 (W.D. Tex. Jan. 10, 2011); *cf.* Schragger, *supra* note 5, at

tions limiting "local lawmakers' ability to raise fees" or taxes.[370]

Cumulatively, these express legal limits arguably "cut[ ] short the lawmaking process and products of an entire level of democratic government."[371] Just the possibility of a legal challenge may dissuade cities from creative policymaking, where questions as to preemption and other limits might only be answered through costly litigation.[372] Further, to the extent creativity is thereby constrained, so is "local governments' ability to be Petri dishes for innovative policies."[373]

C. *Responses, Conclusions, and Suggestions*

As forewarned, I will not be so bold as to try to resolve the centuries-old debate as to the inherent merits of local government. Nor is there space in this Article to fully reconcile the complicated contemporary pros and cons. I will, however, as relevant and necessary to my proposal that legal aid attorneys collaborate more with cities: (1) respond to the most concerning critiques of local government; (2) draw some tentative conclusions; and (3) discuss a few noteworthy suggestions to improve matters.

1. Responses

Critics of localism have certainly set forth serious enough concerns to demand some response, if my proposal for increased legal aid attorney-local government collaboration is to survive. As mentioned, some scholars claim that these problems are so bad as to largely preclude local autonomy and progressive action.[374] Fortunately, there are compelling reasons to conclude otherwise. In particular, neither the notable background limits nor direct legal constraints are fully precluding cities from taking meaningful progressive action in important policy areas. And when they do so act, local governments are in fact having significant intra and extralocal impacts, even on far bigger actors and policies. There are also persuasive explanations for how cities have managed all of this, while other factors may partially alleviate our fears of cities acting instead in harmful ways.

1048 (discussing the history of courts using the dormant Commerce Clause to overturn progressive economic regulations).

[370] John Woolfolk, *Cities, Counties Tread Cautiously in Wake of Prop. 26*, SAN JOSE MERCURY NEWS, Nov. 7, 2010, http://cacoastkeeper.org/news/cities-counties-tread-cautiously-in-wake-of-prop-26 (discussing California Proposition 26); *see also* Frug, *supra* note 2, at 1791 (discussing California Propositions 13 and 218).

[371] Engel, *supra* note 40, at 184 (discussing federal preemption of state laws).

[372] *See* Su, *supra* note 4, at 1670 ("Even if there is a chance that legal challenges will be resolved in their favor, the costs of defending these measures, and the chance of losing in the end, serve as strong impediments to local innovation.").

[373] Parlow, *supra* note 7, at 372; *see also* Parlow, *supra* note 30, at 1073 (discussing benefits of allowing local immigration law innovations).

[374] *See supra* Parts I.A.2, I.B.2.

a. *Legal Limits are Limited*

Preemption and other direct legal limits unquestionably preclude some local action. But as should be clear from all of the innovative local policymaking that has recently taken place, "in practice," localities are still "often given remarkable powers and accorded tremendous deference."[375] According to some, the "[legal] restrictions on local autonomy" are also "dissipat[ing]"[376]: "courts have 'grown increasingly hesitant' to read implicit field preemption into statutes in general";[377] and few states still "adhere to Dillon's Rule" and its stricter limits on local action.[378] Courts have even allowed meaningful local action as to immigration, where federal authority is ostensibly exclusive. For instance, "courts have not held sanctuary cities' non-cooperation laws or policies to be preempted,"[379] and have suggested that certain iterations of such laws might actually preclude federal preemption—as "an unconstitutional intrusion on [a] city's power to regulate the duties of its officials."[380] Similarly, while direct local intrusions into foreign affairs have been preempted, "inward-looking" human rights laws, like the aforementioned CEDAW ordinances, are less likely to be struck down.[381] In more traditional local policy areas, rent and eviction controls regularly survive attacks from powerful landlord associations;[382] and living wage ordinances sometimes live on—avoiding federal, if not always state, preemption.[383] An array of other progressive laws, even some creative campaign finance reforms, have also passed through the courts more, or less, intact.[384]

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[375] Su, *supra* note 4, at 1630.

[376] Gillette, *supra* note 41, at 1064 ("More recent decisions consistently approve subsidies . . . to the local poor . . . .").

[377] Rodríguez, *supra* note 22, at 623 (footnote omitted) (quoting Caleb Nelson, *Preemption*, 86 VA. L. REV. 225, 227 (2000)).

[378] Readler, *supra* note 22, at 784; *see also* Parlow, *supra* note 7, at 383 (discussing the shift from Dillon's Rule to home rule).

[379] Parlow, *supra* note 7, at 381; *see also* Aoki, *supra* note 47, at 495 (noting that recent congressional efforts to discourage sanctuary laws did not pass); Stephen Dinan & Kara Rowland, *Justice: Sanctuary Cities Safe from Law*, WASH. TIMES, July 14, 2010, http://washingtontimes.com/news/2010/jul/14/justice-sanctuary-cities-are-no-arizona (discussing the Obama administration's decision not to sue sanctuary cities).

[380] Rodríguez, *supra* note 22, at 604 (discussing *City of New York v. United States*, 179 F.3d 29, 36 (2d Cir. 1999)).

[381] *See* Burroughs, *supra* note 44, at 417-18.

[382] *See* Gillette, *supra* note 41, at 1092 n.136.

[383] *See* Parlow, *supra* note 7, at 381; Gillette, *supra* note 41, at 1059 & nn.10-12.

[384] *Compare* Parlow, *supra* note 7, at 384 n.93 (noting California courts' upholding "Los Angeles' adoption of a public election financing system, despite a state law banning public financing in all elections"), *and* Mosi Secret, *Campaign Finance Law Survives Another Court Challenge*, N.Y. TIMES, Dec. 20, 2011, http://cityroom.blogs.nytimes.com/2011/12/22/citys-limits-on-pay-to-play-by-campaign-donors-survive-lawsuit (noting a federal appeals

Still, because other local legislation has not been so lucky, these direct legal limits are certainly a legitimate constraint, especially since courts reach "conflicting conclusions" as to similar legislation, making it difficult for cities to predict potential litigation outcomes and costs.[385] My point is simply that these limits still allow for substantial local policymaking in important areas. Further, because we are also weighing local against state action, it is important to note that legal limits may not cut in the latter's favor. Although the fifty states are only subject to federal preemption, they are also more easily and carefully watched by Congress and the courts. Creative state policies are therefore regularly quashed by the federal preemption hammer.[386] By contrast, with many thousands of cities nationwide, local laws may be more likely to pass under state and federal radars.

b. *Not So Limited Impact*

As discussed, critics also note that local action will typically have smaller impacts than would identical state or federal policies. Because of cities' smaller size, other scholars argue that local governments will be unable to address the important social problems caused by bigger actors or policies beyond their individual borders. While these claims are not without merit, there are convincing reasons to not be unduly concerned.

i. Important Internal Impacts

First, even though local action is relatively limited in scale, a single city initiative can still profoundly affect many thousands or millions of people. As mentioned, some cities are larger than states, in population and economic importance. For example, not only Giants in football, New York City has a population of over 8 million "and a gross domestic product of $11,330,000,000," dwarfing many states.[387] Unsurprisingly then, some important social problems *can* be addressed within the confines of a single jurisdiction. For instance, regardless of interlocal inequality, many municipalities also need significant internal redistribution. Indeed, most cities are clearly divided into neighborhoods based on class—in Oakland, we have the wealthy Hills and yuppie Temescal, geographic blocks but socioeconomic miles from the poverty-strick-

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panel's upholding a "New York City law that limits campaign contributions from individuals and entities that have business dealings with the city"), *with* Chemerinsky, *supra* note 160, at 8-9 (discussing local laws upheld and struck down following *Citizens United v. FEC*, 130 S. Ct. 876 (2010)).

[385] Huntington, *supra* note 49, at 790-91 (discussing state and local immigration laws); *see also* Readler, *supra* note 22, at 791-96 (discussing local anti-discrimination ordinances).

[386] *See, e.g.*, Burroughs, *supra* note 44, at 436 (discussing foreign affairs); Resnik, *supra* note 132, at 1653 (discussing human rights laws); Lefcoe, *supra* note 123, at 858-59 (discussing labor laws); Golden & Fazili, *supra* note 79, at 67 (discussing usury laws).

[387] Parlow, *supra* note 7, at 373.

en West and Deep East.[388] These cities can therefore make meaningful changes inside their own borders. Moreover, many have done so.

Local living wage laws, for instance, shift money from wealthier business owners to their employees, thereby lifting "a significant number of workers out of poverty."[389] Similarly, eviction and rent control ordinances redistribute power from local landlords to lower income tenants, with tremendous intralocal impacts. In the San Francisco Bay Area alone, these local laws have probably stopped tens of thousands of families from losing their homes. In fact, as legal aid lawyers can vouch, the city that a Bay Area tenant lives in—and therefore which local laws apply—is often the most important factor for determining that tenant's rights. "What city do you live in?" was the first question I asked my tenant clients. If they were from a city without local rent or eviction controls, I knew immediately that my chances of helping them were much more slim.

Even in areas of ostensibly exclusive federal control, creative local policies have had significant internal effects. While only the federal government can grant legal residency or citizenship to immigrants, cities' pro-immigrant policies have greatly reduced the harms that their undocumented residents would otherwise face. Sanctuary ordinances alone have probably prevented thousands of deportations, by reducing the frequency of routine police traffic stops resulting in removal proceedings. Indeed, although I worked at a nonprofit *in* Oakland, I can only recall clients being reported to ICE following routine traffic stops *outside* of Oakland—in nearby cities like Hayward and Fremont, where police are allowed to contact immigration officials.[390] There is also some evidence that sanctuary laws and city ID cards have increased crime reporting by immigrants and therefore everyone's public safety.[391] Local adoption of international human rights norms has had tangible effects as well. After San Francisco adopted CEDAW, one city department "created women's support groups, devised flexible schedules for working parents, and increased job training

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[388] *Cf.* Troutt, *supra* note 324, at 1134-37 (discussing intralocal "ghettoization" and "antimarkets").

[389] Cummings, *supra* note 36, at 472.

[390] This is not to say that the police in sanctuary cities always follow the law. To the contary, I have heard reports of law enforcement reporting immigrants to ICE in even the most immigrant friendly jurisdictions.

[391] *See* JESSE NEWMARK ET AL., OAKLAND CITY ID CARD COALITION, OAKLAND CITY ID CARD PROPOSAL 11-12 (2008) ("[P]olice in New Haven have already reported steps towards reduced crime following the city's implementation of an ID."), *available at* http://oakland-cityidcard.files.wordpress. com/2009/04/oakland-city-id-card-proposal-april-final.pdf (citing Paul Bass, *Casanova: Release Names, Boost Crime*, NEW HAVEN INDEP., May 19, 2008, http://newhavenindependent.org/index.php/archives/entry/casanova_release_names_boost_crime); *cf.* Golden & Fazili, *supra* note 79, at 35 n.13 ("Such efforts have not only decreased the anxiety . . . in immigrant neighborhoods, but [have] also improved the ability of police to manage public safety.").

courses in areas where women are underrepresented."[392] And if anyone still doubts the internal importance of local policies, simply consider the potential impact of harmful ones on local communities, such as laws prohibiting undocumented immigrants from renting homes.

ii. Extralocal Effects

In addition, actions that are local in origin can sometimes still be regional, national, or even global in attack, meaningfully impacting powerful extralocal actors and policies. As mentioned, local eviction controls curb the injustices of multinational banks, which could otherwise lawfully kick to the curb countless tenants living in foreclosed homes in these jurisdictions.[393] For instance, by filing suit against these much bigger and more powerful institutions for flouting the city's law, Oakland forced the banks to at least partially change their policies.[394] Local anti-big-box movements have also dealt underdog blows to the world's biggest multinational retailer:

> Five years after [Wal-Mart] announced its plans to bring forty Supercenters to California, it has opened only half that amount. . . . While labor and community groups have certainly not been able to stop Wal-Mart Supercenter development, they have been able to place some limits on its pace, scope, and density. . . . Thus, the Inglewood story matters not just as an allegory of labor smiting the mighty Wal-Mart foe, but as a real-world tale of how local advocacy can recalibrate the legal playing field in ways that enhance worker power.[395]

Living wage ordinances similarly increase worker power, in part by redistributing wealth from large corporations with a local presence to its workers. Finally, local human rights and immigration policies might even have international impact.[396] For instance, Massachusetts' Burma boycott was apparently "achieving its intended effect" before the Court struck it down as unconstitutional: "'A number of companies' withdrew from Burma after the law's enactment and at least three cited the Massachusetts laws as among the reasons for their withdrawal."[397] And if Massachusetts could do it, so could New York City, Los Angeles, or a coalition of smaller cities. Likewise, local policies encouraging or discouraging immigration might, at least collectively, affect global migration patterns.[398]

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[392] Burroughs, *supra* note 44, at 417.

[393] *See supra* notes 138-143 and accompanying text.

[394] *See infra* notes 975-977 and accompanying text.

[395] Cummings, *supra* note 42, at 1978, 1984-85, 1997.

[396] *See* Burroughs, *supra* note 44, at 414 (discussing local human rights legislation).

[397] *Id.* at 419 (quoting *Nat'l Foreign Trade Council v. Natsios*, 181 F.3d 38, 46 (1st Cir. 1999)).

[398] *Cf.* Aoki, *supra* note 47, at 462 ("The dynamics of global migration and U.S. governmental responses to it . . . represent a small but highly important manifestation of how

iii. Critical Counternarratives and Other Intangibles

But even local action that does not have immediate internal or extralocal effects can still be significant, when it diverges from the now stagnant and conservative dominant political paradigm. Local action then functions as a counternarrative to this prevailing paradigm, by presenting an alternate vision of how things can be.[399] Such action can thereby prevent the paradigm from becoming intractably entrenched and being perceived as inevitable. For example, local sanctuary ordinances, ID cards, and resolutions calling for amnesty not only offer tangible benefits; they also challenge the mainstream conception of undocumented immigrants as "unlawful," by instead recognizing them as valued residents.[400] Similarly, beyond any actual enforcement, local anti-discrimination laws may dilute pervasive stereotypes and instead encourage "tolerance and acceptance."[401] Local governments can also confer a legitimacy on these counternarratives that other groups cannot. For instance, when LGBT or immigrant rights groups present alternate visions of marriage equality or immigrant amnesty, they may be written off as radical or self-serving special interest groups. But when local governments ostensibly acting on behalf of all of their residents do the same, they increase the baseline credibility of the relevant policy—reducing how "fringe" it is perceived by the public and other government actors. As a result, local action can more easily make meaningful statements to and open a dialogue with the states and federal government.[402]

Because local governments are more open to innovation than states or the federal government, local politics also provides important organizing opportunities and "a critical source of energy" to groups left out of mainstream policymaking.[403] As one author explains, with regard to anti-discrimination ordinances:

> While it is true that few sexual orientation cases are brought to local agencies, it does not follow that local non-discrimination laws are therefore ineffective . . . . if one considers the political, organizational, and other

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American cities, both large and small, are implicated in activities with significant transnational intent and consequence.").

[399] *See* Barbara L. Bezdek, *Alinsky's Prescription: Democracy Alongside Law*, 42 J. MARSHALL L. REV. 723, 748 (2009) ("[L]egislative advocacy that elicits a declaration of legal rights . . . has a uniquely important role in forging new norms . . . ."); Resnik, *supra* note 132, at 1647 (noting that local actors can be "norm entrepreneurs").

[400] *See* Rodríguez, *supra* note 22, at 598 (explaining that day labor centers "create tension with a federal legal regime that has defined the workers . . . as unlawful"); Narro, *supra* note 86, at 511-12 (describing an expressive pro-immigrant resolution as "a major victory that helped shift the momentum of post-September 11 immigrant rights issues").

[401] Shaw, *supra* note 23, at 394.

[402] *See* Burroughs, *supra* note 44, at 422 ("[State and local governments], unlike NGOs, are better positioned to signal to the federal government the policy preferences of the citizens within their jurisdictions.").

[403] Barron, *supra* note 10, at 2.

long-term positive effects that accrue from a successful (or even a failed) effort to enact local legislation.[404]

In addition, even small expressive actions can "reinforce[ ] an activist conception of city government," where the public and the government itself begin to perceive the city as a place for innovative and progressive policymaking.[405]

iv. Subsequent Spread

Local policies that start small can also creep, or burn like wildfire, across the country. First, local policies often spread "horizontally," as other municipalities follow suit.[406] For various reasons, many cities are reluctant to dive into innovative policies, but will do so once other locales test the waters. Some cities simply lack the resources to initially draft such legislation or defend it against legal challenges. Less-daring locales may also want to see a policy's real-world impact or political fallout, before trying it at home. Whatever the reasons, horizontal spread has resulted in some impressive policy proliferation: (1) as of 2004, more than forty local government had adopted or considered CEDAW ordinances;[407] (2) approximately fifty localities had implemented a sanctuary ordinance by 2006;[408] (3) as of 2008, about 140 cities had passed living wage laws,[409] with more wage law campaigns underway;[410] (4) more than 400 cities have joined the Kyoto-based climate change protocol;[411] and (5) hundreds of locales now use drug courts.[412] On a smaller scale, New Haven's city ID card program traveled cross-country to California cities,[413] while anti-big-box action spread across California before making its way back East.[414] Anti-sweatshop ordinances and pro-immigrant resolutions have also spread from city to city.[415] And when nearby localities take similar action, they can create "wide geographic areas" of policy agreement,[416] not so different from state policymaking.

Sometimes this horizontal movement happens ad hoc. For instance, some

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[404] Shaw, *supra* note 23, at 392, 396.

[405] Cummings, *supra* note 42, at 1997.

[406] *See* Engel, *supra* note 40, at 182-83 (discussing the spread of ideas across states).

[407] *See* Resnik, *supra* note 132, at 1640.

[408] *See* Aoki, *supra* note 47, at 494-95.

[409] Parlow, *supra* note 7, at 379; *see also* Lynch, *supra* note 11, at 576 (discussing how two local living wage campaigns "sparked a national movement").

[410] *See* Lynch, *supra* note 11, at 576 (noting seventy-five such campaigns underway as of 2006).

[411] Aoki, *supra* note 47, at 473 (noting that the agreement thereby represents "over sixty million Americans").

[412] *See* Dorf & Sabel, *supra* note 155, at 846 (as of 1999).

[413] *See infra* Part III.B.2.a.

[414] *See* Cummings, *supra* note 42, at 1954, 1975, 1978; Lefcoe, *supra* note 123, at 847.

[415] *See* Narro, *supra* note 86, at 480-81, 511-12.

[416] Cummings, *supra* note 42, at 1983.

local officials actively monitor other cities' innovative actions and informally reach out to the municipal entrepreneurs. But more formal interlocal coordination is also taking place. Local governments are often members of existing organizations and are "forging new strategic alliances" and "information networks"[417] that act as "conduits for border crossings."[418] Similarly, certain academic and nonprofit actors "encourage the sharing of information, the connection of local initiatives, and the crafting of joint strategies and goals."[419] These networks can be national and even global in scope.[420] And it is particularly fitting that U.S. inner-cities are working with their developing country counterparts, as they may have more in common with each other than with their wealthier geographic neighbors.[421]

As mentioned, such horizontal spread also has certain advantages over one-shot central action. Because the initial actors have already devoted time and energy to the policymaking, later localities can instead use their resources to improve the policy or tailor it to local conditions.[422] Thus, in implementing an Oakland city ID card, we were able to borrow from New Haven's and San Francisco's earlier work and devote our time to potential improvements, as discussed in detail below.[423] Once a local policy has survived political or legal challenges, cities may also be willing to up the ante and enact a stronger policy. For instance, San Francisco expanded the usual sanctuary law prohibition on police reporting, to protect minors charged with but not convicted of felo-

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[417] Richardson, *supra* note 33, at 80.

[418] Resnik, *supra* note 132, at 1647.

[419] Susan Sturm, *Lawyers and the Practice of Workplace Equity*, 2002 WIS. L. REV. 277, 319 (2002) (discussing the National Employment Law Project); *see also* Cummings, *supra* note 42, at 1984 ("The Partnership for Working Families is now supporting big-box activism in fifteen cities . . . ."); Resnik, *supra* note 132, at 1639-40 (discussing a coalition of almost 200 organizations that provides model CEDAW resolutions for localities).

[420] *See* Powell, *supra* note 13, at 279 ("[L]ocal governments are learning from each other through national organizations of . . . elected officials, as well as through networks of scholars and activists."); Richardson, *supra* note 33, at 78, 80 (noting an international association of over 300 local governments dedicated to managing "environmental problems through local action"); Resnik, *supra* note 132, at 1649 (discussing the Sister Cities Program, linking "126 countries and 2500 communities worldwide").

[421] *See* McFarlane, *supra* note 305, at 303; Ashar, *supra* note 184, at 1923 ("[Worker c]enters are in ideological, if not actual, communion with activists who oppose a World Bank-sponsored dam in India, indigenous people demanding economic and social rights in Chiapas, and AIDS activists in South Africa fighting for access to affordable generic drugs.").

[422] *See* Stacy Laira Lozner, *Diffusion of Local Regulatory Innovations: The San Francisco CEDAW Ordinance and the New York City Human Rights Initiative*, 104 COLUM. L. REV. 768, 770 (2004) (making suggestions for subsequent implementations).

[423] *See infra* notes 953-955 and accompanying text.

nies.[424]

Local policies can spread vertically as well, to higher level governments.[425] Like tentative localities, state and federal officials may wait to evaluate a local policy's practical impacts or political repercussions before following suit. In particular, the passage of local legislation can help prove to state legislators the preferences of their constituents.[426] The federal government might take more convincing, of course. But as one scholar explains, such "norms cascades" still seem to take place, when "ever-increasing numbers of nonfederal government units push[ ] adoption of the norm to a 'tipping point.' "[427] Federal spread may also be less of a jam now, with an ostensibly progressive President who possesses significant lower level experience.[428]

In fact, there are many exciting examples of such vertical movement. After San Francisco expressly adopted CEDAW "to set an example for the rest of the nation,"[429] "eighteen counties[ ] and sixteen states . . . passed or considered legislation relating to CEDAW, with yet others contemplating action."[430] There are now even plans for a national push.[431] State and local action also helped "pave the way for federal legislation on Burma," the national "Anti-Apartheid Act of 1986,"[432] and U.S. regulations on greenhouse gas emissions.[433] Last, in a notable "case of the almosts," state and local policies once nearly led to anti-chain-store legislation from Congress;[434] and in-state tuition laws may yet "prod the federal government to revisit its own laws by passing the DREAM Act."[435]

A number of scholars also make suggestions to maximize this horizontal and

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[424] *See* Associated Press, *San Francisco Changes Tack on Immigrant Kids*, MSNBC, Oct. 27, 2009, http://msnbc.msn.com/id/33500650/ns/us_news-life.

[425] *See* Engel, *supra* note 40, at 182-83 (discussing state-federal movement).

[426] *See* Shaw, *supra* note 23, at 395 ("[S]tate legislators representing areas that already have local ordinances may be more likely to support statewide legislation . . . .").

[427] Powell, *supra* note 13, at 291-92 (discussing Professor Cass Sunstein's theory).

[428] *See* Barron, *supra* note 10, at 4 ("That the new President has more experience in state than national government bodes well for the future of fostering . . . dynamic local/state/federal alliances.").

[429] Lozner, *supra* note 422, at 778 n.53 (quoting then-Mayor Willie Brown, Jr.).

[430] Resnik, *supra* note 132, at 1640 (as of 2004) (footnote omitted); *see also* Burroughs, *supra* note 44, at 417 ("The San Francisco ordinance has also inspired several state[s] . . . .").

[431] Interview with Allison Davenport, then-Director of WILD for Human Rights (June 21, 2010); CEDAW 2012, http://cedaw2010.org/index.php/about-us (last visited June 9, 2012).

[432] Powell, *supra* note 13, at 289.

[433] Barron, *supra* note 10, at 1.

[434] *See* Schragger, *supra* note 5, at 1079-80 (discussing a "proposed federal chain store tax, known as the 'death sentence' tax bill because its undisguised purpose was to hobble the chains completely by taxing them out of existence").

[435] Rodríguez, *supra* note 22, at 608.

vertical diffusion, and thereby take full advantage of the experimentation rationale for local action. Some scholars endorse the local networks mentioned,[436] while others espouse greater state or federal involvement. For instance, as a condition of local autonomy, cities might be required to report empirical results, meet certain minimum standards, and comply with best practices.[437] Congress has in fact taken such an approach to "officialize the process of experimentation," in response to the successes of local drug courts.[438]

v. Modest Measures Matter

Finally, if anyone should be able to appreciate even the smallest policies in the smallest towns, it is us: direct service attorneys. Helping just one client avoid eviction, deportation, or unemployment can take dozens or hundreds of hours, if he or she even has a legal remedy. So if a local policy can prevent the problem in the first place or provide a remedy that did not previously exist for even a handful of people, we should recognize its importance.

c. *Background Limits Leave Room*

As discussed, probably the most troubling limits on local action stem from certain legal and economic background rules and policies and their tragic consequences. Undoubtedly, these serious problems accurately predict and explain much harmful local decisionmaking. They may also be exacerbated by an inherent local susceptibility to majoritarian tyrannies. However, the tragic conclusion drawn by some—that localities are therefore unable to bring about meaningful progressive change or redistribution—is contradicted by what is actually happening in cities across the country.

As detailed above, local governments have in fact implemented countless positive policies, often involving significant intra or extralocal redistribution.[439] Rather than bending over backwards for investors, some cities are moving forward with meaningful regulations on big business: living wage laws, big-box bans, environmental protections, and more. Locales are also defying dire diagnoses by providing important benefits to their poor and minority residents, including those without health care and lower income immigrant communities.[440] Indeed, apparently unconvinced by pessimistic predictions of an exodus of the rich or influx of the poor, a diversity of diverse communities openly "court

[436] *See, e.g.*, Trubek, *supra* note 35, at 587 ("Linking local action is an effective strategy; it combines local action with the creation of national scope.").

[437] *See, e.g.*, Dorf & Sabel, *supra* note 155, at 838; Gillian E. Metzger et al., *The Changing Shape of Government*, 28 FORDHAM URB. L.J. 1319, 1343 (2001).

[438] *See* Dorf & Sabel, *supra* note 155, at 844.

[439] *See supra* Part I.B.1.b; *cf.* Gillette, *supra* note 41, at 1060, 1064 (noting that redistribution is "a staple of local government" and may "be gaining momentum").

[440] *Cf.* Rodríguez, *supra* note 22, at 640 (noting that "the predicted race-to-the-bottom to deny immigrants all forms of public services did not occur").

images as localities that favor redistributive policies, notwithstanding that they contain a significant population with the means to live elsewhere."[441]

In addition to these empirical disproofs, there are noteworthy theories for why such progressive policies and localities exist. First, electorates may have some added incentive to support *local* redistributive policies, because they see more directly where their money is going: to help workers, reduce homelessness, or prevent crime, in their own backyards.[442] Of course, effective state and federal policies should equally impact local communities, but voters are still likely to perceive such policies as more indirect, since money is first sent far up and away, before (hopefully) coming back down. Second, even if majoritarian tyrannies do reduce local redistribution to the poor minority—but clearly do not stop it entirely—these majorities would also logically redistribute to themselves from the *wealthy* minority. Given the extreme wealth inequality in the United States, where the richest 1% hold more than a third of the nation's wealth,[443] this redistribution would still be significantly progressive. Just think of the modern majority as a middle-class Robin Hood, robbing from the rich to give to the . . . median wage-earner. Again, none of this is to say that the problematic background factors or inherent susceptibilities do not significantly limit city decisionmaking. The only point, but point enough for my proposal, is that they still leave substantial room for progressive action.

d. *Positive Limits on Harmful Local Action*

In addition to this ongoing potential for positive action, there are also reasons why we might be willing to risk some negative policymaking at the municipal level. Indeed, in light of the many harmful local policies discussed above, defending my choice of local government depends on at least some such reassurance.

i. Judicial Protections in Theory and (to a Lesser Extent) Practice

The most troubling local policies are those that attack already disenfranchised groups, such as gay, black, immigrant, or poor communities. As critics contend, these discriminatory actions may sometimes stem from an inherent susceptibility to majoritarian tyrannies. There is a compelling argument, however, that these are the very instances in which courts should protect the targeted group. As John Hart Ely famously explained, courts should be consti-

[441] Gillette, *supra* note 41, at 1073.

[442] *See id.* at 1071-85 (discussing this and other explanations).

[443] *See* Eduardo Porter, *Study Finds Wealth Inequality is Widening Worldwide*, N.Y. TIMES, Dec. 6, 2006, http://nytimes.com/2006/12/06/business/worldbusiness/06wealth.htm; Newmark, *supra* note 152, at 2170-71 (discussing this inequality in more detail); Steven Rattner, *The Rich Get Even Richer*, N.Y. TIMES, Mar. 25, 2012, http://nytimes.com/2012/03/26/opinion/the-rich-get-even-richer.html ("New statistics show an ever-more-startling divergence between the fortunes of the wealthy and everybody else . . . .").

tutionally concerned with policies intended to oppress "vulnerable, stigmatized" minorities, because these groups are unable to adequately protect themselves through the normal political process.[444] To the contrary, majorities and not-so-vulnerable minorities—like the rich and corporations—need no special judicial protection, since they can hold their own during the usual legislative rigamarole. Certain important corollaries also follow: the courts need not police progressive policies to *help* historically stigmatized minorities; but courts should scrutinize government action that would benefit *privileged* interests, since supporters may have unduly influenced the underlying political process through their wealth or connections.[445]

Fortunately, in practice, courts have often invoked relevant rights in line with this principle. Generally speaking, cities must act "without infringing upon the Fifth Amendment, Equal Protection, or the Due Process clauses of the United States Constitution" or similar state constitutional provisions.[446] Localities must also comply with various federal and state statutes that make these rights more concrete, such as fair housing and employment laws. Courts have then applied these legal limits to strike down minority-oppressing legislation. For instance, policies that discriminate against lawful resident immigrants "are inherently suspect and subject to close judicial scrutiny": "[These immigrants] are a 'discrete and insular minority,' historically subjected to discrimination, and, as nonvoters, unable to protect themselves in normal democratic processes. Courts therefore have scrutinized closely state [and local] discrimination against [them] and frequently invalidated it."[447] Indeed, federal policymaking in this area may be more dangerous, as it is only subject to rational basis review and therefore generally upheld.[448] Although less common, courts have also overturned laws that would harm undocumented immigrants. *Plyler v. Doe*, for instance, held that a "law authorizing public schools to charge [undocumented immigrant] children tuition violated the Equal Protection Clause."[449] More recently, courts have used equal protection, due process, and the First Amend-

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[444] Sabel & Simon, *supra* note 233, at 1064-65 (citing JOHN HART ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW (1980)).

[445] *See Am. Fin. Servs. Ass'n v. City of Oakland*, 34 Cal. 4th 1239, 1266 (2005) (George, C.J., dissenting) ("Indeed, the record reveals that the subprime lending industry vigorously lobbied for express preemption language.").

[446] Curtin, Jr., *supra* note 122, at 41.

[447] Wishnie, *supra* note 74, at 565, 502 (footnotes and internal quotation marks omitted); *see also id.* at 554 ("Together, decades of decisions regarding employment, education, and public benefits for permanent residents to a great degree have guaranteed equal treatment under law for millions of noncitizens in this country."); Huntington, *supra* note 49, at 797 n.32 (citing decisions); Spiro, *supra* note 167, at 1628-29 (same).

[448] Wishnie, *supra* note 74, at 507; *see also* Spiro, *supra* note 167, at 1630 ("[T]he federal government has enjoyed a virtual carte blanche on immigration matters.").

[449] Rodríguez, *supra* note 22, at 573 n.14 (citing *Plyler v. Doe*, 457 U.S. 202 (1982)).

ment to bar local and state laws adversely targeting day laborers[450] and undocumented immigrants more broadly,[451] including portions of Arizona's and Alabama's anti-immigrant legislation.[452]

Also in line with Ely, courts have employed equal protection and due process principles to overturn initiatives discriminating against gay people. As mentioned, *Perry* recently protected gay marriage against California's misnomered "Marriage Protection Act,"[453] while *Romer v. Evans* overturned Colorado's *anti*-anti-discrimination constitutional amendment.[454] The courts also invalidated racially discriminatory laws during the civil rights era and more recently stopped an attempt to discriminate against Muslims, by "block[ing the] amendment to Oklahoma's state constitution that would [have] bar[red] the use of Islamic religious law in state courts."[455] Particularly relevant to local government, courts have invalidated racially discriminatory zoning as well,[456] and on rare occasion even land use laws that prejudice the poor. As the court compellingly explained in the legendary *Mt. Laurel* litigation: "[T]he State controls the use of land, *all* of the land. In exercising that control it cannot favor rich over poor. It cannot legislatively set aside dilapidated housing in urban ghettos for the poor and decent housing elsewhere for everyone else."[457] Once in an equal-

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[450] *See* Rodríguez, *supra* note 22, at 573 n.15, 598 n.135; Parlow, *supra* note 7, at 381; Narro, *supra* note 86, at 494-95; *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 940 (9th Cir. 2011) (striking down the aforementioned Redondo Beach anti-soliciation ordinance as unconstitutional under the First Amendment).

[451] *See* Parlow, *supra* note 30, at 1066; Huntington, *supra* note 49, at 803 n.61 (noting that laws prohibiting renting to undocumented immigrants "are not faring well").

[452] *See, e.g.*, *Friendly House v. Whiting*, — F. Supp. 2d ——, No. CV 10-1061-PHX-SRB, 2012 WL 671674, at *8 (D. Ariz. Feb. 29, 2012) (preliminarily enjoining part of Arizona's anti-immigrant legislation, based on the First Amendment); *Cent. Ala. Fair Hous. Ctr. v. Magee*, 835 F. Supp. 2d 1165, 1169, 1184-98, 1200 (M.D. Ala. 2011) (preliminarily enjoining one section of Alabama's anti-immigrant legislation, based in part on the federal Fair Housing Act).

[453] *See Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), *aff'd*, *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012); *cf. Golinski v. U.S. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968, 1002 (N.D. Cal. 2012) (finding that the federal Defense of Marriage Act ("DOMA") "unconstitutionally discriminates against same-sex married couples," in violation of the Equal Protection Clause); *Massachusetts v. U.S. Dep't of Health & Human Servs.*, 682 F.3d 1, 7-16 (1st Cir. 2012) (considering both equal protection and federalism concerns in finding the same DOMA section unconstitutional).

[454] *See Romer v. Evans*, 517 U.S. 620, 623-24 (1996).

[455] Matt Smith, *Judge Blocks Oklahoma's Ban on Islamic Law*, CNN, Nov. 8, 2010, http://cnn.com/2010/POLITICS/11/08/oklahoma.islamic.law.

[456] *See* Dubin, *supra* note 230, at 779 ("The disparate denial of zoning protection . . . implicates the protections of anti-discrimination and due process law.").

[457] *S. Burlington City NAACP v. Township of Mount Laurel*, 456 A.2d 390, 415 (N.J. 1983) (striking down a local exclusionary zoning ordinance under state constitutional provisions); *see also* Sabel & Simon, *supra* note 233, at 1050 (discussing the decision).

ly long while, courts have protected lower income communities in other areas. For instance, courts have invalidated property-tax-funded education schemes because of their unfair impact on poor districts.[458]

This is far from a comprehensive review of the many relevant judicial decisions. But unfortunately, even if it were, it would fall well short of eliminating legitimate concern as to discriminatory local action. Especially troubling, under existing jurisprudence, some of the groups most in need of judicial protection receive the least. Specifically, "equal protection scrutiny is relaxed when [government] laws deal with [undocumented] immigrants," because such immigrants are not treated as a "suspect class."[459] Some recent decisions have therefore upheld ordinances that discriminate against the undocumented.[460] The Supreme Court and Ninth Circuit have also previously found that legislation attacking gay rights is subject only to rational basis review (although Judge Jeffrey S. Whyte recently held otherwise in *Golinski v. U.S. Office of Personnel Management*,[461] so we can cross our fingers and hope for nationwide change if the Court reviews *Golinski*, *Perry*, or *Massachusetts*).[462] Thus, the Sixth Circuit upheld Cincinnati's charter amendment prohibiting city protections for gays and lesbians.[463] Judicial protection of the poor has also been the exception to a rule of permitting class-based segregation through zoning and vastly unequal school resources.[464] And even where courts do apply stricter scrutiny, they have still let pass many discriminatory policies that would not meet an Ely-based standard.[465]

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[458] *See* Briffault, *supra* note 9, at 35-36 (discussing the decisions of four state supreme courts); Richard Pérez-Peña & Winnie Hu, *Court Orders New Jersey to Increase Aid to Schools*, N.Y. TIMES, May 24, 2011, http://nytimes.com/2011/05/25/nyregion/new-jersey-is-ordered-to-increase-aid-to-schools.html.

[459] Rodríguez, *supra* note 22, at 573 n.14; *see also infra* note 514.

[460] *See* Su, *supra* note 4, at 1644; Huntington, *supra* note 49, at 790-91 n.16. The Supreme Court also upheld *United States v. Alabama*, 443 F. App'x. 411, 417, 420 (11th Cir. 2011) (preliminarily enjoining portions of Alabama's anti-immigrant legislation, based in part on the Equal Protection Clause).

[461] 824 F. Supp. 2d 968, 983-85 (N.D. Cal. 2012) (discussing these prior decisions and finding that they are no longer binding precendent).

[462] *See id.*; *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012); *Massachusetts v. U.S. Dep't of Health & Human Servs.*, 682 F.3d 1 (1st Cir. 2012). Despite the Supreme Court's conservative slant, one might hope that an unexpected justice or two will foresee the eventual outcome of this struggle for equal rights, and choose to be remembered as part of the winning and just side.

[463] *See* Readler, *supra* note 22, at 808 (discussing *Equality Found. of Greater Cincinnati, Inc. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997)).

[464] *See* Briffault, *supra* note 9, at 40, 30 (discussing judicial reluctance in these areas).

[465] *See id.* at 108 (noting that exclusionary zoning is allowed in "all but the most egregious cases involving clear racial discrimination"); Dubin, *supra* note 230, at 781-82 (discussing the legal limits to race-based equal protection litigation).

ii. Practical Limits

Fortunately, certain practical constraints on harmful local action may bolster the partial protections from our courts. As an initial matter, we should arguably have some faith in positive policy evolution: that the progressive policies we believe in will succeed and proliferate, while harmful ones will fail and be cast aside. This may happen because of a policy's practical impact or because it inspires a shift in social norms. It can also be the initial policymaking locale that learns from its actions or, in line with the experimentation rationale, take subsequent cities to recognize and adapt to progress or mistakes. Predictably, such policy evolution is most evident where local action has immediate tangible impacts. Economic consequences, especially, can quickly convince cities to adopt or drop policies. "[L]ocal experiments in immigration regulation" may therefore "lead to quick lessons."[466] There are economic reasons to believe that "more welcoming" locales will be more successful, as immigrants "reward [them] with their presence.[467] Anti-immigrant policies, on the other hand, may "represent a temporary and actually quite limited outburst," as these locales face "the consequences of their measures—namely, high legal fees, the disappearance of immigrant populations that had revitalized dying former industrial towns, and the high administrative costs of enforcement."[468] In fact, there is "mounting evidence that . . . local laws *are* affecting the movement of noncitizens," leading at least one town "to repeal its anti-immigrant ordinance" after it caused a decrease in needed workers.[469]

There may also be significant *external* political and economic backlash against cities that enact harmful policies, as other governments and private actors "penalize those jurisdictions perceived as unfriendly."[470] At the state level, Arizona's recent anti-immigrant legislation led to boycotts by cities, private corporations, school districts, unions, and foreign officials, which may cost the state hundreds of millions in lost revenue.[471] Mexico threatened California

[466] Huntington, *supra* note 49, at 832, 847.

[467] *Id.* at 836; *cf.* Hing, *supra* note 82, at 886 ("Many small-town communities are watching Postville in anticipation to see if such a large influx of immigrants can truly revive a small community."); *supra* note 288 (noting studies by the University of Arizona and University of California, Irvine, finding that immigration had benefitted the two states).

[468] Rodríguez, *supra* note 22, at 595; *see also* Spiro, *supra* note 167, at 1640-41 (noting "the concrete economic interests" that "militate against adopting anti-[immigrant] measures").

[469] Huntington, *supra* note 49, at 832 (emphasis added) (discussing the "dramatic decrease in the number of migrant workers available to work on farms" in Riverside, New Jersey); *see also* Andrew O'Reilly, *Dayton's Immigration Strategy for Growth is Drawing Notice*, Fox News Latino, May 10, 2012 (discussing "a city initiative meant to boost its population, and its economy, by welcoming immigrants").

[470] Spiro, *supra* note 167, at 1640-41.

[471] *See id.* at 1641-42 (noting that domestic "public interest coalitions also called for . . . boycotts of California products and tourism").

with similar consequences back in 1994, in response to Proposition 187's proposed assault on immigrants.[472] Sadly, Arizona also failed to learn from an earlier economic backlash to its shameful decision not to celebrate Martin Luther King, Jr. Day: "In addition to lost tourism and convention dollars estimated at $190 million, the National Football League decided against having the Super Bowl played in Arizona, before Arizona relented to the economic pressure."[473] The state even earned itself a popular culture "punch in the face" from hip hop group Public Enemy.[474]

Moreover, local actors have sometimes learned from or changed policies without obvious economic impacts or external backlash. The Cincinnati city council ultimately overturned its own 1994 charter amendment prohibiting protections for gays and lesbians, and implemented anti-discrimination measures in its place.[475] And on an individual level, a county board candidate apparently learned from a progressive anti-discrimination ordinance for sexual minorities, remarking later that "while she would not have supported the law [when it passed] in 1991, she would support it now after witnessing its low costs and its positive effects."[476]

As with judicial protections, however, there are reasons why we cannot count exclusively on these evolutionary limits. First, some seriously unjust policies may be economically beneficial and therefore survive and spread. For instance, local laws excluding subsidized housing for the homeless may have a positive economic impact for those locales, despite the laws' moral reprehensibility. Also, notwithstanding the arguments above, the economic implications of immigration are subject to debate. It is therefore possible that some local anti-immigrant policies would bring economic gains. Compounding this concern, a particular policy may only succeed or fail because of problematic background rules and policies, as discussed. For example, recall that the current system enables the entire nation to share in the benefits of immigration, while border cities and states are left holding the burdens. Some anti-immigrant actions might therefore succeed economically, but only because of this inequitable distribution. Likewise, local big-box bans that might otherwise bring economic gains by promoting local business and higher wages, may instead result

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[472] *See Who is Boycotting Arizona?*, AZCENTRAL.COM, Aug. 27, 2010, http://azcentral.com/business/articles/2010/05/13/20100513immigration-boycotts-list.html; Associated Press, *Study: Immigration Law Boycott Cost Ariz. $140M*, CBS NEWS, Nov. 18, 2010, http://cbsnews.com/stories/2010/11/18/national/main7067340.shtml.

[473] Spiro, *supra* note 167, at 1642 & n.52; *see also id.* at 1641 n.49 (noting that Alabama's racial history played a role in the inflated financial incentives required to persuade a German company to open a factory in the state).

[474] PUBLIC ENEMY, BY THE TIME I GET TO ARIZONA (Def Jam Recordings 1991), *available at* http://youtube.com/watch?v=zrFOb_f7ubw&feature=youtube.

[475] *See Cincinnati Gay Rights Amendment Passes*, BUS. COURIER, Mar. 15, 2006, http://bizjournals.com/cincinnati/stories/2006/03/13/daily40.html.

[476] Shaw, *supra* note 23, at 389-90.

in net losses due to ill-advised state policies. In California, for instance, Wal-Mart's low wages are subsidized to the tune of almost $90 million annually, through its underpaid workers' reliance on state public assistance programs.[477] Also, many unjust policies may be economically neutral or indeterminate and unlikely to invoke external ire. As a result, we would have to rely on policy evolution from changing social norms—change that may come more slowly, if at all. Finally, because even policies with immediate repercussions do not change overnight, evolutionary constraints are little solace to those prejudiced in the meantime.

iii. Reasons for Acceptance

Complicating matters even further, it may be that all these limits on our limits to harmful local policymaking are not entirely bad. According to the "steam valve theory" of policymaking, when cities or states are precluded from expressing their harmful policy preferences at home, they sometimes successfully lobby higher levels of government for action and thereby impose their preferences more broadly.[478] Thus, in these instances, it would have been better to let the hostility express itself locally. As one author puts it as to immigration: "Better, from the [immigrant's] perspective, to be driven from a hostile California to a receptive New York than to be shut out of the United States altogether."[479] Or, to make it municipal, better that Santa Ana enact an anti-immigrant ordinance while Los Angeles remains a safe sanctuary, than the former eliminate the latter by securing state legislation. There is also some empirical support for this theory, as judicial invalidation of anti-immigrant laws in California arguably twice led the state to secure similar federal legislation: the infamous Chinese Exclusion Act of 1882 and Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRAIRA").[480]

Relatedly, even where discriminatory steam finds no higher outlet, the underlying animus may linger and find unofficial expression locally. One scholar therefore contends that "preempting local laws that aim to exclude immigrants will not make for a better integration environment, because the sentiments behind the preempted ordinances are likely to remain and fester."[481] For this reason, civil rights era progress may have had less to do with federal court decisions and more to do with local activism than we once believed, as the former could not eliminate entrenched prejudices.[482] Arguably then, "transition from

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[477] *See* Hing, *supra* note 168, at 1409.

[478] *See* Spiro, *supra* note 167, at 1628-39 (discussing this theory).

[479] *Id.* at 1635-36.

[480] *See id.* at 1630-35 (discussing these examples).

[481] Rodríguez, *supra* note 22, at 639.

[482] *See* Charles J. Ogletree, Jr., *Reflections on the First Half-Century of* Brown v. Board of Education—*Part 3*, CHAMPION, July 2004, at 24-27 (discussing the significant limits of and local resistance to school desegregation decisions); Juan F. Perea, *An Essay on the Icon-*

fear to acceptance is more likely to occur" if local debates are "permitted to run [their] course."[483] Further, precluding locales from making their discriminatory animus explicit through formal policies may make it harder for the targets to recognize and avoid such jurisdictions, where they would still face the underlying hostility.[484]

For a number of reasons, however, these theories are not entirely convincing. First, according to some, the steam valve theory does not hold empirical water—*i.e.* cities and states do not generally lobby higher level governments when their policies are prohibited. "Rather, invalidation generally has led to local accommodation."[485] Moreover, even where steam does successfully rise, central policymaking is likely to involve political compromise and therefore mitigate the harmful preferences of the initiating jurisdiction. For instance, while California's Proposition 187 "would have banned undocumented [immigrant] children from public primary and secondary education, [IIRAIRA] did not."[486] Likewise, contrary to the entrenched hostility hypothesis, there are reasons to believe that prohibiting formal government expression and enforcement of discriminatory preferences might reduce the underlying sentiment. Specifically, precluding official policies of exclusion may increase local exposure to and thereby eventual acceptance of the "other." Local officials and electorates may also gradually absorb the external anti-discriminatory norms signaled by such prohibitions.

e. *States and the Federal Government Face Similar Limits*

In sum so far then: local action still has significant progressive potential despite legitimate constraints; and certain positive legal and practical limits will at least eliminate some of the worst local policies. Yet, without more, one might reasonably conclude that the negative local limits and risk of harmful action are still worse than any state or federal counterparts, such that collaboration with the higher level governments is preferable. In particular, my partial rebuttal notwithstanding, the most troubling constraints and harms likely remain those caused by the problematic legal and economic background rules and policies discussed. However, fortunate for my proposal but tragic for the world, the states and federal government seem to be subject to similar condi-

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ic Status of the Civil Rights Movement and its Unintended Consequences, 18 VA. J. SOC. POL'Y & L. 44, 50-51 (2010) (noting the importance of grassroots resistance and correspondingly less primary role of judicial decisions in the civil rights movement).

483 Rodríguez, *supra* note 22, at 639 (discussing immigration).

484 *See* Huntington, *supra* note 49, at 836 ("Permitting states and localities to express their preferences also would help to inform non-citizens what to expect in a given location."); Rodríguez, *supra* note 22, at 639 ("[I]mmigrants . . . will sort themselves out, settling where they are more likely to fit in and be welcomed into public institutions.").

485 Wishnie, *supra* note 74, at 557-58.

486 Spiro, *supra* note 167, at 1633 n.27 (arguing, however, that this was the only "significant respect" in which "the federal measure [was] less harsh").

tions—including dominant suburban interests, interjurisdictional competition and inequality, and unduly powerful private actors and economic policies. Thus, state and federal choices are similarly constrained by these limits and the resulting harms, which therefore weigh far less strongly against local collaboration.

To elaborate, there is evidence that wealthy suburbs exercise as much negative control over state politics as they do over their less affluent local neighbors.[487] As a result, states seem equally unable to address interlocal inequality. For instance, "in the absence of a state court order, virtually none of the state legislatures that have tackled the problem of interdistrict school finance inequity have closed the gap . . . between rich and poor school districts," and some have even "rendered poor school districts worse off by effecting a net reduction in their funding."[488] States have been similarly tepid "[o]n issues like fair share affordable housing."[489] Perhaps this suburban dominance should come as no surprise, since state and federal governments are responsible for the very policies that have long empowered such affluent locales at the expense of their neighbors. In other words, it is counterintuitive to expect central governments to fix the system of interlocal inequality that they set up in the first place.

Likewise, while interjurisdictional competition and its consequences may have once been more uniquely local, they certainly are no longer. Like cities, states are "constrained by the mobility of capital and the decreasing significance of particular places in the location of economic activity."[490] States therefore also feel pressure to accommodate wealthy businesses and individuals who could take their money elsewhere.[491] In fact, "states began competing for corporate charters" back in the nineteenth century, "adopting low-cost and lax incorporation laws in an effort to prevent the exit of capital and control to neighboring states, thus precipitating a race to the bottom."[492] This race continues today, with states offering subsidies to ever larger and more mobile corporations so they will remain in or relocate to their jurisdictions. Equally, as "neoliberal globalization lowered barriers for the movement of capital and goods across [*national*] borders," the federal government became subject to the same competition for private interests.[493] This too started some time ago—the last step in "the country's first wave of de-industrialization, as capital moved first to the suburbs and Southern states and then offshore to the global South in

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[487] *See* Cashin, *supra* note 9, at 583 (noting "the inexorable influence of middle class suburban voters on state policy choices, and the consequent marginalization of low-income and urban interest groups"); Foster-Bey, *supra* note 275, at 29 (noting that state politicians can "win elections without including cities in their coalitions").

[488] Cashin, *supra* note 1, at 2027.

[489] *Id.* at 2048.

[490] Briffault, *supra* note 2, at 451.

[491] *See* Cashin, *supra* note 9, at 599.

[492] Schragger, *supra* note 5, at 1051-52.

[493] Ashar, *supra* note 184, at 1889.

pursuit of cheaper land and labor."[494] Now, with constraints on big business only decreasing, nations must increasingly meet corporate demands. For instance, to convince a Hollywood movie company to continue filming in New Zealand, the country recently agreed to provide almost $100 million in tax breaks and marketing credits and change a national law to reduce certain worker rights.[495]

This global competition also takes place within a system of inter-national inequality eerily similar in degree, origin, and preservation to its interlocal counterpart.[496] Like affluent suburbs to urban cities, wealthier nations have systematically benefited at the expense of developing countries through past and present subsidies and legal, political, and economic policies.[497] To touch on just the tip of the inequity iceberg, briefly consider the United States vis-à-vis Central America. Our economic advantage comes at least in part from our past corporate exploitation of their natural resources, only possible through our support of violent overthrows of democratic governments.[498] More peaceful but no less exploitative, we now help to preserve our unequal positions with an unfair combination of internal agricultural subsidies and external "free trade" impositions.[499]

Last, certain private actors and economic forces may also be too big for state or federal governments to take on alone. At least as early as the 1800s, scholars expressed concern that wealthy corporations had greater national influence "than the states to which they owed their corporate existence."[500] This condition has only worsened. As Justice Brandeis later remarked: "Through size,

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494 Foster & Glick, *supra* note 283, at 2009.

495 *See* Derek Cheng & Paul Harper, *CTU: Hobbit Labour Law Changes "Opportunistic,"* N.Z. HERALD, Oct. 28, 2010, http://nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10683613.

496 Also, just as some scholars conclude that localism itself is the problem, *see supra* note 343, critics of inter-national inequality often broadly blame "globalization."

497 *See* Newmark, *supra* note 152, at 2182-84 ("[T]he subsidies and trade barriers of rich countries preserve their own economic advantages at the expense of . . . developing nations.").

498 *See id.* at 2173 (noting that "United Fruit and other foreign companies owned three-quarters of Cuba's arable land" in 1959); Hing, *supra* note 168, at 1412 (discussing the Treaty of Guadalupe Hidalgo, by which the U.S. took more than half of Mexico's land); Stephen J. Schnably, *The Santiago Commitment as a Call to Democracy in the United States: Evaluating the OAS Role in Haiti, Peru, and Guatemala*, 25 U. MIAMI INTER-AM. L. REV. 393, 558 nn.622-23 (1994) (citing discussions of U.S. military involvement in El Salvador, Guatemala, and Nicaragua).

499 *See* Frank J. Garcia, *Is Free Trade "Free?" Is it Even "Trade?" Oppression and Consent in the Hemispheric Trade Agreements*, 5 SEATTLE J. SOC. JUST. 505, 518-22 (2007) (discussing the effects of the Central America Free Trade Agreement).

500 Schragger, *supra* note 5, at 1052-53 (quoting THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 335 (2d ed. 1871)).

corporations . . . have become an institution—an institution which has brought such concentration of economic power that so-called private corporations are sometimes able to dominate the State."[501] Today, even based on conservative estimates, many multinational corporations are larger economically than most countries,[502] and therefore than individual U.S. states. Although the United States as a whole may be more powerful than any one megabusiness, the conglomerate of corporate power is likely beyond federal control as well. Similarly, as the ongoing economic crisis has made clear, nations too must answer to the global market. Thus, logically, only supranational governments or international cooperation could confront these global forces head on. Although, paradoxically, perhaps local action—under the radar and spreading globally in an interlocal web—could also put up some meaningful resistance.[503]

2. Suggestions

On this note, I hope that the choice of local government underlying my strategy proposal finally has sufficient support. But before I draw some tentative conclusions, it is worth briefly considering certain notable suggestions to improve the entire system—so as to cut the constraints on positive local action, limit the risks of harmful policies, and reduce interlocal inequality and the other negative consequences. As discussed, it is not localism in and of itself that is responsible for these troubling limits, risks, and results; rather, it is the particular set of background rules and policies that we have put into place. Equally, positive local policies may fail and harmful ones succeed only because of the "current local legal regime," and therefore "may fare quite differently if particular background rules are changed."[504] Arguably then, we should focus less on debating the appropriate amount of local power and more on determining what rules and policies would instead promote good outcomes. Indeed, given their significance, "focusing on these legal structures directly might be as effective a reform strategy as" policymaking aimed at specific social issues.[505]

a. *Background Changes: End Exclusion, Enable Annexation, etc.*

First, although suburban dominance of state decision making may make such

[501] Schragger, *supra* note 5, at 1052 (quoting *Louis K. Liggett Co. v. Lee*, 288 U.S. 517, 565 (1933) (Brandeis, J., dissenting)).

[502] *See* Paul De Grauwe & Filip Camerman, *Are Multinationals Really Bigger Than Nations?*, WORLD ECON., April-June 2003, at 27.

[503] *See* Peter M. Ward, *Creating a Metropolitan Tier of Government in Federal Systems: Getting "There" from "Here" in Mexico City and in Other Latin American Megacities*, 40 S. TEX. L. REV. 603, 607 (1999) (noting that local government may be best able "to resist the depredations of neo-liberal or supra-local economic imperatives, and serve instead to enhance citizenship, public participation, democracy, and social justice").

[504] Su, *supra* note 4, at 1648.

[505] *Id.* at 1681.

change politically impracticable, there are simple tweaks to the aforementioned system of suburban subsidies, exclusionary zoning, taxation, and annexation that could turn these problematic rules and consequences on their heads. As Professor Gerald E. Frug explains: "State law does not have to empower cities in a way that produces [harmful] effects. It could empower them instead to work together to prevent inequality, racial and ethnic division, and sprawl."[506]

Most basic, to begin addressing interlocal inequality, we should stop financially subsidizing the suburbs. We could also easily cut the legal strings that now allow affluent locales to rope out, but not lasso in, less-affluent properties and residents. Specifically, and in line with Ely's minority-oppression rationale, exclusionary zoning against the poor should be kicked out the door; but we should permit zoning to instead include the poor or exclude wealthy interests.[507] Turning to taxes, we could at least partially address the harmful competition for property tax revenues by reducing local reliance thereupon—for instance, by allowing or requiring greater use of other kinds of taxes. More ambitiously, we could significantly reduce the harms of interlocal inequality and inequality itself, "if local public goods like education, or local receipts through property or sales taxes, were not allocated according to municipal boundary lines."[508] In fact, from a global perspective, it is our existing local tax policy that is out of left (or politically, right) field.[509] Not only could localities share revenues, but we should all start sharing in the costs of those happenings from which we all derive benefit. As discussed, anti-immigrant sentiment stems at least in part from disproportionate burdens on receiving locales. Imagine the difference if we spread such social service costs across the country, as we do the many economic benefits from immigration. Encouragingly, at least one state has taken steps in this direction, redistributing some hospital costs by "support[ing] a network of health care clinics outside the state system."[510]

My personal favorite, however, because of its simplicity, power, and intuitive fairness, would be to reinstate pure majority-rule annexation—*i.e.* let the residents of both the potential annexor and annexee participate in a single determinative vote. This would empower less-affluent larger cities, or coalitions of poor towns, to help themselves and truly change everything, overnight. No longer could wealthy businesses and individuals flee to small exclusive jurisdictions, hoarding their assets to themselves. Nor would this necessarily mean an end to the Piedmonts of the world. The threat of annexation would simply force them to cooperate and share sufficient resources with their neighbors, if

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[506] Frug, *supra* note 2, at 1793, 1796.

[507] *See id.* at 1795 ("[T]he state could curb exclusionary zoning and instead give cities the power (now often denied them) to enact inclusionary zoning ordinances . . . .").

[508] Su, *supra* note 4, at 1648.

[509] *See* Kagan, *supra* note 318, at 727 ("[T]o a larger degree than most economically advanced democracies, local governments in the U.S. rely heavily on local taxes, particularly property taxes, to finance basic governmental services . . . .").

[510] *See* Rodríguez, *supra* note 22, at 589-90 (discussing health care clinics in Iowa).

they wanted to keep their communities separate and intact. In this way, implementing majority-rule annexation—like ending exclusionary zoning—is analogous to eliminating immigration controls at national borders. Contrary to the claim that we would then necessarily face an overwhelming influx of immigrants from nearby developing countries, we could instead simply take care of (and stop exploiting) our international neighbors. Few people want to leave their homes and cultures behind, unless forced to do so by unjust economic circumstances. While neither majority-rule annexation nor open borders may be politically feasible right now, they also have the political and rhetorical benefit of fitting well within the now dominant free-market paradigm: Certainly, the natural and free state of things is having the liberty to move where we want geographically and to delineate localities by popular vote. It is only through government regulation of these conditions that they do not currently exist.[511] In fact, until state law changed in the twentieth century, annexation of suburban areas by central cities was the norm.[512]

Short of wholesale annexation, we could instead at least empower cities to restrict use of their jurisdictions by small affluent areas who refuse to share. For instance, existing inequality between Piedmont and Oakland might quickly dissipate if Oakland could impose a transportation tax on Piedmont residents who want to leave their bubble and use our streets. Similarly, Professors Frug and Richard Ford have innovatively proposed that we change the law and allow local residents to cast votes in neighboring jurisdictions.[513] Recycling our Oakland-Piedmont example once more, imagine if Oaklanders could collectively vote on policy proposals by Piedmont(ians?)—or, as with the power to annex, at least force a dialogue through the threat of doing so.

b. *Change Direct Legal Limits: More Ely, Less Preemption et al.*

We could also easily change the more direct legal rules that limit local action, to ensure that good policies pass while bad ones are struck down. As discussed, judicial application of Ely's minority-oppression theory seems to be the real answer to discriminatory local action. But we need more of it. We need to treat any minority group unable to adequately protect itself through the political process as a suspect class, entitled to judicial protection from discriminatory laws. For instance, undocumented immigrants unquestionably merit

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[511] Indeed, there is a questionable disconnect in allowing the free movement of goods and capital, but not people, across national borders. *See* Hing, *supra* note 168, at 1439.

[512] *See* Briffault, *supra* note 2, at 358 ("[T]he predominant view in the nineteenth century was the doctrine of forcible annexation." (quoting KENNETH JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 147 (1985))); Cashin, *supra* note 1, at 1992 ("[S]tate law in the twentieth century was altered to allow relatively easy incorporation in order to prevent further annexation by central cities of suburban areas . . . ." (quoting PAUL KANTOR, THE DEPENDENT CITY REVISITED: THE POLITICAL ECONOMY OF URBAN DEVELOPMENT AND SOCIAL POLICY 164 (1995))).

[513] *See* Frug, *supra* note 18, at 1829 & n.237.

such constitutional safeguards. Not allowed to vote, they, more than anyone, "are outside the political process" and unable to "protect their [own] interests."[514] Although such change may not be soon forthcoming from Congress or the federal courts, states may be more willing to expand the needed protections.

Conversely, with such protections in place, there are good reasons to rid ourselves of unduly constraining preemption and home rule limits. First, critics persuasively argue that these limits require impossible judicial line-drawing, based on a false distinction between issues that are inherently local and those that concern the states or nation.[515] Again, consider the issue of immigration. It is of substantial national importance, but also has huge impacts on the most local of matters—public health, education, and safety. "Questions of who should belong to a political community, and who should be allowed to cross borders, are [therefore] . . . both global and local in scope."[516] Similarly, it is difficult, if not impossible, for courts to get at government actors' intent for implied preemption. Worse, such efforts are politically biased towards deregulation: "Because preemption cases tend to arise in a challenge to a more stringent state [or local] law, a decision in favor of preemption is generally a decision in favor of deregulation."[517] Implied preemption may also perversely increase redistribution to the rich but not the poor, since only the former have the resources and influence to secure express legislative or executive correction at the higher level of government.[518] Accordingly, state legislatures may "be more likely to override judicial invalidation of local subsidies for economic development than judicial invalidation of living wage ordinances."[519]

While conservative judges employ preemption and home rule to promote deregulation and inequitable redistribution, progressive courts use them as cheap surrogates for the real, equality-based reasons for invalidating discriminatory laws, when the latter lack current legal support. Although probably justified where it is the only way to prevent serious harm to underrepresented groups, this substitution is neither intellectually honest nor wholly adequate—leading "to a hollow formalism that denies the equality and anticaste force of

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[514] Rodríguez, *supra* note 22, at 629; *see also* Wishnie, *supra* note 74, at 509 (same).

[515] *See* Schapiro, *supra* note 53, at 40, 51 ("A truly progressive federalism does not rely on judicially crafted visions of appropriate local and national regions . . . . [C]ourts need not provide a border patrol, striking down state and federal actions that transgress an imagined frontier."); *see also* Engel, *supra* note 40, at 161, 183 (discussing this "often futile and confusing task of jurisdictional line-drawing").

[516] Rodríguez, *supra* note 22, at 641.

[517] Engel, *supra* note 40, at 186.

[518] *See* Gillette, *supra* note 41, at 1117 ("[J]udicial invalidation of local redistributive efforts to assist the poor is more likely to 'stick' than invalidation of local redistributive efforts to assist the wealthy, since the latter will more readily be able to substitute state decision makers . . . .").

[519] *Id.*

the equal protection analysis."[520] Further, even well-intentioned use of preemption or home rule where rights-based protections are lacking propagates the two jurisprudences and the continued disproportionate invalidation of progressive laws by a conservative judicial majority, undermining the positive potential of local policymaking.[521] Finally, because of these problems, we regularly wind up with inconsistent court rulings—with some judges finding and others rejecting preemption, while others appeal to equal protection or due process, on identical issues.[522]

We should therefore make the switch: replacing preemption and home rule with increased minority protections.[523] Specifically, in exchange for the latter, we could limit preemption to only its express incarnation: "requir[ing] Congress [or the state legislature] to adopt a clear statement of its intent to preempt." Or, courts might only find preemption where a local law would make it "physically impossible to comply with the federal and state statutes at issue."[524] Less ambitious, dissenting Supreme Court Justices have suggested at least smaller cuts to preemption.[525] Whatever the details, "[t]he point ultimately to recognize at this stage is the value of the antipreemption norm in the state-local [and federal-local] context."[526]

Relatedly, we should allow localities free rein to rein in big business, by entirely eliminating the dormant Commerce Clause and other restrictions on local economic protectionism. But we should simultaneously limit local government collusion with these affluent interests. For instance, as progressive reformer Frederic C. Howe suggested a century ago, we might restrict "city power to grant long-term franchises to private businessmen."[527]

c. *Economic Decentralization*

Sticking with economics, perhaps most apropos to decentralized government policymaking would be a corresponding economic decentralization, where we

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[520] Wishnie, *supra* note 74, at 511 n.96 (internal quotation marks omitted).

[521] *Cf.* Barron, *supra* note 10, at 5-6 (noting that it "will be tempting" to "surrender the preemption issue" for marginally better federal law, but that doing so has "real costs").

[522] *See* Wishnie, *supra* note 74, at 511 n.96 ("The Supreme Court itself has shifted between the two modes of analysis, employing one, the other, or both.").

[523] *See id.* at 567 (arguing that "anti-immigrant rules should be subject to heightened equal protection scrutiny," while preemption should be limited).

[524] Rodríguez, *supra* note 22, at 625 (noting these suggestions). Numerous scholars make similar recommendations. *See, e.g.*, Parlow, *supra* note 30, at 1072 (discussing local immigration laws); Resnik, *supra* note 132, at 1581 (discussing international law).

[525] *See* Burroughs, *supra* note 44, at 434-35 (discussing *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 436-43 (2003) (Ginsburg, Stevens, Scalia & Thomas, JJ., dissenting)).

[526] Rodríguez, *supra* note 22, at 637.

[527] Schragger, *supra* note 5, at 1047 (discussing this and other suggestions by Howe); *cf.* Rodríguez, *supra* note 22, at 639 (noting "the shaky textual foundations of the dormant Commerce Clause").

go beyond limited anti-trust law and truly start replacing large corporations with local business. As discussed, big business is bad for localism because it requires correspondingly big government to keep it in check.[528] Moreover, modern corporations are likely too big even for effective state or national control. Thus, until we cut these private monoliths down to size, governments will find it difficult to curtail their incredibly destructive actions, such as the recent oil drilling and spilling destroying our Oceans and the Amazon.

Corporate consolidation is inherently bad for society in other profound ways as well. Because large corporations overpower smaller governments, they undercut the potential for meaningful democratic participation by those electorates. Big business similarly cripples meaningful economic participation, by consolidating and therefore eliminating jobs in which citizens exercise any real independence or control.[529] In both these ways then, "the concentration of economic power in large-scale corporations . . . undermine[s] the citizenry's capacity to self-govern."[530] As one scholar observes of modern multinationals' evolutionary precursors: "The chains, like the trusts before them, squeezed out competition, held down wages, took money out of the community, converted independent tradesmen into clerks, and concentrated wealth in a few hands."[531]

These impacts also serve to "corporatize" the consumer, in a vicious circle of false savings: As the Wal-Marts of the world coax in consumers with low prices, small retailers and producers go out of business. The small business owners and employees must then find work with their large corporate replacements. But these new jobs pay less, so the corporations can keep prices down. As a result, the workers can only afford to buy from large manufacturers and retailers, leading to the elimination of more local business. As this process becomes the paradigm, these employee-consumers can no longer even imagine the world where they were once independent producers and retailers, and could therefore afford to support the same.[532]

The most obvious way to reduce corporate consolidation and its consequences would be to impose concrete, industry-appropriate size limits on businesses. Given the tragic consequences, I see no adequate justification for a typical corporation to operate in more than one state, much less in multiple countries, or to transact hundreds of millions of dollars in business. More indirect, we should at least change the legal rules that enable unduly powerful corporations to externalize their significant costs and control governments. For

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[528] *See* Schragger, *supra* note 5, at 1048 ("[T]he threat of the big corporations was that they would require large-scale government regulation.").

[529] *Id.* at 1025.

[530] *Id.* at 1019.

[531] *Id.* at 1085-87.

[532] *Cf. id.* at 1080 ("[T]he interests of the small dealer and the interests of the consumer were diverging, in no small part because—as a result of more than eighty years of industrialization and corporatization—there were increasingly fewer Americans who were members of both groups.").

instance, we might eliminate limited liability and corporate personhood, but strengthen campaign finance and lobbying restrictions. Unfortunately, the current corporate sway over state and federal politics is also why such suggestions may be the most unlikely to happen. But if such change were ever possible, that time is now: when the arguably left-leaning President of the United States, former Chief Economist of the right-leaning International Monetary Fund, and general public—from liberals to the Tea Party—all agree that "too big to fail" is no longer acceptable.

d. *Certain Control at Higher Levels or More Local Power*

Unsurprisingly, many scholars instead suggest that the solution to local problems is to shift certain power or oversight to higher levels of government. Proponents of these shifts argue that they are necessary to force interlocal cooperation and alleviate interlocal inequities: "Local governments will not, as long as they need not, take extralocal effects into account, give a voice to nonresidents affected by local actions, internalize externalities, make compensatory payments for negative spillovers or transfer local wealth to other communities in the region to ameliorate fiscal disparities."[533] As discussed, I am inclined to believe we can better address these problems without centralizing power, through specific changes to problematic background rules and policies,[534] such as allowing majority-rule annexation, reducing local dependence on property taxes, and prohibiting exclusionary zoning of the poor. Nonetheless, the extensive academic discussion of vertical shifts merits at least a brief review and response.

First, a number of scholars believe that higher level governments should take over resource distribution. These theorists reasonably contend that vertically shifting distributional choices, but only distributional choices, balances the goal of local autonomy with the need to reduce resulting inequality.[535] Some scholars suggest that a new regional entity take on this responsibility.[536] Others stick with the existing states, arguing that states are more likely and able than localities to equitably distribute resources, because of their "greater geographic scope, superior fiscal resources and social and economic heterogeneity."[537] As these scholars elaborate, states "contain and therefore can tax the corporations and affluent residents beyond the reach of most localities." Also, because

[533] Briffault, *supra* note 2, at 434; *see also* Cashin, *supra* note 1, at 2048 ("[L]ocalist strategies that depend completely on voluntary cooperation will fail to redress regional inequities.").

[534] *See* Frug, *supra* note 2, at 1794 ("Fostering . . . inter-city cooperation does not require increasing the power of the County government, let alone the creation of an areawide regional government. What is needed instead is a definition of city power that promotes regional objectives and regional cooperation rather than parochialism and inter-city competition.").

[535] *See* Cashin, *supra* note 9, at 625-26; Poindexter, *supra* note 19, at 655-56.

[536] *See* Poindexter, *supra* note 19, at 655; Cashin, *supra* note 1, at 2042.

[537] Briffault, *supra* note 2, at 448.

states encompass both poor cities and affluent suburbs, their distributional choices are at least "potentially subject to the political influence" of both.[538] Reaching instead for a higher rung, other scholars logically conclude that these distributional advantages only increase at the federal level: "the national legislature possesses several institutional advantages over state legislatures, including a captured tax base and its facility for logrolling arrangements that tend to equalize power between representatives of affluent and poor districts."[539] Indeed, fiscal municipal management by federal authorities is the norm in parts of Europe and Asia, where "[m]unicipalities and provincial governments get large proportions of their budgets from the national government."[540]

Instead of, or in addition to, vertically shifting distributional power, other scholars suggest withdrawing "local control of matters with clear regional implications and manifest externalities."[541] Thus, decisionmaking on issues such as "[s]prawl, water and sewer access, transportation, environmental regulation, . . . [a]ffordable and public housing, revenue sharing, and density controls"[542] might be shifted to regional, state, or federal governments.[543] Like proponents of distribution-only shifts, these scholars contend that their systems would still "vest localities with broad local powers," since cities would only "cede control to regional [or state] fora on matters that are truly regional in scope."[544] Advocates for a new regional body also contend that this may paradoxically lead to greater local control, for the urban cities now left out of state political processes.[545]

As to both these proposals, my main concern—echoed from the proponents themselves—is that there is little reason to think states or the federal government would do any better at remedying inequalities and externalities.[546] As discussed, and as their harmful policies reflect, these higher level governments seem more capturee than capturor of the wealthy interests that we want to rein in. And again, these are the very governments responsible for the local background rules and policies incentivizing and enabling the injustices that we need

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[538] *Id.* For the same reasons but with a more limited scope, some scholars focus on "greater state fiscal responsibility for local schools." *Id.* at 385.

[539] Cashin, *supra* note 9, at 594; *see also id.* at 599; Richardson, *supra* note 33, at 55.

[540] Kagan, *supra* note 318, at 727.

[541] Troutt, *supra* note 324, at 1173.

[542] *Id.* at 1172; *see also* Cashin, *supra* note 1, at 2034.

[543] *See* Briffault, *supra* note 2, at 434 ("Without federal or state intervention . . . the pervasive problems of externalities . . . will certainly persist.").

[544] Cashin, *supra* note 1, at 2044.

[545] *See* Frug, *supra* note 18, at 1790.

[546] *See* Cashin, *supra* note 9, at 590, 597-98 (recognizing that significant redistribution is not likely at the state or national levels); McFarlane, *supra* note 305, at 312 ("[T]he political environment is such that the idea of adjusting the existing economic system to encourage redistribution of wealth to benefit the poor is unthinkable.").

to address.[547] Likewise, it seems unlikely that the states or federal government would concoct a regional entity substantially more equitable or resistant to capture than its creator.[548] In fact, notwithstanding a few notable exceptions and suggestions for improvement, the regional efforts so far have done little to address inequality or externalities.[549] Transferring power over matters with regional implications would also require difficult or impossible line-drawing; as discussed, almost all local action has both internal and external impacts. On the other hand, I could be wrong. As should be clear, it is far from clear which, if any, level of government could and would actually address inequality and externalities.

More nuanced, other scholars suggest that higher level governments instead address inequality and externalities by requiring and/or facilitating intergovernmental information-sharing, cooperation and dialogue, and compliance with best practice standards by localities.[550] Instead of simply taking power for themselves, the states or federal government would pull power upwards into a "network of decentralized problem solvers"[551] that they oversee. These approaches thereby envision substantial multi-level government interaction and power sharing, labeled "dynamic,"[552] "dialogic,"[553] or "polyphonic"[554] federalism or localism. For example, in exchange for local cooperation, higher level governments might forego preemption and allow greater initial policymaking autonomy.[555] According to proponents, such overlapping jurisdiction "advances the values of plurality, dialogue, and redundancy," and the benefits therefrom.[556] Specifically, redundant policymaking power arguably "affords a failsafe mechanism should [one or more governments] neglect an important problem."[557] More policymakers may also mean less interest group capture, as the group would need to take in politicians and players at each level of govern-

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[547] *See* Briffault, *supra* note 2, at 451 ("How, in other words, can states be the solution when they are the source of the problem?").

[548] *See* Cashin, *supra* note 1, at 2034 ("[I]n the absence of a broad, energized coalition of citizens and interests, the favored quarter would likely continue to dominate the outcome of decision making by any new, regional governance structure.").

[549] *See id.* at 2029-41.

[550] *See* Powell, *supra* note 13, at 270-71 (suggesting that the "federal government or other national entity . . . serve th[is] important role"); Troutt, *supra* note 324, at 1173 (suggesting that "states enact legislation to compel interlocal cooperation where equity, and often efficiency, demand it"); Cashin, *supra* note 1, at 1997 (noting Frug's proposal to create regional legislatures to "serve as fora 'for inter-local negotiations'").

[551] Schapiro, *supra* note 53, at 39.

[552] Engel, *supra* note 40, at 176.

[553] Powell, *supra* note 13, at 271.

[554] Schapiro, *supra* note 53, at 39.

[555] *See* Powell, *supra* note 13, at 270-71; Barron & Frug, *supra* note 293, at 288.

[556] Schapiro, *supra* note 53, at 39; *see also* Engel, *supra* note 40, at 176-77.

[557] Schapiro, *supra* note 53, at 39.

ment.[558] And through increased dialogue, governments might share "valuable alternative methods and learn from each others' experiences."[559]

Relatedly, but without shifting any power, states or the federal government could at least force cities to more carefully consider and explain the impacts of their actions. Some states are already taking such steps in the environmental arena, through so-called "baby NEPAs." These laws simply require that before "mak[ing] any discretionary land-use decision that may have a significant impact on the environment," local governments "first prepar[e] and approv[e] a report detailing harmful impacts and possible ways of mitigating them."[560] Cities thereby retain control over land use, but must research and share relevant information.

Personally, I would prefer either the intergovernmental facilitation or forced local consideration approaches to formally shifting power upwards, since they leave more room for the positives of local action. For the same reason, many localists instead prioritize providing more power to localities. Professor Frug, for instance, warns that "people will only participate in local politics . . . if there is a genuine transfer of power to localities, enabling citizens to see that their political efforts have an effect on their daily lives."[561] Likewise, Justice O'Connor commented that "[i]f we want to preserve the ability of citizens to learn democratic processes through participation in local government, citizens must retain the power to govern, not merely administer, their local problems."[562] The same could be said as to the experimentation rationale for local government, as its significance depends on local power to act broadly in important areas. Again, however, I believe that our focus needs to be on the specific powers and incentives that we provide, instead of some sum autonomy amount.

3. Conclusion

So where are we now? In light of the significant inherent and existing positives and negatives of local government relative to its higher level peers, there is probably no unambiguous "best" level of government for progressive action today. Rather, we see serious limits, and limits on limits, as to all levels of government. Predictably, we therefore also see widely varying and constantly changing approaches by each level of government to important social issues,[563]

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[558] *See* Engel, *supra* note 40, at 179, 181 ("When one level of government is captured by one set of policy proponents, opposing interest groups can always seek policy gains at the other level of government.").

[559] Schapiro, *supra* note 53, at 39.

[560] Lefcoe, *supra* note 123, at 873.

[561] Cashin, *supra* note 1, at 1999.

[562] Cashin, *supra* note 9, at 576 (quoting *FERC v. Mississippi*, 456 U.S. 742, 790 (1982) (O'Connor, J., concurring in the judgment in part and dissenting in part)).

[563] *See* Resnik, *supra* note 132, at 1668-69 (noting that "institutional voices . . . can and do shift their tones," and thus that no jurisdictional type "produces rights of a particular

from economic reform[564] to immigration and race.[565] Roles can even reverse on a single issue, in a single locale, in a short period of time. For instance, in Jefferson County, Kentucky, federal courts had to enforce race-based desegregation of the local school district for decades; but then, when the district continued voluntarily integrating its schools to address ongoing de facto segregation, the Supreme Court stepped in to stop it cold.[566] Given these shifting and inconsistent policies, it is also unsurprising that we see very different scholarly appraisals of the various levels of government. Where academics do pick vertical sides, so to speak, they often seem to analyze a selective slice of the theoretical or empirical pie, thereby predetermining the outcome. This is not to cast any stones, however, as I would be surprised if my largely locally oriented professional experience in the progressive Bay Area did not cause some unintentional bias to seep into this Article.

Yet, for a number of reasons, I do not propose that we simply throw in the towel and call it an uninformative tie. First, depending on the time, place, issue, and specific policy, there will sometimes be clear level of government winners and losers. For instance, Arizona is not about to help its immigrant communities, but the City of Tucson might; and while California seems content to leave the state's deplorable prison conditions as is, the federal courts do not. Second, all else being relatively equal, I would still be inclined to go local. In part, this is because I tentatively find the inherent local pros to outweigh the cons. But my personal predilection also stems from a high level of frustration with the higher level status quo, as centuries of undue influence from the same powerful corporate interests seems to ensure uninspired policymaking by two exasperatingly similar and entrenched political parties. Accordingly, at least for now, I would probably prefer innovative local action on the political

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kind"); Schragger, *supra* note 5, at 1018 (rejecting "the easy cosmopolitanism of those who believe that decentralization is necessarily politically or economically conservative").

[564] *See generally* Schragger, *supra* note 5 (discussing the progressive state and local economic reforms of the early twentieth century and later shift therefrom).

[565] *See, e.g.*, Huntington, *supra* note 49, at 831 ("In a world where some states are offering in-state tuition to unauthorized migrants while the federal government is seeking to construct a wall along the southern border, it is by no means clear that the national government will better protect the interests of non-citizens. At other points in history, however, the roles have been reversed."); Cashin, *supra* note 9, at 592 "[T]he federal government has also been a sponsor of racist policies . . . .").

[566] *See* Robert Barnes, *Three Years After Landmark Court Decision, Louisville Still Struggles with School Desegregation*, WASH. POST, Sept. 20, 2010, http://washingtonpost.com/wp-syn/content/article/2010/09/19/AR2010091904973_pf.html. I was particularly disheartened, having helped write an amicus on behalf of the district. *See* Brief of the Civil Rights Project at Harvard University as Amicus Curiae in Support of Defendants-Appellees and Affirmance of the Judgment of the District Court, McFarland v. Jefferson County Public Schools, 416 F.3d 513 (6th Cir. 2005) (per curiam), *rev'd*, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007).

fringes, even if it means accepting some bad policies along with the good. I say this with some reservation, however, recognizing that it is far easier to say as a privileged professional unlikely to suffer the harms of any discriminatory local action.

Also, while I lean local at this point in history, I would still generally try to work at the level of government that would be most helpful as to the particular issue at hand, whether that means reaching out to local authorities or international tribunals.[567] As one author explains: "Once [we] let go of an assumption that any one level of power . . . can be an ongoing source of any particular political stance," we must "understand the necessity to work at multiple sites."[568] Even where we believe there is an optimal level of government to address a given issue, "policymaking may [still] need to begin" wherever decisionmakers are currently "receptive to [our] agenda."[569] This is "[t]he genius in having multiple levels of government[:] that if one fails to act, another can step in to solve the problem."[570]

Rather than spend too much time debating the merits of the various levels of government, we should also focus more on the real improvements we could make to maximize their respective strengths and minimize their weaknesses. As discussed, relatively simple changes could reduce or eliminate the biggest concerns as to local government and increase its positive potential. Among these, I would personally: (1) change certain local background rules to flip the now problematic promotion and enabling of affluent locales (for instance, we should allow majority-rule annexation but prohibit exclusionary zoning of the poor); (2) reduce preemption and similar direct legal constraints on localities, in

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[567] Indeed, flipping the local aspect of my proposal, some aid attorneys have gone supranational to promote human rights. *See* Stephen A. Rosenbaum, *Pro Bono Publico Meets Droits De L'Homme: Speaking a New Legal Language*, 13 LOY. L.A. INT'L & COMP. L.J. 499, 500 (1991) (discussing "ways that legal aid advocates can utilize international human rights doctrine to advance the interests of [the] poor and disadvantaged"); Ashar, *supra* note 184, at 1897-98 (noting collaborations to assist immigrant workers through use of international tribunals and laws).

[568] Resnik, *supra* note 132, at 1670; *see also* Richardson, *supra* note 33, at 13 ("Legal pluralism challenges theories which see the nation-state as the sole source of political and legal initiative, emphasizing instead the coexistence and importance of supra-state (e.g., transnational organizations) or sub-state (e.g., local government) processes."); Barron, *supra* note 10, at 4 ("[W]e must remember that this is a three level game—federal, state, and local—and that each level has its own unique set of interests, concerns, and ideas.").

[569] Engel, *supra* note 40, at 173, 177; *see also* Resnik, *supra* note 132, at 1592-93 (noting that civil rights groups once asked the United Nations to protect black people living in the United States, due to the lack of a national response); Cummings, *supra* note 42, at 1952 ("Defeated at the state, the UFCW took its opposition to Wal-Mart to the local government level . . . .").

[570] Erwin Chemerinsky, *Empowering States: The Need to Limit Federal Preemption*, 33 PEPP. L. REV. 69, 74 (2005); *see also* Resnik, *supra* note 132, at 1670 (noting that jurisdictional "multiplicity is a source of opportunity").

exchange for more focused protections for oppressed minorities; (3) take any and all steps to deconcentrate economic power, so localities are not so outsized by corporate actors; and (4) assuming these changes adequately encourage and enable localities to remedy current inequalities, as I would expect, increase local autonomy (perhaps with some higher level government facilitation) to take full advantage of the inherent positives of local action. If these changes were not politically feasible or failed to work, however, I would probably be willing to shift some fiscal redistribution or obvious externalities upwards, to remedy current inequalities without unduly limiting local autonomy and innovation.

Finally, I hope to have persuaded even those readers who continue to believe that the states or federal government are preferable partners for progressive change that there is also significant potential for positive local action. They might therefore concede that exploring legal aid collaborations with local government is still worthwhile, at least where higher level policymaking is not an option. Whether or not everyone is convinced by my specific suggestions, I also hope we can all agree that localism *per se* is not the cause of inequality or our other serious social problems. Instead, changing certain problematic background rules and policies would lead to a far different strain of localism and a more just world.

II. Why Legal Aid Attorneys?

Given local government's significant present potential as a source of progressive action, I will now explore the second assumption underlying my strategy proposal: that legal aid lawyers, in particular, should collaborate with localities to try to bring about such change. Here too, there are strong arguments on both sides. However, those arguments in favor of such collaborations are compelling enough that we should at least seriously consider reaching out to cities in appropriate situations. First, such collaborations are arguably necessary, both to solve certain problems and given a current shift toward local and collaborative policymaking. Local collaborations are also relatively feasible, compared to working at the state or federal levels, especially considering the goals and connections that we often share with cities. Finally, there are important ways in which these partnerships may be effective and beneficial for us, our clients, and local governments.

A. *Reasons for Our Involvement*

1. Necessity

a. *Shift to Local and Collaborative Government*

Given a current trend towards local and collaborative government, involving ourselves in this policymaking is arguably necessary, in the sense that: local collaboration is happening, so the rhetorical choice is whether we participate and have a say in the direction of this surge, or sit by and watch while other nongovernmental actors (often with interests adverse to our own) control the

process and outcome. To elaborate, cities currently hold substantial policymaking power and are in fact using this power in important ways, as discussed. According to some scholars, this reflects an ongoing devolution of "funding and regulation" to lower level governments,[571] as "[t]he desire for centrally coordinated government solutions to vexing social problems has given way to a thirst for local control."[572] Thus, we legal aid attorneys, in turn, arguably must move our locus of advocacy to the local level, where the action is.[573]

In addition to this downward shift, scholars also describe a significant trend away from "top-down," "command-and-control" governmental decisionmaking, and toward multi-party "collaborative problem-solving."[574] This procedural shift has been discussed extensively and creatively labeled, as "devolved collaboration,"[575] "collaborative governance,"[576] "new legal pluralism,"[577] "experimentalist" governance,[578] "new governance,"[579] and "Renew Deal governance."[580] One scholar even concludes that this is "perhaps the central reality of public problem-solving for the foreseeable future—namely, its collaborative nature, its reliance on a wide array of third parties in addition to government to address public problems and pursue public purposes."[581]

But while these government collaborations can include a wide range of public-interest advocates, as discussed in detail below, they do not always involve actors so likely to share our interests. Instead, according to some scholars, a "pattern of privatization" is associated with collaborative shifts in governance.[582] Private businesses, in particular, are already exploiting these options at the local level.[583] For instance, Wal-Mart regularly partners with city politi-

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[571] Louise G. Trubek, *Crossing Boundaries: Legal Education and the Challenge of the "New Public Interest Law,"* 2005 WIS. L. REV. 455, 463 (2005); *see also* Foster, *supra* note 26, at 459 (discussing this shift as to environmental decisionmaking).

[572] Trubek, *supra* note 35, at 577.

[573] *See id.* at 584.

[574] Foster, *supra* note 26, at 459-60 (discussing this shift in the environmental context); Karkkainen, *supra* note 235, at 557, 567 (same).

[575] Foster, *supra* note 26, at 460.

[576] Jody Freeman, *Collaborative Governance in the Administrative State*, 45 UCLA L. REV. 1, 4 (1997).

[577] Lobel, *supra* note 56, at 966-970.

[578] Julissa Reynoso, *The Impact of Identity Politics and Public Sector Reform on Organizing and the Practice of Democracy*, 37 COLUM. HUM. RTS. L. REV. 149, 164 (2005).

[579] Metzger et al., *supra* note 437, at 1334, 1338.

[580] Lobel, *supra* note 15, at 373.

[581] Lester M. Salamon, *The New Governance and the Tools of Public Action: An Introduction*, 28 FORDHAM URB. L.J. 1611, 1623 (2001).

[582] Reynoso, *supra* note 578, at 162-64; *see also* Lobel, *supra* note 15, at 468 (noting a tendency to equate the shift in governance with deregulation and privatization).

[583] *See* Trubek, *supra* note 35, at 580 ("[P]oliticians and agency heads at every level are increasingly turning to non-governmental actors, such as private businesses . . . .").

cians willing to support big-box store development.[584] With the ongoing downpour of budget cuts in the current economic climate, local governments may reach out even more to private interests for support. Accordingly, to prevent capture by interests adverse to our clients and ideals, we arguably need to affirmatively involve ourselves in this increasingly local and collaborative policymaking.[585]

b. *Important Issues May Require Collaboration*

Beyond these governance trends, collaboration may also be necessary to solve certain important social problems. Scholars reasonably contend that complex issues cannot be solved alone. These include problems with which we are particularly concerned: "More often than not, the challenges facing disadvantaged communities today are multi-faceted and require reaching across sectors to find solutions."[586] To put it another way, if "[p]ublic law problems invariably result from the complex interaction of conduct by myriad actors,"[587] it seems only logical that they would also require multi-party solutions. Thus, "interdisciplinary collaborations with multiple stakeholders" may be necessary to address discrimination, because it is a "systemic" and "complex" problem involving "issues of racial and gender bias . . . deeply connected to other concerns."[588] Due to similar complexities, "[d]eveloping policies and programs to improve the lives of [immigrant] communities ha[s] required collaborative efforts across sectors."[589] But "mind-numbingly complex problems" in need of collaborative solutions arguably peak in the environmental arena, where an array of local, global, floral, and faunal interests come into climactic (and sometimes climatic) conflict.[590] As discussed more below, local government may also be a particularly important collaborative piece in complex policy puzzles. Even where problems are not so complex, team efforts may be necessary to successfully challenge more powerful opponents.

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[584] *See* Cummings, *supra* note 42, at 1956, 1959, 1961.

[585] *See* Trubek, *supra* note 35, at 585 ("The role of public interest lawyers in creating these collaborations and developing and serving as facilitators is an important new role.").

[586] Golden & Fazili, *supra* note 79, at 34, 73; *see also* Lozner, *supra* note 422, at 775 (noting that "neither nonprofits nor governmental agencies can solve community problems on their own").

[587] Sabel & Simon, *supra* note 233, at 1095.

[588] Sturm, *supra* note 419, at 281, 293-94, 303.

[589] Golden & Fazili, *supra* note 79, at 35 n.13.

[590] Karkkainen, *supra* note 235, at 570; *see also* Foster, *supra* note 26, at 465 (noting that traditional top-down strategies "have failed to deal with the current generation of environmental problems that are much more complex and diffuse"); Lynne Marie Paretchan, *Choreographic NGO Strategies to Protect Instream Flows*, 42 NAT. RESOURCES J. 33, 37 (2002) (noting that a "lack of simple solutions . . . [has] . . . encouraged government agencies to . . . partner with NGOs in order to forge innovative, non-litigatory solutions").

2. Feasibility

a. *Compared to the State and Federal Alternatives*

That our collaboration with local government may be needed, however, only matters if it is also feasible. Fortunately, there are reasons to believe that it sometimes is. First, relatively speaking, city collaborations are typically going to be much more feasible than inherently more resource and time demanding work at the state or federal levels. As one author explains, those of us who "assist the poor may have greater difficulty organizing and gaining access and influence at more centralized levels of government, simply because the combination of transportation costs and the multiple barriers to enactment require resources beyond [our] means."[591] Basic access costs such as transportation, lodging, and time away from home and other work generally increase with physical jurisdiction size. This could also limit the direct involvement of clients in our collaborative efforts, a strategy suggested below, since our clients may find such costs particularly prohibitive. Larger legislatures also mean more political officials and interested third parties to deal with. Indeed, simply coordinating with our allies would be significantly harder, state or nationwide.

To the contrary, consider the relative ease of collaborating in our own local government backyards. No need for us or our clients to travel, beyond a walk or bus ride to city hall. Likewise, we are talking about ten or so city councilmembers, instead of hundreds of state or federal legislators,[592] and who are dealing with far fewer constituents. In many cities, affected communities and nonprofits are also already at least somewhat organized; but if not, they will still be easier to organize. For example, coordinating immigrant communities and supporting organizations in Oakland would probably involve a dozen or so groups, primarily located in just a couple of neighborhoods. Imagine, instead, rounding up all of the relevant California communities and nonprofits, statewide.

b. *Existing Connections and Shared Goals*

Legal aid-local government collaboration may also be more feasible because of preexisting relationships between the two. Some local governments directly fund legal aid work.[593] Here in Oakland, for instance, aid organizations receive significant financing to provide legal services to tenants through Community

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[591] Gillette, *supra* note 41, at 1116. *But see* Cashin, *supra* note 9, at 596 ("The national arena also offers low-income and anti-poverty interest groups the strategic advantage of being able to focus energies on one political forum, with attendant economies of scale.")

[592] *See* THE PEW CHARITABLE TRUSTS, CITY COUNCILS IN PHILADELPHIA AND OTHER MAJOR CITIES 11 (2011), *available at* http://www.pewtrusts.org/our_work_report_detail.aspx?id=327690; *Population and Legislative Size*, Nat'l Conf. of State Legs., http://ncsl.org/default.aspx?tabid=13527 (last visited June 9, 2012).

[593] *See* Randall T. Shepard, *The New Role of State Supreme Courts as Engines of Court Reform*, 81 N.Y.U. L. REV. 1535, 1544 (2006).

Development Block Grants and Rent Adjustment Program contracts. These organizations therefore spend substantial time coordinating with the city. Aid organizations also regularly interact with nearby localities because the latter provide relevant and important services. Many cities have building inspectors, with whom tenant representatives must work to prove and improve substandard housing conditions. Legal advocates for immigrant and other domestic violence victims similarly depend on and collaborate with local police, for U-Visa certifications and temporary restraining order applications. Some cities even provide their own species of direct legal services. For instance, Oakland and Los Angeles have "neighborhood law" programs, where city attorneys provide a municipal twist on traditional legal aid to lower income communities.

Moreover, these existing connections are unsurprising and future collaboration all the more plausible because less-affluent cities, where most of us work, share certain goals with our client communities. As one scholar explains, cities and community groups are becoming increasingly "natural and, in fact essential, allies," because they "jointly face the dislocations brought on by the changed economic order."[594] Likewise, because of law enforcement and other public safety concerns, many municipalities share our interest in integrating undocumented immigrants into the community.[595] Predictably then, we have in fact seen a substantial history of collaboration between public interest advocates and local governments, as discussed in detail below.

3. Effective and Beneficial

There is also reason to believe that legal aid-local government collaboration can be effective and beneficial for all involved. This brings us first to our second comparative question (the first being the relative value of local versus state or federal government): whether devoting time to such partnerships would be better than instead spending it on our usual direct services or some other legal strategy. To address this question, we need to weigh the pros and cons of these different approaches. As with the level of government debate, however, there is so much existing discussion that I could not possibly cover it all here. Accordingly, I will again attempt only to briefly review and address those points most relevant to my proposal. Starting with the positives, I will first consider ways in which my strategy might avoid the shortcomings, or echo the advantages, of its alternatives.

a. *Compared to Traditional Legal Aid*

For decades now, critical legal theorists and practitioners have questioned the value of traditional legal aid. Among other serious allegations, they contend that helping individual clients, one by one, cannot meet overwhelming

[594] Golden & Fazili, *supra* note 7979, at 95, 67.

[595] *Cf.* Schuck, *supra* note 28, at 64 (noting "a remarkable solicitude by public officials for both legal and undocumented immigrants in many receiving . . . communities").

client need or solve the root causes of their problems, and may even exacerbate existing inequities. Critics level similar claims against the litigation and adversarialism characteristic of traditional aid. Local collaboration, on the other hand, arguably avoids some of these alleged shortcomings, and thereby finds some comparative support as a strategy proposal.

i. Individual Client Concerns

The traditional model of direct legal services involves assisting "individual clients, typically with discrete, recognizable legal problems."[596] According to some critics, however, such individual assistance is ineffective or worse. The most obvious problem is that there is not nearly enough aid to go around.[597] Rather, because there is no right to civil representation and wholly inadequate funding, "the service model operates like a lottery,"[598] where only "a small percentage of individuals in need of help get it."[599] Thus, "[e]ven by reallocating all of" our " 'law reform' resources to direct client service we would not be able to satisfy the . . . need of the poor and the subordinated."[600] A noble desire to help more of those in need may also perversely lead aid attorneys "to emphasize quantity above quality."[601]

Relatedly, "solving the individual problems of a small percentage of individuals," arguably cannot address the widespread and complicated issues facing these communities—"[s]uch issues as the needs of undocumented [immigrants], banking the unbanked[,] and dealing with the mortgage foreclosure crisis."[602] Individual aid, claim the critics, therefore "fail[s] to address the root causes of poverty,"[603] has "not translated into real social change,"[604] and is "not

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[596] Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 104 (2000).

[597] *See* Deborah L. Rhode, *Rethinking the Public in Lawyers' Public Service: Pro Bono, Strategic Philanthropy, and the Bottom Line*, 77 FORDHAM L. REV. 1435-36, 1441 (2009) (noting the "shameful irony that the country with the world's highest concentration of lawyers" allows "four-fifths of the legal needs of the poor" to go unmet).

[598] Raymond H. Brescia et al., *Who's in Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831, 843 (1998).

[599] Colloquium, Robin S. Golden, *Toward a Model of Community Representation for Legal Assistance Lawyering: Examining the Role of Legal Assistance Agencies in Drug-Related Evictions from Public Housing*, 17 YALE L. & POL'Y REV. 527, 538, 540-41 (1998).

[600] Diamond, *supra* note 596, at 108.

[601] Brescia et al., *supra* note 598, at 835.

[602] Golden & Fazili, *supra* note 79, at 85-86; *see also* Karen Tokarz et al., *Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL'Y 359, 401 (2008) (noting "prior misconceptions that social and economic problems could be solved with individual strategies").

[603] Brescia et al., *supra* note 598, at 862.

[604] Golden, *supra* note 599, at 539; *see also* Golden & Fazili, *supra* note 79, at 58.

what poor people want or need."[605] Instead, "[d]espite hard work by legal services advocates, the plight of poor clients is as bad as or worse now than at any time during the 25 years that legal services programs have been in existence."[606] Accordingly, even clients fortunate enough to receive assistance are unlikely to benefit long term, as the aid lawyer arguably "leave[s] his [or her] clients precisely where he [or she] found them": facing an unchanged and unjust system.[607] For example, evictions often result from a tenant's "inadequate income," which "a traditional [aid] approach, cannot increase." Individual representation may therefore "delay eviction," but "cannot forever forestall the inevitable."[608]

Worse, some critics contend that the "piecemeal reform" of direct services actually enables our "unfair social system" and "postpones the wholesale reformation that must occur to create a decent society," by "disguis[ing] and legitimiz[ing] oppression."[609] Like Marxist theorists argue of the middle-class impact on counter-capitalist revolution, legal aid may "stifle what might otherwise be a strong impulse for social change," by keeping things just good enough.[610] Helping individuals to solve only their own immediate problems may also "co-opt[ ] potential leaders" of a broader movement for change.[611] Similarly, legal aid arguably "makes poor people dependent on lawyers and isolates them from other poor people."[612] Settlement agreements often have confidentiality clauses that expressly require such separation, and thereby "enable[ ] . . . employer[s, landlords, etc.] to avoid correcting the underlying problem by preventing other workers[, tenants, etc.] from knowing about it."[613] As one advocate therefore said of her own work: "It soon became obvious that by providing legal services for individual workers, we were undermining our goal of organizing the com-

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605 Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433, 443 (1998) (noting this argument by Stephen Wexler).

606 Golden, *supra* note 599, at 533-34 (quoting Paul E. Lee & Mary M. Lee, *Reflections from the Bottom of the Well: Racial Bias in the Provision of Legal Services to the Poor*, 27 CLEARINGHOUSE REV. 311, 312 (1993)).

607 Brescia et al., *supra* note 598, at 863 (quoting Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1053 (1970)); *see also* Eagly, *supra* note 605, at 444 (same).

608 Gregory L. Volz et al., *Higher Education and Community Lawyering: Common Ground, Consensus, and Collaboration for Economic Justice*, 2002 WIS. L. REV. 505, 517 (2002).

609 Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301, 307 (1987) (critiquing this claim).

610 Richard F. Klawiter, *¡La Tierra es Nuestra! The Campesino Struggle in El Salvador and a Vision of Community-Based Lawyering*, 42 STAN. L. REV. 1625, 1683 (1990).

611 *See* Gordon, *supra* note 201, at 439.

612 Eagly, *supra* note 605, at 444 (citing Stephen Wexler); *see also* Brescia et al., *supra* note 598, at 846, 862-63; Gordon, *supra* note 201, at 438.

613 Gordon, *supra* note 201, at 440. *But see infra* note 752 and accompanying text.

munity."[614] Individual representation may also impede "progressive community development" when client goals run counter to those of the broader community.[615] For instance, preventing the eviction of a tenant involved in domestic violence or drug sales may be a positive outcome for him or her, but harm the rest of the tenants at the property.[616]

Local government collaboration, to the contrary, would generally involve advocacy for entire communities instead of individual client interests. As discussed, local policy changes might also provide assistance to hundreds or thousands of our clients in one swell swoop, or even make minor but important tweaks to the underlying system. These collaborations may therefore be more in line with what some contend was the original goal of legal services: "to serve the poor as a group, not simply indigent clients on an individual basis."[617]

ii. Limits to Litigation and Adversarial Advocacy

Critics of traditional aid also question litigation, in particular, as a reform strategy, whether it involves a single client or a broader public impact case. As they explain, it is now "conventional wisdom" that "[l]awsuits are expensive, terrifying, frustrating, infuriating, humiliating, time-consuming, perhaps all-consuming."[618] The high and increasing costs of litigation may therefore further "reduce[ ] the number of indigent clients that can be served."[619] Because it is so consuming, litigation may also limit our "ability . . . to engage in alternative courses of action" where appropriate, moreso than would other strategies.[620]

Compounding the problem, expending these litigation costs is arguably a most dubious gamble: often unpredictable, against bad odds, and with a delayed and inadequate payout. Because of the "complexity of our legal system"[621] and wide variety in judges, even experienced litigators rarely seem confident predicting case outcomes. But to the extent there is a predictable trend, it

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614 Gordon, *supra* note 201, at 438.

615 Brescia et al., *supra* note 598, at 862.

616 *See* Golden, *supra* note 599, at 527.

617 Rosenbaum, *supra* note 567, at 509.

618 Lobel, *supra* note 56, at 950 (quoting David Luban, *Settlements and the Erosion of the Public Realm*, 83 GEO. L.J. 2619, 2621 (1995), and Judge Learned Hand's pointed claim that "as a litigant I should dread a lawsuit beyond almost anything short of sickness and death," *The Deficiencies of Trials To Reach the Heart of the Matter*, *in* 3 LECTURES ON LEGAL TOPICS 89, 105 (1926)).

619 Lawrence P. McLellan, *Expanding the Use of Collaborative Law: Consideration of its Use in a Legal Aid Program for Resolving Family Law Disputes*, 2008 J. DISP. RESOL. 465, 465 (2008).

620 Lobel, *supra* note 56, at 949; *see also* Brescia et al., *supra* note 598, at 844 ("Burdensome caseloads curtail the possibility of more broad-based work.").

621 Robert A. Kagan, *Political and Legal Obstacles to Collaborative Ecosystem Planning*, 24 ECOLOGY L.Q. 871, 872 (1997) (noting also that neither lawyers "nor judges want

is against our clients—with legal rules "made by and for the affluent,"[622] and applied in their favor by judges more likely to relate to property and business owners than tenants or workers.[623] As to delay, litigation is notorious for its "slow and unpredictable timeline"[624] and "alienating . . . deadlocks."[625] Then, "even favorable court decisions have little or none of their intended effect," because of "less-than vigorous implementation."[626] For instance, due to inadequate collection mechanisms, worker wage and hour judgments often fail to translate into actual restitution.[627]

For all of these reasons, our opponents are often unimpressed by our threats to assert our clients' legal rights. For example, we once had good arguments that employers were not legally required by federal immigration law to, and might in fact violate anti-discrimination and document-abuse laws if, they fired workers based on Social Security Administration "no match" letters—which suggest but do not confirm that a worker lacks immigration documents. But our strongly worded letters and phone calls were often no match for the factors motivating the layoffs: whether the no-match letter truly inspired fear of an ICE investigation, or was simply an excuse to act on an unlawful animus against the worker. As employers sometimes candidly explained, they knew that we lacked the resources to regularly file suit and would face a slow and uphill battle in court regardless, so they were simply more scared of ICE than of us.[628]

Litigation may also force our clients and their stories into a limiting and confusing legal framework that excludes other important issues and injustices.[629] In my own experience at a workers' rights clinic, the most common worker complaint was that he or she had been treated badly and then unfairly—but not discriminatorily or retaliatorily, by legal standards—fired. Sadly, with

to undergo the painstakingly slow, costly, unpredictable, and unpleasant process of litigation in America's intensely adversarial system").

[622] Klawiter, *supra* note 610, at 1661 (discussing El Salvador); *see also* Lobel, *supra* note 56, at 954-55 (discussing how "more powerful groups" may be "able to shape and control the development of the law").

[623] *Cf.* Matt Taibbi, *Invasion of the Home Snatchers*, ROLLING STONE, Nov. 10, 2010, http://rollingstone.com/politics/news/matt-taibbi-courts-helping-banks-screw-over-homeowners-20101110.

[624] Park, *supra* note 184, at 97; *see also* Gordon, *supra* note 201, at 440 (noting "the slowness of court and administrative proceedings").

[625] Kagan, *supra* note 621, at 872.

[626] Klawiter, *supra* note 610, at 1683; *see also* Lobel, *supra* note 56, at 954 (noting the claim that "courts lack the capacity, power, and information" to enforce their decisions).

[627] *See* Gordon, *supra* note 201, at 418; Lobel, *supra* note 56, at 950.

[628] *Cf.* Park, *supra* note 184, at 95 ("In spite of the potential threat of workers' claims, an employer may elect to terminate suspected unauthorized workers without fear of legal ramifications based on a presumption that [the] workers lack adequate access to the law.").

[629] *See* Cummings & Eagly, *supra* note 54, at 455-56; Eagly, *supra* note 605, at 474; Klawiter, *supra* note 610, at 1627 ("[A] practice need not be 'illegal' to be unjust . . . .").

at-will employment and declining union membership, usually neither injustice was illegal. We therefore did our best to find consolation remedies for other, unlawful employer conduct, like failure to pay overtime or provide meal and rest periods. But for many of our admirably principled clients, a remedy not for their perceived injustice was little or no remedy at all. Worse, these legal limits are often narrowed further, to those kinds of cases that fall "within existing agency [and attorney] priorities and expertise"[630] and "funders' preferences."[631] Thus, in these and other ways, litigation arguably involves "socially privileged lawyers" and organizations imposing their priorities top-down,[632] with little or no "input from affected communities."[633] Similarly, impact litigation may invoke issues, or at least negative perceptions, of democratic unaccountability, as a "closed network of elite[ ]" lawyers and judges make policy thereby.[634]

As with individual advocacy in general, critics also contend that litigation or the "law itself" are "ultimately ineffectual tool[s] for achieving meaningful, long-term" social change,[635] thereby leaving even successful litigants little better off in the long-term.[636] This is because courts arguably "have little power (and, increasingly, less willingness) to . . . eliminate systemic abuses."[637] In particular, they "typically disclaim any authority to fashion imaginative and novel remedies" or "order redistributive measures," perhaps necessary to truly address injustices.[638] Because of the aforementioned lack of enforcement, even

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[630] Golden, *supra* note 599, at 537; *see also* Brescia et al., *supra* note 598, at 842 ("As a practical matter, 'lawyer preference' and 'high priority' become synonymous.").

[631] Brescia et al., *supra* note 598, at 842.

[632] Cummings, *supra* note 42, at 1991.

[633] Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891, 1031 (2008); *see also* Brescia et al., *supra* note 598, at 846.

[634] Lobel, *supra* note 56, at 952; *see also* Cummings, *supra* note 633, at 1030 (noting concern as to "the systemic legitimacy of small groups of lawyers pursuing their own version of social change without significant political checks"); David I. Schulman et al., *Public Health Legal Services: A New Vision*, 15 GEO. J. ON POVERTY L. & POL'Y 729, 774 (2008) (noting that legal aid litigation leads "[b]eleaguered employers, landlords," and governments to criticize our "pursuit of a left-wing, political agenda").

[635] Cummings, *supra* note 42, at 1992; *see also* Diamond, *supra* note 596, at 107 ("It has been my view that the law is not capable of protecting the interests of the poor . . . .").

[636] *See* Klawiter, *supra* note 610, at 1664 ("[F]ormal legal strategies, standing alone, are unlikely over the long term to substantially improve the lives of 'litigants . . . .'").

[637] *Id.* at 1681; *see also* Harris et al., *supra* note 314, at 2095 ("[B]y the late 1980s federal courts had become less hospitable as venues to advance justice on behalf of poor people.").

[638] Klawiter, *supra* note 610, at 1681-82; *see also* Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Postmodern, Multicultural World*, 38 WM. & MARY L. REV. 5, 31 (1996) ("Third-party-imposed solutions seldom get at root-causes of conflicts or provide enduring solutions."); Gordon, *supra* note 201, at 440 ("If employers change their policies in response to a complaint or lawsuit, they often do so in a way that is tailored only to avoid legal liability, leaving the core exploitative conditions intact.").

impact litigation that garners new rights may "have little, if any, practical effect."[639] Courts and legal aid may also be biased towards emergency, after the fact remedies, rather than more effective preventive measures, invoking a compelling analogy to public health: "[I]n allocating legal aid for the emergency situation only, such as the looming eviction, . . . the legal services community replicates the same inefficiencies as a medical system that only provides care in emergency rooms and hospitals."[640] Litigation may also make matters worse. It arguably "cuts off the 'possibility of radical change in society' by presenting its 'moderately reformist' and 'status-quo-ist' paths as the only alternatives."[641] It may be particularly likely to "co-opt[ ] potential movement leaders" and undermine collective organizing, because of potentially significant monetary awards for client plaintiffs.[642] Our participation in an unjust legal system may also legitimize it, as simply playing the game conveys an implicit acceptance of the rules as fair.[643]

For many of the same reasons, critics are also concerned with the adversarial and zealous advocacy associated with traditional legal aid.[644] An adversarial process and mindset may limit us to binary, "all or nothing" problem-solving,[645] which ignores "common ground," excludes other affected parties, and therefore "cannot respond to real-life complexity requiring multifaceted solutions."[646] Indeed, our duty of zealous client advocacy arguably prohibits us from considering the legitimate interests of, and our moral obligations to, other communities, society as a whole, and even our opponents.[647] For instance, as a

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[639] Gordon, *supra* note 201, at 441; *see also* Diamond, *supra* note 596, at 107 ("Poignantly, creating the legal right to a desegregated school system is not the same thing as having an integrated, non-discriminatory, high-quality school system.").

[640] Schulman et al., *supra* note 634, at 778-79; *see also* Lobel, *supra* note 56, at 954 ("[L]egal enforcement is often understood as backward-looking or corrective, focusing on past wrongs while failing to deter future wrongdoing . . . .").

[641] Lobel, *supra* note 56, at 956 (quoting DUNCAN KENNEDY, A CRITIQUE OF ADJUDICATION 236 (1997)); *see also id.* at 955 ("[Law reform] is, at its most successful level, incremental, gradualist, and moderate. It will not disturb the basic political and economic organization of modern American society." (quoting JOEL F. HANDLER, SOCIAL MOVEMENTS AND THE LEGAL SYSTEM 233 (1978))).

[642] Cummings, *supra* note 42, at 1985; *see also* Ashar, *supra* note 184, at 1905.

[643] *See* Klawiter, *supra* note 610, at 1667, 1681; Cummings, *supra* note 42, at 1985; Ashar, *supra* note 184, at 1904 (noting claims that litigation legitimized and reinforced a "structure constructed for managing and oppressing poor people").

[644] *See* Krista Riddick Rogers, *Promoting a Paradigm of Collaboration in an Adversarial Legal System: An Integrated Problem Solving Perspective for Shifting Prevailing Attitudes from Competition to Cooperation Within the Legal Profession*, 6 BARRY L. REV. 137, 139 (2006) ("Much has been written about various problems resulting from the widespread competitive and adversarial attitudes of lawyers . . . .").

[645] Klawiter, *supra* note 610, at 1682.

[646] Rogers, *supra* note 644, at 141; *see also* Menkel-Meadow, *supra* note 638, at 6-7.

[647] *See* Golden & Fazili, *supra* note 79, at 83; Golden, *supra* note 599, at 534.

worker and tenant advocate, I quickly learned that our clients were not always entirely in the right, and that their employers and landlords were sometimes similarly underrepresented members of the same communities. Likewise, I sometimes took action on my clients' behalf that seemed contrary to the interests of the broader community, such as settling an individual case where involving a larger group or pursuing litigation might have led to a more significant change in private policy or the law. But a diet of adversarial zeal may also be bad for us and our clients. As a practical matter, we are usually on the weaker side of the legal fight, against bigger and better funded private or government interests.[648] Constant conflict may be professionally and psychologically harmful too, perhaps partly to blame for attorneys' "improper tactics, incivility, . . . ethical violations," and high mental illness and substance abuse rates.[649]

Local government collaborations, on the other hand, will typically involve less litigation and adversarialism than traditional legal aid. Depending on the particular project and process, such collaborations may therefore be more cost effective, prevention focused, democratically inclusive, and broadly creative than direct services. As discussed below, they may also thereby provide an effective antidote to some of the litigation and adversarial ills impacting aid attorneys.

b. *Compared to Other Options*

Unsurprisingly, given the extensive critique of traditional aid, advocates have spent decades discussing, and to some extent actually implementing, alternative legal models and strategies. Once more, a thorough analysis is not possible in this already overly extended Article; and a strict taxonomy would be difficult regardless, because of significant overlap among strategies and shifting terminology. I will, however, briefly consider, compare, and contrast a few of the options most relevant to my strategy proposal.

i. CED, Community, and Collaborative Lawyering

Community Economic Development ("CED") is probably the most discussed and deployed alternative to traditional aid. Generally speaking, CED attorneys instead provide transactional legal services, to help clients start and run local businesses or nonprofits. In doing so, CED intentionally responded to certain traditional aid criticisms. It recognized "that representation in legal proceedings were not the only legal services that poor communities required."[650] It also sought to avoid top-down attorney decisionmaking and provide better solu-

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[648] *Cf.* Jesse Newmark, Recent Case, *Mutual Combat Mitigation*, 118 HARV. L. REV. 2437, 2442-44 (2005) (discussing these adversarial inequities in the criminal justice context).

[649] Rogers, *supra* note 644, at 137, 139.

[650] *Golden & Fazili, supra* note 79, at 58-59.

tions, by supporting clients' own entrepreneurial ideas; according to CED, "only the client can explain the [problems] that need to be resolved" and "build [the] institutions to address [them]."[651] At the same time, by promoting development to benefit the broader community and not only the client entrepreneur, CED involved "an explicit effort . . . to expand the concept of client."[652] Through this model, CED has had significant successes: "creating new units of affordable housing, building commercial shopping centers in neighborhoods long deprived of basic services, supporting community-based businesses owners, and directing public and private resources to distressed areas."[653] But despite early optimism, CED eventually found itself subject to almost as much criticism as traditional aid. Most notable, scholars similarly question CED's potential to bring about lasting change, given its significant dependence on economic markets that are as unfairly biased against our client communities as the legal system on which traditional aid relies.[654]

Partly in response to these critiques, other advocates have promoted a "community-based model" of lawyering—with a capital "C" unconstrained by "ED." "[A]s its name suggests," the model's defining characteristic is "the fictional presupposition that the community itself is the client,"[655] which can be put into practice in various ways. First, the community lawyer might still directly assist individual clients, but "place community needs ahead of . . . individual rights where they conflict," or prioritize those needs by selectively allocating scarce aid resources to clients and strategies based thereupon.[656] The attorney might therefore decline to execute confidential settlements that would exclude clients' coworkers, or might only represent tenants willing to reach out to their neighbors. To ensure abstract notions of community are not used to justify top-down priority setting, however, proponents suggest living in client communities or working with community-based organizations ("CBOs") to determine actual needs.[657] Taking it a step further, community lawyers might even formally represent CBOs instead of individual clients, as a sort of nonprofit general counsel.[658] Lawyers could thereby use their unique legal skills to

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[651] Volz et al., *supra* note 608, at 523-24.

[652] Golden & Fazili, *supra* note 79, at 85.

[653] Cummings, *supra* note 36, at 491.

[654] *See id.* at 447-58 (discussing limits to traditional market-based CED and noting "the tenuous evidence of poverty reduction"). *See generally* Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217 (1999) (discussing problems with traditional CED).

[655] Brescia et al., *supra* note 598, at 855; *see also* Volz et al., *supra* note 608, at 518-19.

[656] Golden, *supra* note 599, at 555.

[657] *See id.* at 557; Ashar, *supra* note 184, at 1898, 1921-22 (discussing collaboration between public interest lawyers and movement organizations); Diamond, *supra* note 596, at 89, 85 (discussing a model where "attorneys become, as much as possible, a part of the community they serve," perhaps by living in that community).

[658] *See* Foster & Glick, *supra* note 283, at 2060-65 (discussing "integrative lawyering,"

defend those working for perhaps more systemic change, outside of unjust courtrooms and markets.[659] A litigator "could play an important role in 'political organizing,'" for instance, by "defend[ing] an organization against a lawsuit" or using affirmative litigation to "catalyze collective action," "augment . . . group[ ] morale,"[660] or "confer[ ] legitimacy."[661] Likewise, a transactional lawyer could help "negotiate worker buy-outs of manufacturing companies and structure employee-owned businesses."[662]

In certain ways then, CED, community lawyering, and my local government collaboration proposal are not so much competing models as strategies that could involve each other. For instance, a CED or community lawyer might work with a city to facilitate tenant or worker owned cooperatives. The three strategies also share certain characteristics: they are likely to focus on communities instead of individual clients; and will less frequently face opposing parties "in the traditional legal sense."[663]

More clearly encompassing my strategy proposal, other advocates promote a "collaborative" model, where lawyers build "partnerships to enhance the power of their constituencies," employing "the multiple skills of broker, negotiator, intermediary, and public policy advocate."[664] This model is not to be confused, however, with what also has been called collaborative, or "client-centered," lawyering. Less a model than an approach to avoid top-down lawyering, the essence "is that the client, rather than the lawyer, must make decisions concerning both the ends to be achieved by legal representation, and the means to be used to achieve them."[665] Also more of a technique, other practitioners advocate "mindful lawyering," to "connect the individual practice of paying attention with the collective work of peacemaking."[666] Of course, both of these approaches could be incorporated into any of the preceding models or my proposal.

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where lawyers might integrate directly into a community organization, like corporate "inhouse counsel"); Shah, *supra* note 654, at 254 (discussing opportunities for lawyers to represent community organizations as "collaborative corporate counsel").

[659] *See* Shah, *supra* note 654, at 254 (explaining that these organizations "are engaged in activities that genuinely empower individuals and build social alliances").

[660] Cummings & Eagly, *supra* note 54, at 466-67; *see also* Ashar, *supra* note 184, at 1922 (noting that lawyers were "essential in defensive litigation" to protect a worker center).

[661] Ashar, *supra* note 184, at 1917, 1922.

[662] Cummings & Eagly, *supra* note 54, at 478.

[663] Volz et al., *supra* note 608, at 519.

[664] *Id.* at 551.

[665] Diamond, *supra* note 596, at 90; *see also* Stephen Wizner & Robert Solomon, *Law as Politics: A Response to Adam Babich*, 11 CLINICAL L. REV. 473, 475-76 (2005).

[666] Harris, *supra* note 314, at 2077; *see also* Rogers, *supra* note 644, at 153-54 (discussing "Therapeutic Jurisprudence").

ii. Extralegal Lawyering

Generally the most aggressive in criticizing and diverging from traditional legal aid, however, are the so-called "extralegal" models of lawyering, led by "law and organizing."[667] This model hails back to a more militant era of labor activism—of "protests, illicit strikes, and pickets"—arguably "deradicaliz[ed] and pacifi[ed]" by legal reform.[668] Its proponents therefore urge lawyers "to deemphasize conventional legal practices and to focus on facilitating group mobilization," as only the latter enables poor people to bring about real social change.[669] Extralegal activism may also be the only option when courts and markets deny justice. For instance, while our legal and economic systems enable the foreclosure crisis, advocates are engaging in creative and sometimes successful direct action against it, such as squatting foreclosed properties and picketing bank CEO homes.[670]

With regard to strategy specifics, law and organizing lawyers often help bring groups together in the first place, through community education, fundraising, direct organizing, or training organizers. The lawyers then assist these groups to achieve their ends, by developing alliances, ensuring media coverage, preparing them for political confrontation, and assisting in direct action.[671] More in line with my proposal, traditional aid lawyers might also employ a bit of law and organizing on the side, "supplement[ing] conventional litigation strategies with community education programs and . . . organizing campaigns."[672] Or, like community lawyers, these attorneys could allocate legal resources to promote the model's goals, by making provision of legal services contingent on group membership.[673]

In some ways then, law and organizing is similar to local government collaboration: they both focus on change through political advocacy and often at the

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[667] *See* Lobel, *supra* note 56, at 959-66 (discussing these strategies); Cummings & Eagly, *supra* note 54, at 468 (noting that law and organizing "is now one of the most influential models of progressive legal practice").

[668] Lobel, *supra* note 56, at 955-56, 945.

[669] *Id.* at 960 (citing Sophie Bryan, *Personally Professional: A Law Student in Search of an Advocacy Model*, 35 HARV. C.R.-C.L. L. REV. 277 (2000)); *see also* Diamond, *supra* note 596, at 126 ("An organized group is a pre-condition to a successful struggle against subordination . . . ."); Cummings & Eagly, *supra* note 54, at 453 ("[S]ocial transformation required mass movements, not legal advocacy.").

[670] *See* John Leland, *With Advocates' Help, Squatters Call Foreclosures Home*, N.Y. TIMES, Apr. 9, 2009, http://nytimes.com/2009/04/10/us/10squatter.html; Paul Tharp, *Bank on Change, Activist Pickets CEOs' Homes for New Mortgages*, N.Y. POST, Feb. 10, 2009, http://nypost.com/p/news/business/item_MfQklXA3ZFqYVB2UXrbg1J; *cf.* Diamond, *supra* note 596, at 129 (discussing the possibility of demonstrating "in front of [a] developer's home or church or his children's school").

[671] *See* Lobel, *supra* note 56, at 960, 964 (discussing these and other strategies).

[672] Cummings & Eagly, *supra* note 54 at 447-48.

[673] *Id.*

local level.[674] The primary difference, however, is that law and organizing attorneys organize clients to advocate *directly*, while in my model we act as an intermediary.[675] On the one hand, directly mobilizing clients is arguably better for their long-term empowerment, because it teaches them to fish on their own for future changes. On the other hand, direct client action may sometimes be unrealistic, given the time constraints, fears, and other limits that lower income client communities may face.[676] Our surrogate advocacy may also be needed to float under the radar, where conspicuous mass action would fail. For instance, client mobilization for local tenant or immigrant protections might waken powerful landlord lobbies or popular nativist sentiment. To the contrary, closed-door collaborations with local government might keep such progressive action quiet enough to pass unnoticed. Beyond this major distinction, organizing may have the advantage in terms of developing personal client connections,[677] while collaborations arguably make better use of our existing legal skills—skills that may actually undermine our capacity to organize.[678]

Also falling within the extralegal genre, but often less aggressively anti-legal, are "community education" or "lay lawyering" models, where lawyers "educate clients to be able to advocate for themselves."[679] In some models, the education is geared specifically toward group organizing—through labor law classes, for instance.[680] But in others, client communities learn traditional legal

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[674] *See id.* at 460-62 (discussing this aspect of law and organizing).

[675] *See* Diamond, *supra* note 596, at 126-28 (noting that direct organizing is one option).

[676] *See* Cummings & Eagly, *supra* note 54, at 498 ("Low-income clients face a host of . . . practical impediments to participating in organizing efforts. Persons who are the sole providers for their families, for instance, may be unable to fit additional tasks into already challenging work and family schedules."); *see also id.* ("[U]ndocumented immigrant clients might be unresponsive to an organizing approach because their involvement . . . could bring them to the attention of [immigration] officials . . . ."); Gordon, *supra* note 201, at 440 (recognizing that "organizing takes a considerable commitment of time, time which most immigrants do not feel they have"); Bezdek, *supra* note 399, at 746-47 (discussing situations in which organizing may be difficult or impossible).

[677] Diamond, *supra* note 596, at 125 (noting that organizing "may put a lawyer in closer touch with the reality of a client's situation, attitudes, and perceptions," and increase community trust through "this less formal and structured involvement" with its struggle).

[678] *See* Cummings & Eagly, *supra* note 54, at 494 (noting that lawyers are arguably "singularly ill-equipped to organize," given community distrust and our "penchant for narrow, legalistic thinking," "tendency to dominate community settings," and investment in the existing system); Diamond, *supra* note 596, at 124 ("Among the obvious disadvantages is that an attorney typically lacks training and experience to adopt the organizer role.").

[679] Diamond, *supra* note 596, at 89-90; *see also* Shah, *supra* note 654, at 251-54 (discussing lay lawyering and arguing that "the most obvious route for community development practitioners to mobilize people toward empowerment lies in education").

[680] *See* Louise G. Trubek, *Reinvigorating Poverty Law Practice: Sites, Skills and Collaborations*, 25 FORDHAM URB. L.J. 801, 806 (1998) ("Project staff conduct a mini-school where classes on labor laws are taught to community members.").

aid, such as landlord-tenant, wage and hour, public benefit, or immigration law. These individuals can then ostensibly represent themselves and each other, which may be necessary given the lack of aid lawyers to go around.[681] Community education could also be incorporated on the side of other approaches, including my own.

Finally, certain models, such as "activist lawyering," expressly emphasize substantive goals over any particular strategy.[682] They are therefore equally willing to use or cast aside any of above approaches—from traditional aid to direct action—for the sake of building client and community power. (Thus, in some sense, this model is the opposite of client-centered lawyering, which places the means of client decisionmaking autonomy above other ends.[683]) Of course, where appropriate to reach these ends, local collaboration would fall under the activist lawyering umbrella.

c. *Other Benefits*

i. Benefits from Collaboration Generally

As mentioned, my proposal for aid attorneys to work more with local government falls within a broader model of and current movement towards collaborative problem solving. It should therefore share in the numerous alleged benefits from collaboration generally. First, as discussed, collaboration may sometimes be necessary to tackle complex problems or confront powerful actors. More broadly, proponents claim that collaborations can address "substantive issues . . . in a more comprehensive, effective, and creative manner."[684] In particular, collaborative interaction may help parties step outside of their usual "culture[s] of insularity and defensiveness."[685] By exchanging information and ideas, collaborators may also come to better understand complex problems and discover shared goals. Then, unconstrained by any adversarial framework, they can move beyond collective action problems and binary outcomes, finding "win-win" solutions for all involved.[686]

Further, especially when collaborators bring diverse expertise, experience, and skills to the table, they can share resources and reduce the costs of action to

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[681] *See* Eagly, *supra* note 605, at 483.

[682] *See* Diamond, *supra* note 596, at 128 ("The primary goal of the activist lawyer is to help clients achieve their identified ends and to do so in as many ways as she can.").

[683] *See id.* at 105 ("[A]utonomy is not the only goal. . . . In fact, most clients are focused on the outcome and are largely indifferent to their relationship with attorneys.").

[684] Rogers, *supra* note 644, at 142.

[685] Freeman, *supra* note 576, at 14 (discussing regulatory agencies).

[686] *See* Lobel, *supra* note 15, at 379; Kagan, *supra* note 621, at 873 ("[C]ooperative solutions produce more gains to both sides than does resort to the slow, costly processes of legal coercion.").

any one party.[687] Post-collaboration, parties may also be "more likely to follow through with [the] decisions in which they were involved."[688] This can be relevant to both adversary compliance with and ally enforcement of any action plans. For instance, in my experience at a city attorney's office, building inspectors and police officers were much more likely to follow through in addressing problem properties when we involved them in initial strategy discussions and decisions.

In all these ways then, collaborations may have greater potential to produce innovative, high-quality ideas and actual change, where parties "achieve results beyond what . . . [they] could secure on their own."[689] These partnership positives should also grow with time, as parties improve relations and develop greater empathy and trust, since these are keys to collaborative success.[690] Finally, to the extent collaborations are inclusive and representative of affected interests, they are arguably more democratic and legitimate than policymaking by individual organizations or attorneys.[691]

ii. Benefits from Legal Aid Attorneys

More specific to my proposal, aid attorneys have unique attributes that may improve otherwise unilateral local government action or collaborations without us. First, we specifically represent many of the groups most underrepresented in normal political processes. Accordingly, by advocating on behalf of our communities in local government collaborations, we can help "correct the[se] deficiencies in majoritarian democracy."[692] Further, while the political advoca-

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[687] *See* Tokarz et al., *supra* note 602, at 372 (noting that groups can share "social capital, such as operational skills and networking resources").

[688] Foster, *supra* note 26, at 481-82 (discussing this argument).

[689] Rhode, *supra* note 597, at 1448; *see also* Trubek, *supra* note 35, at 585 (noting innovation displayed by local collaborators); Lobel, *supra* note 15, at 442 (noting that multiparty processes can "facilitate wider imaginative horizons"); Elizabeth Deakin, *Perspectives on Causes and Cures for Urban Decay: The Role of University Urban Planning Departments in Community Building*, 30 CONN. L. REV. 1301, 1312 (1998) (noting recognition by university-city collaboration participants that they "accomplished more through group action than their individual efforts could have produced").

[690] *See* Tokarz et al., *supra* note 602, at 372 ("[I]nteractions also provide opportunities for relationship building, engendering trust, sympathy, and commitment."); Rogers, *supra* note 644, at 142 ("[R]elationships between parties are strengthened since a collaborative problem solving approach encourages cooperation . . . ."); Deakin, *supra* note 689, at 1315 (noting the collaboration benefit of increased "trust among participants, which in turn increases their long-term capacity to be productive").

[691] *See* Foster, *supra* note 26, at 494 ("The ideal of devolved collaboration expresses quite well the democratic wish of those who desire more inclusive, representative, creative, and effective environmental decision-making."); Golden & Fazili, *supra* note 79, at 72 (noting that some see "collaborative, decentralized coalition building as the path to tackling questions of power and exclusion in a way that is democracy enhancing and re-affirming").

[692] Bezdek, *supra* note 399, at 748-49; *see also* Reynoso, *supra* note 578, at 166

cy organizations that traditionally work with government may represent the same groups, we bring more direct client experience and connections to the table.[693] We may therefore better know the problems facing these communities and whether proposed solutions would actually work on the ground. Likewise, we may have greater access to relevant input and evidence from our client communities.[694] Indeed, with our involvement and support, community members should be more willing and able to participate directly in collaborative efforts.[695] This may be especially important for immigrant and other communities particularly excluded or frightened by government actors. Through direct client relationships, we also develop strong emotional ties to our client communities. When involved in collaborations that would affect them, the average aid attorney may therefore have greater personal commitment than the typical policy advocate. We may have professional incentives to ensure that collaborations succeed as well, when the action would result in reduced caseloads or increased success in our regular work.

At the same time, we will generally be more connected than our clients or community-based organizations to elite institutions and professional actors: "Community lawyers are one of the few resources that not only have daily contact with poor neighborhoods, . . . but also have routine contact in the wider community with major institutions that can help clients achieve their objectives."[696] We often have personal or professional relationships with professors and universities, private attorneys and law firms, and other public interest attorneys and nonprofit organizations. For example, many of us use legal listservs to maintain contact with individuals and organizations active in our practice areas, often state or nationwide. As discussed in detail below, these connections can be critical to collaborative action—whether we need the influence of powerful institutional actors at the outset, or a nonprofit network to spread progressive policies later on.

("[I]nter-linkings between CBOs and government have the potential of making government itself more effective and accountable to those most directly affected by public failures.").

[693] *See* Volz et al., *supra* note 608, at 546 ("[C]ommunity lawyers will help to ensure that the voice of the client will be heard.").

[694] *See* Rebekah Diller & Emily Savner, *Restoring Legal Aid for the Poor: A Call to End Draconian and Wasteful Restrictions*, 36 FORDHAM URB. L.J. 687, 701 (2009) (noting that aid attorneys "see the legal problems faced by low-income communities on a daily basis"); Richardson, *supra* note 33, at 59 ("NGO staff members also may possess more extensive field knowledge and experience than do government officers.").

[695] *See* Volz et al., *supra* note 608, at 532 ("Far too many poor citizens, lacking in formal education and real-life sophistication with governmental bodies and processes, are uncomfortable with public hearings and meetings. The presence of legal counsel gives them added confidence."); Richardson, *supra* note 33, at 59 ("NGOs can appear more institutionally acceptable to communities accustomed to adversarial relationships with governmental authorities.").

[696] Volz et al., *supra* note 608, at 537.

As direct service attorneys, we may also have unique substantive legal knowledge relevant to the collaboration issue at hand—in immigration, housing, or employment law, for instance.[697] Similarly, projects might benefit from our more general legal skills: expertise in research, writing, and interpretation; and attention to and ability to explain technical detail.[698] Moreso than most local governments, many of our organizations also regularly work with law students and other volunteers, whose efforts we might enlist. Last, nonprofits generally, and small legal aid offices in particular, may "be more innovative, experimental, and flexible"[699] than government actors, "because of . . . institutional characteristics like small size, flexibility, 'shallow' hierarchies, and short lines of communication."[700]

For all of these reasons, we may be uniquely positioned to act as intermediaries in initiating strong and diverse collaborations, capable of real change.[701] With both direct community experience and professional connections, we fall somewhere in between community-based organizations and elite institutions. We might thereby be best able to bring both sides into a cooperative fold—reaching out to both a tenants' organization and a law school, for example. Likewise, local governments may receive us more favorably than other groups. At least in my anecdotal experience, public officials regularly (and unduly) write off CBOs as unprofessional activists, and advocacy groups as disconnected from the real world. Officials also often have existing adversarial relations with both, because of their traditional roles challenging government. To the contrary, we may represent an acceptable middle ground: simultaneously legitimate as professionals and credible because of our direct experience. Because most of us are not regularly involved in government af-

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[697] *See* Rhode, *supra* note 597, at 1448 (noting that "nonprofits have knowledge of substantive law"); Cummings & Eagly, *supra* note 54, at 484 ("For example, a coalition focused on immigrant rights would need a lawyer to explain existing immigration laws and interpret new legislative proposals.").

[698] *See* Cummings & Eagly, *supra* note 54, at 478, 483 (noting that practitioners "might explain the technical aspects of the existing legal regime, research how other jurisdictions have dealt with similar issues, assist in drafting legislation, and help [CBOs] understand and negotiate the legislative process"); Cummings, *supra* note 36, at 469 ("Lawyers' technical expertise and familiarity with the interpretation of complex statutory language make them critical resources . . . ."); Golden, *supra* note 599, at 559 (noting the "unique training of lawyers to analyze problems and to think critically").

[699] Lee P. Breckenridge, *Nonprofit Environmental Organizations and the Restructuring of Institutions for Ecosystem Management*, 25 ECOLOGY L.Q. 692, 701 (1999) (discussing nonprofits generally).

[700] Richardson, *supra* note 33, at 58-59 (discussing nonprofits generally).

[701] *See* Volz et al., *supra* note 608, at 552 (noting that community lawyers can "function as an intermediary, ensuring effective communication among . . . poor and . . . non-poor institutions"); Klawiter, *supra* note 610, at 1688-89 (noting that lawyers can "help solicit and coordinate the unique skills of community members and 'outsiders' alike: investigators, social workers, teachers, laborers, and other concerned people").

fairs, we are also less likely to bring adversarial baggage. Finally, officials may be more willing to collaborate when we are involved because our legal skills and volunteer labor can reduce their workload. Of course, however, all of these comparative points are generalizations that will vary with particular projects, government actors, nonprofit organizations, and individuals.[702]

iii. Benefits from Local Government

Local governments also bring unique benefits to collaborative action. Most obvious, only governments can enact laws creating new rights, remedies, and entitlements. Governments also have other exclusive legal tools, such as authority to bring criminal charges and certain civil actions.[703] In California, for instance, many cities can charge local ordinance violations as misdemeanors,[704] and only government officials can take full advantage of powerful "unfair business practice" civil suits.[705] Local governments also encompass important public agencies, such as law and code enforcement. Public officials can therefore more easily enlist their support or access critical records, such as police reports, code inspection reports, or in some cities, foreclosure databases. As aid attorneys know all too well, even where these records are public, it can be difficult for third parties to get timely or comprehensive access. Local government involvement in collaborations will also generally attract far greater media attention, which can be another important tool in effective action.[706] Further, given significant employee turnover at nonprofit organizations, versus union stability and high incumbent reelection rates in government, city staff and officials will often be around longer than us. Their participation can therefore help ensure that collaborations do not fall apart when we are gone. At least compared to us, cities may also be potent partners with substantial resources, more able to challenge powerful opponents and to implement and enforce collaborative actions.[707]

In addition to these practical benefits, local governments can bring democrat-

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[702] *Cf.* Alan W. Houseman, *Political Lessons: Legal Services for the Poor—A Commentary*, 83 GEO. L.J. 1669, 1690, 1696 (1995) (discussing how some aid programs are problematically bureaucratic and isolated from the communities they serve).

[703] *See* Rhode, *supra* note 597, at 1448 ("[C]ity prosecutors have special investigative capacities and the leverage of criminal and civil penalties.").

[704] *See, e.g.*, OAKLAND, CAL., MUN. CODE § 1.28.010(A) (2010).

[705] *See* CAL. BUS. & PROF. CODE § 17206 (2008) (allowing civil penalties only in government actions); *infra* note 979 and accompanying text.

[706] *See* Rosenbaum, *supra* note 567, at 524-25 (discussing the importance of media coverage); Schragger, *supra* note 5, at 1016 ("Local efforts to constrain the expansion of big-box retailing have attracted the attention of the national media."); Narro, *supra* note 86, at 511 (noting that Los Angeles "city council members held a press event" together with community groups, to announce a pro-immigrant resolution).

[707] *See* Golden & Fazili, *supra* note 79, at 95 ("[T]he city offers resources and a platform."); Foster & Glick, *supra* note 79, at 2016 (noting that cities can sometimes "strengthen capacity to monitor and enforce compliance").

ic legitimacy to collaborations. As discussed, aid organizations and other nonprofits typically represent specific underrepresented communities, while local government has the unique "responsibility to meet the needs of all citizens."[708] In this way, we are the yins to each other's yangs: just as our participation is essential to ameliorating underrepresentation, their involvement is critical to ensuring that other interests are considered. This is especially important where actions to benefit particular communities would take resources from a finite pool and therefore away from other groups. In these zero-sum situations, we need someone charged with seeing the bigger picture and comparing group needs, in a way that advocates like ourselves would find difficult to do. There may also be other ways in which nonprofits acting alone would be less democratic.[709] At least in my Oakland experience, nonprofit advocates are more privileged, professional, and white, on average, than city officials, and therefore less representative in some ways of the majority of city residents.[710] For all of these reasons then, local governments and legal aid organizations seem to have a particular corrective synergy that would be good for collaborations.[711]

iv. Benefits to All Involved

Beyond any positive actions taken, legal aid-local government collaborations may also benefit those involved in other important ways. First, the partnerships provide significant educational opportunities. We can all benefit from learning about different perspectives, even where we do not change our own views. For instance, better understanding how government actors see an issue can help us frame our points in more convincing ways in the future. In my experience, such understanding leads to increased respect and empathy as well, which are essential to finding ways to move forward in the face of real disagreement. Aid attorneys can also learn about local politics from direct interaction with government partners.[712] As was the case for me, this can be as basic as learning the names of your city councilmembers, or as nuanced as discovering which indi-

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[708] Golden & Fazili, *supra* note 79, at 88 n.196 ("Because of the unique responsibility, the government is a critical partner for these collaborative efforts.").

[709] *See* Lobel, *supra* note 56, at 980 ("Private associations, even when structured as nonprofit entities, are frequently undemocratic institutions whose legitimacy is often questionable"); Martha Minow, *Public and Private Partnerships: Accounting for the New Religion*, 116 HARV. L. REV. 1229, 1266 (2003) ("Some critics charge that too many nonprofits . . . lack democratic procedures.").

[710] *Cf.* Richardson, *supra* note 33, at 59 ("NGOs cannot generally be a substitute for local governments. They are self-appointed rather than elected organizations and their social origins may lie in the dominant rather than the dominated groups in society.").

[711] *Cf.* Salamon, *supra* note 581, at 1633-34 ("By . . . utilizing the state for what it does best—raising resources and setting broad societal directions—while using nonprofit organizations for what they do best—delivering services at a human scale and innovating in new fields—important public advantages can be gained.").

[712] *See* Golden & Fazili, *supra* note 79, at 76 ("[S]uch projects provide . . . an inside view of how government approaches community issues.").

vidual staff member cares about and can get things done on a given issue. Through these collaborations, government actors may even come to internalize relevant progressive norms. Such internalization might stem from their positive interactions with us,[713] increased exposure to community suffering, or in accord with psychological research on cognitive dissonance, simply having committed time and resources to the issue at hand.[714] Whatever the reason, I have found that city officials sometimes express significantly more progressive positions on specific issues after working in relevant collaborations.

Back to us, collaborative work with local governments may help prevent professional dissatisfaction and burnout. Even aid attorneys committed to direct services need some variety now and then, and these collaborations may provide the perfect temporary contrast. Through such collaborations, we can briefly escape the harmful heat of excess adversarialism, with a refreshing dip into cooperative problem solving.[715] Likewise, we can temporarily step outside of individual client advocacy, to work on "something larger than a single case."[716] When collaborations focus on preventive solutions, they may also provide some relief from emotionally draining crisis response work.[717] Further, occasional interaction with government can be an outlet for those of us interested in politics. As an example of all of the above, consider an aid attorney who handles habeas cases for inmates on death row. Normally, the attorney performs incredibly meaningful but emotionally taxing and extremely adversarial work, for individual and often difficult clients. Local government collaboration—such as seeking an expressive resolution against capital punishment—might therefore offer the attorney a much needed but still work-relevant reprieve.

Participating in such collaborations might also help us hone certain professional skills in need of sharpening, as we lobby political officials, communicate

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[713] *See* Lozner, *supra* note 422, at 784 ("Norm internalization is facilitated by a series of repeated interactions that generate legal rules."); Tokarz et al., *supra* note 602, at 372 ("Positive results from . . . interactions may include socialization—the process by which one group absorbs the normative values and integral codes of another group . . . .").

[714] Contrary to our normal intuitions, the best way to elicit positive feelings from someone is not to do something for them, but to get them to do something for you. This is because they then need to internally reconcile their feelings towards you with their own positive actions. *See Ben Franklin Effect*, Wikipedia, http://en.wikipedia.org/wiki/Ben_Franklin_effect (last visited June 9, 2012).

[715] *See* Rogers, *supra* note 644, at 160-61 (noting that exposing lawyers to "positive alternative models of practice," such as collaboration, may improve professional satisfaction).

[716] Ashar, *supra* note 184, at 1916 (discussing a worker center campaign); *see also* Cummings, *supra* note 42, at 1979; Golden & Fazili, *supra* note 79, at 76.

[717] *Cf.* Schulman et al., *supra* note 634, at 759 (noting that a medical-legal partnership presented lawyers an opportunity "to change the way legal services are typically delivered, away from crisis-generated litigation toward *preventive law*").

with the media, prepare community members for public speaking, or help draft legislation.[718] Working with local government may open up professional opportunities as well, where we can continue to assist underrepresented communities in new ways.[719] For instance, I transitioned from legal aid at a nonprofit to neighborhood law attorney for the City of Oakland, after collaborating with the city attorney's office to address a particularly bad landlord, as discussed in detail below.[720] Our aid organizations can also benefit from our involvement in local government collaborations. Media coverage and positive government relations may lead to increased organizational "visibility and influence,"[721] important for future fundraising and action on behalf of our client communities. Government partnerships may also alleviate the negative public perception of aid attorneys surreptitiously pursuing special interests through the courts.[722] To the extent we involve them, as discussed more below, our clients can benefit from collaborations as well. Like us, our clients could thereby learn about their local government. Interacting with officials or speaking at public hearings might be the first meaningful democratic participation for many of our clients.[723] Our clients should also benefit from working with other community members who share similar problems and experiences.[724] For all of these reasons, collaborations may empower them to better solve problems without us in the future.

v. Benefits from Collaboration Generally

Finally, collaborative efforts, big or small, can increase the potential for future collaborations and other political action. As we develop relationships with and learn from local governments and other partners on any one project, we should become better able to imagine and implement bigger and more successful future projects.[725] Contacts, alliances, and experience from collaborations

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[718] *See* Cummings, *supra* note 42, at 1988 (discussing how a local anti-Wal-Mart campaign invoked such "an alternative set of advocacy skills").

[719] *Cf.* Cummings, *supra* note 633, at 1034 (noting such opportunities stemming from innovative work in international law).

[720] *See infra* notes 978-981 and accompanying text.

[721] Breckenridge, *supra* note 699, at 698.

[722] *See* Volz et al., *supra* note 608, at 549 (arguing that such collaborative strategies are "far easier to reconcile with American values than is . . . a litigation-based strategy").

[723] *See* Lobel, *supra* note 15, at 374 ("[T]he overall goal of participation is broader than simply ensuring the achievement of policy goals; it enhances the ability of citizens to participate in political and civic life.").

[724] *See* Cummings, *supra* note 42, at 1992 ("[H]igher-order lawyering for social change is a matter of helping clients to see the commonality of their condition . . . .").

[725] *See* Deakin, *supra* note 689, at 1306 (explaining that partnerships can help "build and institutionalize long-term working relationships and capabilities that in turn can spin off new partnerships and take advantage of an expanding set of opportunities"); Shaw, *supra* note 23, at 394 ("As a result of coordination and consolidation [to amend a local law], the [parties involved have] a greater chance of political success in the future.").

may also enable us to become politically involved in other ways—for instance, in vetting political candidates on issues of interest to our client communities.[726] Moreover, collaborations that culminate in positive action may encourage other progressive organizations to try similar strategies, initiating a virtuous cycle of positive pressure on our cities. As one workers' rights advocate explains:

> The goal of these efforts is to both enact local policies and also change the nature of the dialogue about the role of local governments to promote labor standards. Indeed, the success of [various organizations] in winning living wage and big-box ordinances has helped to revise expectations about how local governments should use their power to link economic development to social justice.[727]

B. *Arguments Against Our Involvement*

On the other hand, there are also legitimate arguments against legal aid attorneys engaging in collaborations with local government. Some such collaborations may still be infeasible, because of funding and time constraints due to our direct service work, or conflicts with the local government. Even where feasible, there are also reasons to question whether collaborations are worth the time taken away from traditional legal aid and other social justice strategies, or the risks of compromise and cooption.

1. Feasibility Concerns

a. *Funding and Time Limits*

First, to the extent collaborations involve "lobbying," the many aid attorneys at organizations receiving Legal Services Corporation ("LSC") funding are expressly excluded. In addition to other seriously troubling limits that apply even to the use of non-LSC funds,[728] these organizations "may not lobby unless they are specifically invited [in writing] to do so by a legislator or administrator, or do so on behalf of a particular client."[729] There is a compelling criticism, of course, that this "restriction[ ] on legislative advocacy . . . gag[s] legal aid attorneys in their critical role in alerting legislatures to the problems of low-income communities," further disadvantaging these communities.[730] But at least for now, this is the inequitable rule some of us face. Others of us may be similarly

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[726] *Cf.* Cummings, *supra* note 42, at 1948 ("Community-labor groups have gained local influence . . . as important political actors in their own right . . . .").

[727] *Id.* at 1984.

[728] *See* Brescia et al., *supra* note 598, at 837-38 (noting that these include "class actions, suing governments, representing [undocumented immigrants], [and] organizing"); Eagly, *supra* note 605, at 434 (noting that adherence "to traditional modes of legal practice is due, in part, to the[se] severe . . . limitations").

[729] Rosenbaum, *supra* note 567, at 507.

[730] Diller & Savner, *supra* note 694, at 696, 701-02 ("Because few lawmakers are aware of this limitation and rarely invite the participation of legal services lawyers in legislative

constrained by other funders' demands. For instance, some funders implicitly expect or expressly require aid organizations to handle large numbers of particular kinds of clients and cases.[731] With inadequate funding and staffing overall, these demands may make even occasional collaborations impossible for some of us.[732] For instance, at the small nonprofit where I worked, meeting numerical requirements from two local funding sources monopolized almost all of our housing staff attorney's time.

Beyond funding, the overwhelming demand for immediate legal assistance can make it psychologically difficult for aid attorneys to devote time and energy to less urgent activities, like collaborations. At least in my experience, we often resolve ourselves to try new strategies and even take initial steps, rationally deciding that they are worth a small reduction in traditional aid. But these commitments then fall to the wayside as "hundreds of needy clients each week plead[ ] for assistance with severe legal emergencies—lost child support, terminated welfare or health care benefits, kidnapped children, eviction or foreclosure notices, and so on."[733] When we wind up in court, this emotional anchor is joined by litigation deadlines demanding "priority over any [other] obligations."[734] An increased risk of failure from unfamiliar or longer-term strategies may add to the psychological paralysis. With traditional aid, we can at least be confident that we will regularly help individual clients with their immediate problems, even if we sometimes fail. Whereas, with strategies like mine, we reasonably worry that all of our time and energy will come to naught. For example, I have found that aid attorneys commonly give up on trying to shop even strong affirmative cases to private lawyers, despite the potential benefits to our clients, because we so often invest substantial time only to find no takers. Importantly, we still rationally believe the searches are worth some time, even considering the risk of failure. We stop instead for irrational, but entirely understandable, psychological reasons: it simply becomes too emotionally difficult to take time away from something as urgently needed as traditional aid, for something so likely to fail.

These financial and psychological constraints could also be particularly preclusive of my proposal, as it may be more time intensive than other side

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discussions, this highly unusual requirement most often shuts down communication entirely.").

[731] *See* Houseman, *supra* note 702, at 1699 (noting "the political reality . . . that legal services providers must handle large numbers of clients in order to justify the receipt of federal and other funds").

[732] *See* Volz et al., *supra* note 608, at 537 ("Increasing caseloads . . . and reduced funding . . . conspire to leave insufficient time or money for new approaches to poverty remediation."); Foster & Glick, *supra* note 283, at 2061 ("[T]he caseload has been so great that the lawyers have little time or energy left for more than sporadic, episodic involvement in organizing and advocacy campaigns . . . .").

[733] Schulman et al., *supra* note 634, at 776.

[734] Cummings & Eagly, *supra* note 54, at 500.

strategies. Even at the local level, collaborations can involve dozens of officials and other actors. Further, aid attorneys might have to learn new or improve underdeveloped skills before engaging in the "nontraditional activities" involved.[735] Successfully building coalitions and participating in collaborative problem solving requires "the ability to listen and communicate in ways that build trusting relationships with a broad array of individuals and groups," in "partnerships that cross ideological and political lines."[736] Collaborations may also require us to "deal with the non-legal aspects of social or economic problems,"[737] "shar[e] expertise with other professionals . . ., monitor[ ] performance, and gather[ ] data."[738] As some scholars contend, not only do we typically lack adequate training in these areas, but improvement would require difficult shifts in orientation—for example, from competitive, single-issue adversarialism, to cooperative, multi-dimensional problem solving.[739] Even as to traditional legal skills, collaborative projects may more often need transactional lawyering, which is not usually our forte. For all of these reasons then, government collaborations are arguably best left to professional policy advocates.

b. *Local Government Conflicts*

Moreover, legal aid organizations and local governments do not always have the positive existing relationships and shared goals discussed above. Rather, some desirable collaborations may be impracticable due to present political differences or past adversarial interactions. As to the former, for example, Captain Obvious could tell you that progressive nonprofits cannot partner with the City of Hazelton on immigration issues any time soon. The same goes for particular policy areas in the many other cities with entrenched positions contrary to our own.[740] Adversarial relations with local government may also be the norm for some aid organizations. As one CED advocate describes: "More often than not, [we] sit at the opposite side of the table . . . pushing, prodding, and cajoling local government[ ] to act appropriately in order to realize client

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[735] Trubek, *supra* note 35, at 600.

[736] Volz et al., *supra* note 608, at 527-28 (quoting PENDA D. HAIR, LOUDER THAN WORDS: LAWYERS, COMMUNITIES AND THE STRUGGLE FOR JUSTICE 5 (2001)).

[737] Diamond, *supra* note 596, at 76.

[738] Trubek, *supra* note 35, at 600.

[739] *See* Diamond, *supra* note 596, at 76 ("Attorneys are usually not trained to deal . . . with any form of multi-dimensional problem-solving."); Karkkainen, *supra* note 235, at 572 (noting that legal training and culture may incline lawyers "toward split-the-difference, least common denominator" solutions, instead of "genuine, constructive, open-ended problem solving"); Rose Voyvodic & Mary Medcalf, *Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor*, 14 WASH. U. J.L. & POL'Y 101, 126 (2004) ("The competitiveness of law school, as well as the overwhelmingly adversarial context it addresses, also operates to interfere with the ability to collaborate.").

[740] *See supra* Part I.B.2.a.

goals."[741] Under these circumstances, there may be mutual distrust and "unwilling[ness] to pursue cooperative agreements."[742] There is also "often distrust of the government on the part of [our] clients"[743] and other nonprofits. Thus, even where aid lawyers and local officials could rise above past differences and collaborate, we might thereby lose legitimacy in our clients' or partners' eyes.

2. Effectiveness Concerns

Even where local government collaborations are financially, psychologically, and institutionally feasible, they may still be ill-advised. Countering the siege of criticism set forth above, many scholars and practitioners vigorously defend the value of traditional legal aid. Taking time away for collaborations may therefore not be worth the costs. Collaborations also pose significant risks of cooption and undue compromise, which may outweigh the potential positives.

a. *Reconsidering Traditional Legal Aid*

i. Importance of Individual Services

Advocates of traditional legal aid persuasively insist on the importance of individual client services, denouncing its critique as "familiar, imperialistic and wrong."[744] According to these advocates, individual legal assistance is exactly what the poor need most right now.[745] To reconsider a usually disparaging metaphor, legal aid has been called a "band-aid" solution, because it may temporarily staunch the figurative bleeding but does not truly heal the injury or prevent others. Yet for someone bleeding profusely, a bandage may be the difference between life and death; and it would be no consolation to him or her that the band-aid budget instead went to preventive programs. Equally, for a tenant family facing eviction, traditional legal aid may not address their poverty, solve any of its associated harms, or even prevent future housing problems, but it can mean a roof over head tonight. Aid lawyers devoting time to other strategies—acting as organizers, educators, or collaborators—therefore means less relief for "the manifest suffering of real people with immediate [legal] problems."[746] Further, while organizers can organize, teachers can teach, and

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[741] Golden & Fazili, *supra* note 79, at 75.

[742] Bezdek, *supra* note 399, at 737 (discussing CBO mistrust of public actors).

[743] Golden & Fazili, *supra* note 79, at 75.

[744] Delgado, *supra* note 609, at 307.

[745] *See* Gordon, *supra* note 201, at 439-40 ("Finding a lawyer to resolve the problem presents the least risk and the biggest possible benefit."); Wizner & Solomon, *supra* note 665, at 476 ("When we asked [a social service agency director] to help define community legal issues, she told us that 'access to lawyers' is the primary issue. [She] believes that her community (unlike us, she lives and works there) has been so underserved that providing lawyers in the community is a sufficient aspiration.").

[746] Diamond, *supra* note 596, at 108; *see also* Cummings & Eagly, *supra* note 54, at 492

advocates can collaborate, only attorneys can provide legal aid; and there are not enough of us to go around: "As it stands, there are only six thousand full-time legal services staff lawyers to meet the legal needs" of forty-five million low-income individuals.[747] Perhaps then, with our unique capacity to meet this immediate need, we should leave other strategies to non-lawyers.[748]

These needs are arguably so urgent that we should address them even if doing so would negatively impact broader social change. Indeed, it may only be privileged professionals who would consider sacrificing the former for the latter, since we are not the ones now suffering, who cannot afford to wait. As one scholar explains:

> A court order directing a housing authority to disburse funds for heating in subsidized housing may postpone the revolution, or it may not. In the meantime, the order keeps a number of poor families warm. This may mean more to them than it does to a comfortable academic working in a warm office. It smacks of paternalism to assert that the possibility of revolution later outweighs the certainty of heat now . . . .[749]

As the scholar suggests, this may also be a false choice, since it is unclear whether traditional aid actually undermines more systemic change. In fact, there are some reasons to believe that the opposite is true. Continuing with the last example, the "welfare family may hold a tenants' union meeting in their [now] heated living room."[750] Likewise, when workers receive overtime wages, their kids may be able to devote more time to education—rather than after(or instead of)-school jobs to help support the family—and thereby break through class ceilings. Moreover, as discussed, quick-fix systemic changes may be impossible in the near future, if not as a general rule.[751] Therefore, these small direct steps, collectively and over time, may be the only way up the stairs to real social change. But hopefully speeding up this climb, providing individual assistance to a single client can sometimes indirectly benefit many others. For instance, I represented one worker who, after settling a claim for missed meal and rest periods at his prior job, proudly informed me that his former coworkers had then started receiving the required breaks. Even when a

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("Given the scarcity of resources in legal aid programs, a shift toward an organizing-centered approach would result in a reduction of basic services to clients [needing legal help]."); Houseman, *supra* note 702, at 1669, 1699 ("[T]he suggested solutions ignore . . . the reality of daily legal services practice, where far more clients than can be effectively represented seek both emergency and long-term assistance . . . .").

[747] Cummings & Eagly, *supra* note 54, at 492-93; *see also supra* note 597.

[748] *Cf.* Schulman et al., *supra* note 634, at 776-77 ("The prospective clients with those crises need lawyers to navigate the legal, administrative and regulatory systems in which their difficulties are embedded. . . . Without them, the clients are lost.").

[749] Delgado, *supra* note 609, at 307-08.

[750] *Id.* at 308 ("[I]ncremental changes may bring revolutionary changes closer . . . .").

[751] *See supra* Part I.C.1.e.

settlement agreement has a confidentiality clause, my experience has been that the worker or tenant often promptly and without repercussion ignores it, informing his or her coworkers and neighbors of their rights and remedies.[752]

For those who value client autonomy, it may also be irrelevant whether there is some better use of our time. Nine times out of ten, individual legal assistance is what our clients ask for, so depriving them thereof to provide something else ignores their reasonable wishes.[753] Worse, by doing so, we would often be employing a double-standard: What do privileged professionals like us usually do when faced with a legal problem? Do we organize or collaborate for broader change, or do we just find a lawyer so we can move on with our lives? On a more practical note, some funding sources and volunteers are particularly attracted to the direct legal services that we offer.[754] Cutting these services to pursue alternative strategies may therefore result in reduced funding and volunteers. Finally, we might avoid some of the purported downsides of individual legal services, such as top-down lawyering, by making tweaks to legal aid, rather than changing models.

ii. Importance of Litigation and Adversarial Advocacy

Some scholars similarly defend the value of litigation, arguing that its critics: minimize the concrete benefits and "significant institutional restructuring that legal advocacy has achieved"; and in doing so, unnecessarily "truncate[ ] progressive legal practice by closing off potential avenues for redress."[755] Impact litigation, in particular, has brought significant individual relief to thousands of underrepresented people, as well as more systemic reform. For example, a single California lawsuit helped countless people by stopping a $200 million cut to Medicaid.[756] And "litigation to halt the demolition of public housing in post-Katrina New Orleans, to redirect . . . public transit dollars to serve . . . Los Angeles bus riders, and to equalize the expenditure of public school funding, are all efforts to change the *rules of the systems* that ensnare the poor and powerless."[757]

Advocates also speak up for litigation-secured rights. As discussed, some

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[752] There is generally no repercussion because: 1) the worker or tenant has left his or her job or moved, respectively; and 2) is judgment proof; plus 3) the former employer or landlord would have a difficult time proving any violation regardless.

[753] *See* Diamond, *supra* note 596, at 100-01 ("For these clients, a collaborative approach would destroy client autonomy by ignoring the client's initial wishes . . . ."); Gordon, *supra* note 201, at 439, 444 ("[W]orkers often prefer litigation to carrying out . . . creative strategies involving group action.").

[754] *See* Gordon, *supra* note 201, at 442-43 (noting that traditional legal services can lead to grants from foundations and "court-ordered attorneys' fees," and are "an excellent way to recruit and incorporate volunteers").

[755] Cummings & Eagly, *supra* note 54, at 491 ("[C]reative litigation and court-ordered remedies have changed many aspects of the social, political, and economic landscape.").

[756] *See* Houseman, *supra* note 702, at 1685-86 (discussing other notable cases as well).

[757] Bezdek, *supra* note 399, at 744 (emphasis added).

critics contend that inadequate implementation and enforcement incapacitates these rights, and therefore argue that it is not civil-rights rulings but on-the-ground activism that actually brings social change. Litigation proponents reasonably respond, however, that it is the legal decisions that open the door for the grassroots activism, by "expos[ing] the vulnerability of . . . previously untouchable" policies,[758] sparking debate, and shaping public opinion.[759] Like the expressive local laws discussed above, rights-based rulings thereby function as meaningful counternarratives, even where there is no direct, effective enforcement.[760] But litigation can sometimes improve the latter as well. For instance, "cases brought by legal services lawyers" have won "[more-]effective remedies [for] welfare recipients, public housing tenants, debtors, mental patients, and juveniles."[761] As with individual services, scholars also suggest that critics' casual dismissal of legal rights may stem from their privileged positions: "One explanation for the [critique] on rights may be that . . . a white male teaching at a major law school, has little use for [them]. Those with whom he comes in contact in his daily life—landlords, employers, public authorities—generally treat him with respect and deference."[762]

Back to litigation more broadly, some actors may only change their behavior after being threatened with or subjected to legal action. This may be the case more frequently for certain kinds of actors—such as immigrant employers, according to one advocate.[763] Or, as most of us have experienced, it can just be a particular landlord or employer who, for whatever reason, only takes lawsuits seriously. Legal victories or simply "the shadow of litigation" may also set a more favorable stage for other strategies, increasing leverage for negotiations or providing protection for organizing.[764] And for courts to strike down local laws that oppress political minorities, as suggested above, someone has to be bringing the lawsuits.[765] Finally, some argue that zealous adversarial advocacy for our client communities is the last thing we should give up at this point in history, when no one else is looking out for them.[766]

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[758] Cummings, *supra* note 42, at 1947-48 (discussing this claim).

[759] *See* Shaw, *supra* note 23, at 390 (discussing civil rights movements).

[760] *See supra* Part I.C.1.b.3.

[761] Houseman, *supra* note 702, at 1685.

[762] Delgado, *supra* note 609, at 305-06 (footnote omitted).

[763] *See* Park, *supra* note 184, at 86 ("For immigrants who have different cultural and historical perspectives on social and economic justice values, legal requirements can be more effective than community or public pressure." (internal quotation marks omitted)).

[764] *See* Narro, *supra* note 86, at 494 ("The legal victory also created tremendous leverage for day laborers to negotiate possible solutions . . . .").

[765] *See supra* Part I.C.1.d.i. and Part I.C.2.b.

[766] *See* Ashar, *supra* note 184, at 1918 ("[T]he instinct to provide zealous advocacy in an adversarial context remains constant and is perhaps, in light of the relative diminishment of the state's role in economic relationships, more important than in any preceding moment in recent history.").

b. *Compromise and Cooption*

Offsetting the notable positives discussed, scholars also note serious collaboration pitfalls. First, collaborations often require compromise[767]—in our case, for instance, to convince more moderate government partners to participate. Worse, partnerships may perversely result in the cooption of groups like us, who otherwise act as important independent checks on government. As one article explains: collaborators "form bonds that at least soften, and may completely extinguish, the organizational rivalries that otherwise make them mindful of one another's overreaching"; collaborations thus "co-opt[ ] potential watchdogs by making them part of the team responsible for generating solutions."[768] Further, just as collaboration benefits should increase over time as relationships develop, so unfortunately would the risk of cooption grow.[769]

Scholars also contend that local political advocacy is "particularly ripe for cooptation,"[770] with government officials "accustomed not to open deliberation," but "to the exercise of carefully husbanded political power or bureaucratic prerogative."[771] These officials may therefore only work or continue to work with groups willing to pander to their interests, maximizing the cooptive pressure. Specifically, officials may recruit and involve "nongovernmental actors on the basis of past or promised political patronage,"[772] while excluding activists who "might publicly criticize . . . inadequate" action[773] and underrepresented groups that lack "sufficient vertical capital" to force their way in.[774] Moreover, aid attorneys may be especially susceptible to such cooption at times, due to existing connections with local government. For instance, those of us at organizations that receive city funding might feel pressure to "adopt conciliatory rather than confrontational positions vis-à-vis local government actors."[775] We may be similarly compromised when our work depends on city agencies or staff, such as rent boards, building inspectors, or the police. Attorneys as a whole may also be ill-suited to avoiding cooption. As one practition-

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[767] *See* Cummings, *supra* note 42, at 1954 (noting compromises made in big-box regulation); Shaw, *supra* note 23, at 389 (same, as to an anti-discrimination ordinance).

[768] Dorf & Sabel, *supra* note 155, at 874; *see also* Freeman, *supra* note 576, at 85.

[769] *See* Mark Seidenfeld, *Empowering Stakeholders: Limits on Collaboration as the Basis for Flexible Regulation*, 41 WM. & MARY L. REV. 411, 486 (2000) ("[W]hen groups engage in long-term, cooperative endeavors with regulators, the process is especially susceptible to co-option . . . .").

[770] Lobel, *supra* note 56, at 976 (noting that such cooption results "in far lesser achievements than what may have been expected by the groups involved").

[771] Lozner, *supra* note 422, at 775 n.38 (quoting Archon Fung, Creating Deliberative Publics: Governance After Devolution and Democratic Centralism 45 (Dec. 2, 1999), *available at* http://archonfung.net/papers/DemocPublic.pdf).

[772] Lozner, *supra* note 422, at 775.

[773] Foster & Glick, *supra* note 283, at 2024.

[774] Foster, *supra* note 26, at 490.

[775] Cummings, *supra* note 312, at 141-42 (discussing block grant programs).

er explains, "lawyers tend to be mediators instead of collaborative advocates, often acceding to big businesses and city government prerogatives and priorities."[776]

Last, echoing critiques of traditional aid, other scholars charge that collaborations will "simply replicate, and perhaps even exacerbate" existing inequities, since parties without "adequate social capital and material resources" lack the access and influence needed for meaningful participation.[777] These underrepresented groups will therefore "continue to be disadvantaged in the distribution of . . . benefits and burdens in devolved collaborative processes."[778] With a false promise of inclusion and cooperation, collaboration may also more effectively legitimate these inequitable outcomes than would litigation or other openly adversarial action.[779]

C. *Responses and Conclusion*

As with the level of government debate, I will not try to fully resolve all of these complicated issues here; indeed, this would be an epic undertaking. Again, my more modest goal is simply to convince the reader that legal aid-local government collaboration is a legitimate contender for our time. I will therefore respond to some of the most compelling arguments against our involvement and draw certain tentative conclusions, hopefully sufficient to support my proposal.

1. Responses

a. *Still Feasible for Some of Us, Some of the Time*

As discussed, significant funding limits, time and skill constraints, and local government conflicts will certainly preclude some aid attorneys from collaborating with some cities, on some issues, some of the time. The sum of these "somes," however, is that there is still substantial room for us to work with cities on important issues. This potential is empirically proven by the many such collaborations that have recently taken place, as discussed in detail below.[780] Certain strategies may also help us overcome these significant constraints. And where some of us still cannot, this is arguably all the more reason for the rest of us to step up to the collaborative plate.

To elaborate, LSC funding, with its express prohibition of political advocacy, may preclude affected aid attorneys from most government collaborations. To the extent our participation is worthwhile, however, those of us at non-LSC

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[776] Shah, *supra* note 654, at 248 (discussing community development boards).

[777] Foster, *supra* note 26, at 464, 485, 492.

[778] *Id.* at 464; *see also* Lozner, *supra* note 422, at 773 ("Negotiated regulation has been criticized for . . . its tendency to replicate existing imbalances of power."); Sabel & Simon, *supra* note 233, at 1098 (same).

[779] *See* Foster, *supra* note 26, at 485, 489; Foster & Glick, *supra* note 283, at 2017.

[780] *See infra* Part III.B.

organizations should pick up the slack. Fortuitously, such collaborations may be more appropriate for non-LSC aid providers anyway. Without LSC funds and their strict requirements, these organizations tend to be smaller and less bureaucratic.[781] Their staff attorneys may therefore have greater freedom to pursue less conventional strategies, like local government collaborations. Many of these providers also decided to forego LSC funding because of the harsh restrictions—on serving undocumented immigrants, for instance. This is not to criticize LSC organizations, as someone has to take advantage of these funds despite their limits, since they enable us to provide assistance to countless low income clients. But to some extent, non-LSC organizations have thereby self-selected as more openly and uncompromisingly political. Their attorneys may therefore more often receive the organization's blessing to pursue political projects. Non-LSC attorneys may also be more individually interested in such projects on average, because they select and are selected by these less conventional and more political organizations. Yet, even LSC attorneys may sometimes be able to participate in city collaborations—for instance, where they can secure written invitations from local officials or convince sympathetic supervisors to let them collaborate off the clock.

Similarly, while aid attorney time and skill constraints surely impact our capacity to collaborate, there are plausible explanations for how we have surmounted these hurdles and may continue to do so. First, contrary to the contention that we would have to learn entirely new skills, some scholars paint a rosier picture of aid attorneys' existing collaborative capacity:

> Although their prior training and experience may not fully equip them to serve these unconventional roles, they nonetheless bring to the task indispensable skills that few other professionals can match. They are skilled in the arts of oral and written advocacy and negotiation, attentive to detail, accustomed to examining complex problems from many angles of vision and devising creative solutions, capable of identifying and avoiding (or, where necessary, creating) ambiguity, alert to the downside risks of legal and financial liability, and knowledgeable about and adept at maneuvering through the complex legal, institutional, and political terrain within which decisions are made. They are also skilled at refining generalized policy formulations into more precise operational instruments.[782]

Indeed, given that we now settle over ninety-five percent of cases,[783] it would be surprising if we did not have relevant negotiation skills; rather, lawyers who can actually litigate may be the rarer commodity. Also, when additional skill development is needed, these initial entrance costs should at least roll over, enabling us to participate in future collaborations as well. Even where we lack the time to learn any needed skills, we could instead join part-

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[781] *See generally* Richardson, *supra* note 33, at 58-59.
[782] Karkkainen, *supra* note 235, at 571-72.
[783] *See* Houseman, *supra* note 702, at 1692.

ners with the relevant abilities or expertise.[784] Bringing partners on board or enlisting in an existing coalition should loosen our direct service restraints as well, allowing us to temporarily dock for urgent client matters while our partners pick up the collaboration slack. As discussed more below, we could also protect our time and psychological wellbeing by taking a more limited role in collaborations, at least at first. Finally, the argument that only lawyers can provide legal aid, so non-attorneys should handle collaborations, organizing, and other less purely legal strategies, may be technically correct but real world irrelevant since "frequently, nobody else is available" for the latter either.[785]

Turning to local government conflicts, our past adversarial interactions with public officials, or their positions on particular policies, will also rule out some potential projects. Creative aid attorneys in many cities, however, should still be able to imagine other important projects in areas of shared interest and relative harmony. As discussed, cities and aid attorneys often have common goals and existing connections on vital social issues, and countless cities have proven their willingness to take progressive action in these areas. Also, because governments are not monolithic entities but amalgamations of individual people, our conflicts will often be with particular officials or offices and not others. Thus, as discussed below, we should sometimes be able to find more receptive city representatives. Yet, even aid organizations and officials discordant in one area may be capable of harmonizing in another.[786] And again, because local collaborations are taking place regardless, it is arguably necessary that we find ways to work even with "previously antagonistic actors,"[787] if we want our client communities to be represented.

b. *Still Effective, Even Considering Cooption and Other Concerns*

Compromise, cooption, and preexisting power imbalances are also legitimate collaboration concerns, but still (1) leave significant room for meaningful city collaborations, (2) often weigh in favor of our involvement, and (3) are not unique to this strategy. First, while compromise may be an inherent price we pay to collaborate with more moderate governments or other participants, presumably we will only do so where they bring benefits that outweigh this cost. To make a more educated decision, we might also initiate an early, candid discussion regarding respective goals and any room for change. Further, as attorneys regularly working within and contaminated by "the system," we are arguably better suited than pure community-based organizations to risk poten-

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[784] *See infra* Part III.A.2. and Part III.A.3.

[785] Volz et al., *supra* note 608, at 535; *see also* Diamond, *supra* note 596, at 126.

[786] Harris, *supra* note 314, at 2093-94 ("Once cast as adversaries in many struggles, elected officials . . . and . . . organizations serving the poor recently have forged new opportunities to work together . . . ."); *see also* Golden & Fazili, *supra* note 79, at 37 (recognizing "the changed landscape, in which yesterday's foes are today's allies").

[787] Trubek, *supra* note 35, at 586.

tially compromising collaborations; CBOs can thereby maintain their important separation from the powers that be, both in reality and in the eyes of communities who may expect this of them moreso than of us.[788] In addition, compromise may not always be necessary, where participants agree on project details from the outset or discover win-win solutions through collaboration. We can also strategically choose projects where such consensus or problem solving seem likely, as discussed below.

Relatedly, the risk of cooption may be too great for us on particular projects—for instance, where local actors are also involved in funding decisions that impact our organizations. Most of the time, however, cooption concerns actually weigh in favor of our involvement. At least where local officials otherwise choose to partner with past panderers, participation by *any* genuinely independent actor is likely to reduce capture. In addition, typical attorney attributes may make us capture resistant. Our adversarial zeal can be paradoxically positive here, as we are trained to doggedly pursue our side's objectives. Likewise, lawyers are versed in "policing . . . procedural regularity, so as to reduce opportunities for . . . capture."[789] Aid attorneys may also be particularly cooption proof. Many of us chose this often emotionally draining, financially unrewarding, and professionally underrespected work because of a strong commitment to our ideals.[790] As discussed, direct service work also keeps us personally connected and dedicated to our client communities. Accordingly, by only engaging in collaborations on the side, our independence should be refreshed by regular showers of direct client interaction, washing away cooptive buildup. For the same reason, we have less to lose than regular policy players if we need to stop playing nice: sure, doing so may get us 86'd and precluded from future collaboration; but if so, so be it, we can simply return to our usual, important aid work.

Similarly, our involvement should only lessen collaboration's negative potential to maintain or worsen preexisting power imbalances. As one scholar notes, "[p]olitical and economic power and technical ability are the currencies of pluralism."[791] While our pockets may not be particularly deep, aid attorneys at least bring some social capital, technical skills, and practical resources to the table. Our surrogate spending on behalf of client communities should therefore shift power in their favor, even if but slightly.[792] As discussed in detail below, we could also strategically use our connections to involve more powerful insti-

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[788] *See* Ashar, *supra* note 184, at 1922 (noting that lawyers can thereby "help movement organizations maintain distance from governmental and private entities, which in turn might help organizations remain oppositional and retain movement vitality").

[789] Karkkainen, *supra* note 235, at 573.

[790] *Cf.* Lobel, *supra* note 15, at 468 ("The ability to engage in governance depends on the ability to hold ideas about what is right and what is wrong.").

[791] Foster, *supra* note 26, at 470.

[792] *See id.* at 487 ("Collaborative processes depend upon some degree of social capital among their potential participants, particularly at the local level.").

tutional allies or a coalition of actors on our side, to further increase community capital and shift the balance of power. Through such like-minded partnerships, we should be able to help one another resist harmful compromise and cooption as well. Equally important, however, not all collaboration-induced changes necessarily merit these negative labels. Rather, where we make concessions or shift positions because we have been genuinely convinced by other perspectives, this is arguably the positive and natural result of meaningful democratic engagement with groups representing diverse and sometimes divergent interests. This stands in sharp contrast to *harmful* compromise or cooption, induced by factors external to the issue at hand—such as the financial, professional, and personal pressures discussed.

Finally, while we must recognize the special risk and seek to avoid instances where collaboration would provide false legitimacy to actions that preserve or exacerbate existing inequities, this problem is not entirely unique to my proposal. As discussed, critics also accuse traditional aid, CED, and other strategies of failing to remedy and legitimizing an unjust status quo. Indeed, whatever legal, political, or economic strategy we employ, there is an intuitive argument that acting within the system—where those in power always have the upper hand—cannot significantly change it. This arguably holds true even for law and organizing and other extralegal strategies. As one author explains, rhetoric to the contrary relies on a false dichotomy between legal systems and a "non-regulated sphere of alternative social activism" that does not truly exist: "Just as advocates of a laissez-faire market are incorrect in imagining a purely private space free of regulation," there is no independent land for activism not "formed and sustained by law."[793] Thus, because we are always subject to inequitable legal, political, and economic forces, it is simply "the act of *engagement*, not *law*, that holds the risks of cooptation and the politics of compromise," and extralegal strategies are no more likely to improve "existing social arrangements."[794] Perhaps then, the only viable option for immediate change—as we have recently been reminded by Egypt and Libya—is to *not* engage, and instead pick up revolutionary arms and "illegally[ ] disrupt."[795] Otherwise, we may have to be content with the hope of bringing about change little by little, whatever strategy we employ.

c. *One of Many Legitimate Options Worthy of Our Consideration*

In a strategy vacuum then, collaborations should often be a feasible and effective approach for aid attorneys. However, as discussed, scholars equally

[793] Lobel, *supra* note 56, at 978, 981.

[794] *Id.* at 977, 985 ("[S]trategies embraced by new public interest lawyers have not been shown to produce effective change in communities, and certainly there has been no assurance that [they] fare comparatively better than legal reform.").

[795] Lobel, *supra* note 15, at 460 n.546 (noting the argument that "the power of underprivileged groups lies precisely in their power to (illegally) disrupt").

assert the importance of traditional legal aid and various other legal models. The tempting final question therefore remains: what is the best overall model, most deserving of our time? For a number of reasons, I do not believe there is a clear answer or that one is likely to present itself anytime soon. First, the question is difficult because, as we have seen, the criticisms of one strategy, upon more careful consideration, often apply equally to others. For instance, as we just discussed, no legal strategy seems likely to bring about immediate structural change. Nor is the risk of client disempowerment limited to traditional legal aid, since no model of lawyering can neutralize our professional privilege or the resulting power dynamics.[796] Whatever strategy we employ, we might inadvertently squeeze our clients into that mold—using our professional status or technical sophistication to "subtly impose [our] own ideas and . . . agendas."[797]

Complicating matters further, the goal of client empowerment is extremely complicated, and clients' immediate wishes are only one component to consider. Take a typical eviction scenario: where the low income tenant family lives in substandard housing conditions, but fell behind on rent for economic reasons. Traditional aid may be most immediately empowering, as the clients desperately want someone to handle the legal work. But as the case continues, the strategy could cut either way: lawyer-dominated litigation might disempower clients who want to participate in the solution, but empower those who do not have the time to do so because of work or other obligations.[798] Looking even further out, a successful legal defense empowers the clients to keep their housing and move on with their lives, but fails to empower them to better prevent or remedy any future, finance-related evictions. Helping the family to organize, on the other hand, may ignore their initial wishes, require more of their time, and be less likely to prevent the immediate eviction; but it would also involve them in the solution and perhaps better prepare them to address future evictions. Of course, the particular empowerment mix is debatable and case specific. My point is simply that any strategy recipe involves a sticky empowerment morass, difficult to peel apart and qualitatively compare.

Likewise, it may be empirically impracticable to compare the relative impact of strategy choices even on a quantifiable factor, such as the need for immediate legal assistance. Traditional aid, for instance, would consistently meet

[796] *See* Harris, *supra* note 314, at 2115 ("Lawyering relationships—like all relationships—cannot be purged of power or the possibility of coercion . . . ."); Lobel, *supra* note 56, at 977 ("It is not the particularities of lawyers as a professional group that create dependency. Rather, it is the dynamics between skilled, networked, and resourced components and those who need them that may submerge goals and create reliance.").

[797] Cummings & Eagly, *supra* note 54, at 497; *see also id.* at 496-97 ("[L]aw and organizing advocates may also engage in strategies that involve professional overreaching and impinge upon client autonomy. . . . It is therefore important that organizing is not portrayed as an intrinsically client-empowering form of practice.").

[798] *See supra* note 676 and accompanying text.

some, likely calculable, portion of this need. Strategies such as collaboration, organizing, or impact litigation, however, are far less predictable: when successful, these strategies may alleviate much more need per time-invested than traditional aid, but the exact impact would vary greatly; and when they fail, substantial time investments may not help a single person. Making the analysis even more difficult, most of us would reasonably want to add future-prevention apples to the immediate-need oranges equation. As one scholar explains:

> Every hour spent on [preventive legal care] is an hour not spent on one of the clients in the waiting room, with the emergency case that needs lawyering help today. . . . One could describe [the] choice in such a way to imply that the crises ought to trump the non-emergency needs . . . . That rhetorical move, however, would be intellectually dishonest. . . . At the same time, . . . the long term needs of prevention care do not operate as a trump on the pleas of today's disaffected and suffering.[799]

Moreover, to truly compare impact, imagine adding community education or systemic change to the mix—for a full fruit salad of complex, hard to quantify and compare factors. Is it any surprise then that "there are widely divergent views about how best to achieve meaningful impact on the lives of the poor"?[800] Perhaps the final nail in the comparison coffin, there can also be substantial overlap between strategies that seem distinct. The end goal of local government collaboration can be an affirmative lawsuit or CED project. Or, in reverse, traditional litigation can result in court-facilitated processes similar to collaboration.[801] And as mentioned, where we help clients get directly involved in collaborations, the differences between my proposal and law and organizing begin to evaporate.

2. Conclusion

In sum, I hope the reader is now convinced that legal aid attorneys should seriously consider collaborating with local governments. As we first discussed, local government is at least a reasonable, if not the preferable, level of government at which to now work for progressive action. Further, our participation in local collaborations is important regardless, because they: (1) are happening with or without us; (2) may be necessary to solve certain issues; (3) will particularly benefit from our involvement; and (4) will in turn benefit us, our clients, and local governments. Finally, like its strategy peers, local government collaboration has significant pros and cons; and, with no clear strategy winner, is an equally reasonable use of our time.

The astute reader may still ask, however, what then was gained by extensively discussing, comparing, and ultimately adding another "equally reasonable"

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[799] Schulman et al., *supra* note 634, at 777 (discussing HIV-related preventive legal care).

[800] Houseman, *supra* note 702, at 1689.

[801] *See* Sabel & Simon, *supra* note 233, at 1055 (discussing such processes).

strategy to our already complicated "tactical toolkit."[802] Fortunately for this Article, there are a number of compelling answers. Most obvious, although there is no strategy winner in the abstract, certain strategies will be better than others in specific circumstances—considering the particular issue and actors at hand. We therefore logically would want the broadest "range of options to assess and deploy," as "each context warrants."[803] Hammering the toolkit analogy home, hammers and screwdrivers may be equally useful, but the carpenter needs both to properly handle nails and screws. In addition, the usefulness of any strategy will depend on the skills of the individual attorney involved.[804] For example, a fiery speaker may be successful in litigation and organizing, but compromise collaboration. As practitioners have found, using multiple strategies simultaneously may also be the most effective approach to some problems.[805] Similarly, attorneys may need to first use one strategy, to get to another. For instance, offering direct legal services may be the best way to find clients willing to participate in collaborations or organizing.[806]

Having more strategy options to offer clients is also conducive to their immediate autonomy, as they can choose the one that is right for them. More options may be equally important to our own professional happiness, by "allow[ing] lawyers who want to be 'moral activists,' problem solvers, lawyers for the situation or the community, discretionary lawyers, civic republicans, or statesmen [or women] . . . to have greater flexibility in the models they choose."[807] Switching strategies may also help us to avoid burnout and stay excited about the practice of law. I personally found that mixing collaborations and community education with my usual direct service work kept me from feeling as depressed by the unmet need left by legal aid, very gradual nature of education, and frustrating politics of collaboration. Changing approaches may also beneficially draw us "outside [our] comfort zones"[808] and encourage us to "think outside the box."[809]

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[802] *See* Bezdek, *supra* note 399, at 750 ("The tactical toolkit encompasses litigation, legislative change, lobbying, community and popular education, media campaigns, political mobilization, and organizing . . . .").

[803] *Id.*

[804] *See* Diamond, *supra* note 596, at 101 (noting that a "lawyer may simply be incapable of adopting" an approach that exceeds his or her "own expectations or abilities").

[805] *See* Cummings & Eagly, *supra* note 54, at 512-13 ("[T]he combination of organizing techniques with more traditional forms of legal advocacy has . . . effectively redressed problems faced by low-income constituencies."); Gordon, *supra* note 201, at 428-37 (discussing a model involving organizing, education, and legal services); Narro, *supra* note 86, at 471-512 (discussing worker centers' effective use of numerous combined strategies).

[806] *See* Gordon, *supra* note 201, at 442 ("The [legal] clinic is also an effective means for bringing workers into the organization.").

[807] Menkel-Meadow, *supra* note 638, at 43-44 (footnotes omitted).

[808] Tokarz et al., *supra* note 602, at 380 (discussing interdisciplinary work).

[809] Cummings & Eagly, *supra* note 54, at 467 (internal quotation marks omitted).

Yet even on this final issue, there are drawbacks. Critically, our client communities would suffer if we were all strategy generalists, since more tools also means less expertise with any one—*i.e.* jack of all trades, master of none. This is why boxing champion Andre Ward does not divide his time evenly between the sweet science and basketball; one may complement the other to some extent, but you do not win the Olympic gold by spreading yourself too thin. Likewise, the best immigration or housing litigators are usually those that focus on that one thing, and our clients need these experts for difficult cases. More subtle, overly promoting new strategies and expanded roles can lead to unrealistic and overwhelming aid attorney expectations. It is arguably hard enough to be a competent lawyer providing just traditional legal services, now so technically complex that the general practitioner is going the way of the buffalo. Yet aid attorneys are also asked to corral a strategy stampede: to be "litigator and litigation analyst, transactional lawyer, political strategist, negotiator, community educator, broker, writer, lobbyist, and staff member"; and to "move fluidly from one role to another" and "combine roles."[810] It is enough to make one's head spin, or worse, "produce a sense of role confusion that is demoralizing and causes [us] to doubt [our] own efficacy."[811] I therefore often find articles like mine more discouraging than inspiring—feeling as if I must follow a particular model to truly help my client communities, but doubting I have the skills required to do so. Indeed, many of us went to law school precisely because we wanted to work for social justice but organizing, teaching, or politics were not our strengths.

Fortunately, I believe that we can avoid these negative stingers while enjoying the positive honey of multiple strategies. First, we simply need to present and receive strategy suggestions in ways that are not disheartening or disabling. As we have just done, this means reminding ourselves that there is no clearly superior strategy (unless and until there is adequate evidence to the contrary). Likewise, we must recognize the need for both the strategy specialist and well-rounded jack, and that having both types of attorneys can provide a beneficial synergy. For example, I simultaneously tried my hand at multiple strategies and areas of law. Importantly, as I was alone offering site-based services at a junior high school, this enabled me to provide widespread *initial* assistance in the field. But with my—what we will generously call—expertise divided, I needed and received constant assistance from direct service specialists for everything beyond the intake stage. Also, with ample room for all, we need to give ourselves and each other sufficient space to consider not only which strategy or strategy package is best for our particular client communities, but how well it fits with our individual abilities and personal wellbeing. In fact,

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[810] Foster & Glick, *supra* note 283, at 2057-58 (footnotes omitted); *see also* Trubek, *supra* note 571, at 467-68 (listing what seems an impossible number of things for law students to learn).

[811] Cummings & Eagly, *supra* note 54, at 495.

I suggest the latter as much for our clients as for ourselves. In my experience, attorney passion, commitment, and consideration are the most important factors to successful assistance; and I imagine that empirical studies, if possible, would confirm as much. Therefore, ensuring that we maintain these psychological strengths may be more essential to progressive social change than any depersonalized strategy positives and negatives.

Turning to the last section of this Article, there is one more reason that it was important to extensively discuss and debate the merits of my proposal, even though there is no ultimate strategy winner. As we have seen, there is otherwise a natural but harmful tendency to romanticize new models and demonize the old.[812] As a result, we risk "closing off [the] potential avenues for redress" that we have disproportionately discredited.[813] We also put off the real work of carefully critiquing the new strategy, considering how best to implement it, and evaluating actual attempts to do so.[814] Thus, like stonewashing a pair of new jeans, I have tried to instead immediately treat my proposal to as vigorous a critique as the older models; and I will now consider some specific strategies to best implement my strategy and real world examples of its practice.

III. Collaboration Strategies and Case Studies

Hopefully, the reader is now convinced of both the worthiness of adding legal aid-local government collaborations to our potential strategy repertoire, as well as the importance of immediately critiquing this and any other new legal model. But convinced or not, I think we can all agree that before employing any legal approach, we should consider how best to do so: exploring strategies to take advantage of its strengths and minimize its weaknesses; and considering case studies of its actual implementation. Accordingly, starting with the former, although I have already briefly mentioned a number of specific strategies for my proposal, I will now discuss them and others in more detail.

A. *Collaboration Strategies*

1. Choice of Local Government and Project

While some aid attorneys may be limited to a single municipality in their immediate area, most of us are near to and, counting counties, within multiple local jurisdictions. An Oakland attorney, for instance, also borders Berkeley

[812] *See* Lobel, *supra* note 56, at 974.

[813] Cummings & Eagly, *supra* note 54, at 491; *see also id.* at 479 ("[S]cholars have omitted the type of critical analysis of organizing practice that they have so deftly leveled against litigation-based approaches."); Lobel, *supra* note 56, at 979 ("[S]ocial reformers overestimate the possibilities of one channel for reform while crowding out other paths and more complex alternatives.").

[814] *See* Cummings & Eagly, *supra* note 54, at 480 ("[I]t is important to generate a balanced view of [a strategy's] strengths and weaknesses so that advocates can more thoughtfully engage [therein].").

and San Leandro, among other cities, and is subsumed by Alameda County. Fortunately, as discussed, diverse municipalities—big and small, poor and affluent, urban and rural, and from coast to coast—have at times been willing to take significant progressive action. There may, however, be empirically valid municipal stereotypes (albeit which, like any such heuristic, we should only cautiously consider). Cities struggling with serious poverty, for instance, may be more receptive to creative "new initiatives and endeavors," given their urgent need for solutions.[815] Large cities and college towns—with active advocacy groups and student organizations, respectively—may also be particularly open to progressive action.[816]

Likewise, while we should not categorically rule out any ideas, certain kinds of projects are probably more amenable, on average, to successful local government collaboration. Most obvious, cities may expressly reach out to us for assistance. When they do so, it is likely to be a cooperative, non-adversarial endeavor, since they chose the project and want our help. By investing even a little time in these requests, we can garner appreciation and trust that pay future dividends. Thus, if the proposed action is at all positive for our client communities, we should seriously consider doing our best to respond. Of course, we cannot count on local government to be first to reach across the aisle, especially where we have had past adversarial relations. We may therefore need to affirmatively involve ourselves. If so, it might be best to start small—for example, by going to existing coalition meetings or speaking at public hearings. This may help attorneys who "feel daunted or depressed by the prospect" of collaborations to comfortably wet their feet.[817] For those of us ready to jump in, starting small should also prevent our mistakenly committing to more work than we bargained for, and provide important initial experience we may need to later succeed in a larger role. By traditional aid analogy, we first learn litigation at administrative hearings, with simple cases, or as second chairs, not as lead attorneys in complex litigation.

To further increase our chances of initial success, it may be best to start with a project local government is likely to support,[818] considering a number of relevant factors. First, local officials should be more receptive to collaborative projects that would benefit their political allies or important constituents. For instance, cities with large, voting, immigrant populations or immigrant-dependent economies should be more open to progressive action on their behalf.[819] Similarly, politicians with union ties may support anti-big-box ordinances and

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[815] Golden & Fazili, *supra* note 79, at 78.

[816] *See* Readler, *supra* note 22, at 789 n.97 (noting that such cities are more likely to ban sexual-orientation discrimination).

[817] Daniel M. Kowalski, *Things to Do While Waiting for the Revolution*, 21 GEO. J. LEGAL ETHICS 37, 38 n.6 (2008) (discussing legislative reform).

[818] *Cf.* Tokarz et al., *supra* note 602, at 372 (noting that "borderland" interactions—where two cultures come into contact—"can be either constructive or destructive").

[819] *See* Rodríguez, *supra* note 22, at 609 n.180.

other workers' rights initiatives.[820] A "powerful common enemy" might also unite us and local government,[821] especially where the enemy is an outsider, so local officials do not face competing constituents. Non-resident corporations may therefore be a more politically palatable target than local business. Cities may also enjoy the extra media attention that comes with actions against nationally known corporations. Plus, such efforts can sometimes progressively redistribute from these corporations to less affluent cities and their residents, as discussed. Indeed, given the current economy and slashed city budgets, projects may need to be revenue generating or cost reducing—or at least revenue neutral and zero liability—to garner city support.[822] Accordingly, aid attorneys concerned with foreclosure-based blight might collaborate with cities to enforce state or local laws against the bank owners, as the fines collected from the banks can more than cover enforcement costs.[823] But we should think broadly and creatively here as well, since projects that initially seem costly, such as city ID cards, may not have to be.[824] To help reduce city costs, we might also consider projects where we can provide needed legal skills and expertise, connections to clients, or access to volunteers. For instance, we could help gather evidence from the community or draft legislation.[825] As mentioned, we are more likely to ameliorate power imbalances when we add such value to collaborations, since the local government may come to rely on our assistance.[826] But where we still lack sufficient capital on our own to mitigate city costs or power imbalances, we should consider projects that would interest additional, perhaps more useful or powerful, allies.

In addition, where some local opposition is unavoidable, we might have increased success with a "divide and conquer" project. Like some existing local eviction, rent control, and living wage ordinances, we could exempt smaller property or business owners from proposed regulations and thereby "reduce the numbers[ ] and political influence" of the opposition.[827] Targeting larger businesses may be preferable regardless, because it promotes positive economic

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[820] *See* Lefcoe, *supra* note 123, at 841.

[821] Foster, *supra* note 26, at 497-98 (noting that collaborative success is more likely where such an enemy "unites factions of unequal influence and power").

[822] *See* Bettinger-López, *supra* note 106, at 71 n.244 ("[I]t is unlikely that local . . . governments would be willing to accept enhanced liability . . . .").

[823] *See supra* note 145 and accompanying text.

[824] *See infra* notes 954-955 and accompanying text.

[825] *See* Ashar, *supra* note 184, at 1891 (discussing how a worker center issued an industry analysis providing the basis for proposed legislation); Cummings, *supra* note 42, at 1972 (noting a labor attorney's involvement in drafting an anti-big-box ordinance).

[826] *See* Lobel, *supra* note 15, at 463-64 (discussing the claim that "even in situations of extreme differences in power . . . mutually beneficial exchanges can occur," when more-powerful parties "come to rely on the weaker party's knowledge and cooperation").

[827] Gillette, *supra* note 41, at 1108. Chicago's city council, for instance, passed a living wage ordinance applying "only to retailers that occupy more than 90,000 square feet and

decentralization, as previously discussed.[828] Projects that add or enforce remedies, as opposed to creating new rights, may also limit opposition and be more politically feasible. It should be harder for opponents to argue openly and convincingly against actions that would simply promote compliance with existing law. Further, because rights are arguably only as good as their remedies, improving remedies can be equally important.

In designing projects, we should also consider the significant limits on local governments discussed above.[829] For example, given significant interlocal competition for jobs and development, some cities may be reluctant to impose regulations that they believe could jeopardize either. To address this concern, projects that would redistribute from existing business or property owners may need to reduce opportunities for escape. Thus, a living wage ordinance might start with non-exportable service sector employees, such as hotel, restaurant, and janitorial workers.[830] Where necessary, we might similarly compromise on landlord laws by exempting new development. We should also choose projects to take advantage of local collaboration strengths. For example, because collaborations may be necessary to address complex problems involving powerful opponents, it might be best to focus our collaborative energy on these issues—such as the foreclosure crisis, according to one clinical professor.[831] Since collaborative relationships should improve with time, we might also choose issues where we can imagine multiple projects with the same parties.[832] Finally, to take advantage of our client connections and avoid top-down lawyering, we might develop projects based on direct client suggestions, as discussed more below.

2. Pre-Collaboration Coalitions and Preparation

Instead of diving right into local government collaboration after choosing a project, it will often be better to first establish a coalition of likely allies and complete some preparatory work. There are a number of potential benefits from such pre-collaboration coalitions, many of which respond to the collabo-

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make more than $1 billion in annual gross revenue," although Mayor Richard M. Daley later vetoed it. *Id.* at 1057-58 & n.2, 1109 & n.185.

[828] *See supra* Part I.C.2.c.

[829] *See supra* Part I.B.2.c.

[830] *Cf.* Gillette, *supra* note 41 at 1108 (noting a recent living wage law covering only certain food service, janitorial, and security workers); Cummings, *supra* note 42, at 1950 (same, as to certain hotel workers).

[831] *See* Golden & Fazili, *supra* note 79, at 37 ("Not only are the causes of the crisis complex, but . . . the solutions to it require new and innovative pairings of social groups . . . .").

[832] *Cf.* Bezdek, *supra* note 399, at 746 ("Community lawyering may also serve better than lawyer-led strategies in situations where a well-defined community can achieve a 'repeat player' position and interact frequently with a particular agency or entity . . . .").

ration concerns discussed above.[833] First, by carefully planning projects and ironing out any disagreements beforehand, we can ensure "a united front at the bargaining table."[834] This is important to maintaining project control and alleviating power imbalances. Simply showing up in greater numbers can also increase our leverage and legitimacy with local government and other more moderate parties, so they "take[our] positions much more seriously."[835] As one article notes: "Enterprising politicians are quick to put themselves ahead of a movement that might otherwise turn against them."[836] For both of these reasons, coalitions may be particularly important where we are unlikely to start on the same project page as local government. But regardless, coalitions can help ensure that we consider diverse views and more democratically design a better project before we get the collaboration ball rolling. By spreading the initial workload, coalitions can also "maximize financial and staff resources" and compensate for our time constraints.[837] Finally, with a coalition or on our own, completing some project work pre-collaboration can: (1) lead local officials to take the project and us more seriously; (2) make the project seem less overwhelming to them; and (3) improve the chances that they will defer to our preferred project details, since it is easier to simply accept and harder to change completed work. This pre-collaboration work could include, for instance, organizing clients and evidence, media outreach, or relevant legal research and writing.[838]

Coalitions, however, have drawbacks as well. Efforts to convince and coordinate potential participants can be time intensive and ultimately unsuccessful. Coalitions also cut both ways on project compromise and cooption: while together we are less likely to be coopted by more divergent interests, even our allies' diverse views may force us to compromise on our ideal project plans. Indeed, the greater the coalition diversity, the more likely we will have divergent priorities and goals. Thus, it may sometimes be best to start with an even smaller pre-coalition coalition: an inner core of partners who we most trust to share our ideals and help solidify a non-compromise project position. We could then gradually add other likely but less certain allies, thereby surrounding the inner core with democratic legitimacy, increased capital, and broader capacities. We might also strategically request more limited involvement from the

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[833] *See supra* Part II.B.

[834] Paretchan, *supra* note 590, at 43.

[835] Trubek, *supra* note 35, at 591; *see also* Foster & Glick, *supra* note 283, at 2017, 2023-24 ("[A] community can reap substantial gains only if it forms a broad-based negotiating coalition that has sufficient political clout . . . .").

[836] Liebman & Sabel, *supra* note 181, at 267.

[837] Paretchan, *supra* note 590, at 43.

[838] *See* Cummings, *supra* note 36, at 470 (discussing a living wage campaign where legal service lawyers first worked to "develop a draft living wage proposal," then involved local government only after the proposal was finalized); Lynch, *supra* note 11, at 577 (discussing living wage coalitions that "organize endorsements" and "draft ordinance language").

less certain allies—asking only for endorsements or that they attend some but not all meetings, for instance. Similarly, for some projects, it may actually be better to involve local government early on. When a city shares our project preferences, it can be a strong positive force against conflicting interests. We may also need government participation to convince other important parties to come on board, since it can confirm the legitimate potential of a project and garner media attention. These may be prerequisites for parties understandably hesitant to devote time to a project unlikely to succeed, or less admirably, for parties most persuaded by publicity opportunities.

3. Particular Partners: Universities, Unions, and More

For many of the same reasons, involving potential allies is equally important after any initial coalition, for the collaboration itself. Again, the more and more-diverse allies we include, the more social capital, practical resources, credibility, and democratic legitimacy to potentially support our project goals. But we also need to weigh these benefits against the aforementioned drawbacks: potential project compromise and the risk of spending significant time seeking out partners only to be turned down. In any event, we should think broadly and creatively about parties who might share our interests and benefit the project. Indeed, surprising partner possibilities arise when we think outside the box. For instance, as one anti-big-box advocate explains: "Depending on the community, Wal-Mart superstore opponents could include environmental advocates, local merchants fearful of competition, residents wary of traffic, historic preservation enthusiasts trying to save traditional downtowns from devastating suburban competition, self-described 'sprawl busters,' unhappy Wal-Mart employees past and present, and academic critics of Wal-Mart."[839] Scholars and practitioners have noted equally broad partner possibilities in other areas.[840] We should still exercise caution, however, especially where shared interests stem from distinct motives and are therefore more likely to later conflict. As mentioned, there are various strategies we can use to circumscribe the participation of these more questionable parties.

As to specific kinds of partners, we should of course consider other nonprofit organizations. For all of the reasons discussed, we can be more effective working together, and have in fact had substantial success doing so. For instance, the San Francisco CEDAW "ordinance was brought about through the efforts" of three nonprofit partners.[841] In selecting other nonprofits, those serving simi-

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[839] Lefcoe, *supra* note 123, at 836-37 (footnotes omitted).

[840] *See* Harris, *supra* note 314, at 2101 ("Advocates from various sectors, including labor, faith leaders, environmentalists, housing activists, and policymakers, have collaborated to advance a progressive economic justice agenda."); Foster & Glick, *supra* note 283, at 2049 (discussing a similarly diverse community development coalition).

[841] Lozner, *supra* note 422, at 778. A local government agency was the fourth partner. *See id.*

lar communities may be most likely to share our ideals and goals, limiting the need to compromise. But here too we should think broadly, since even nonprofits regularly at odds can share interests on particular projects. For instance, labor and environmental groups have come together to support anti-big-box action.[842] Also, to balance out our role as aid attorneys, we might particularly seek out community-based nonprofits, such as "churches, community development organizations, and tenant associations."[843] These groups are the most community connected and can "counteract[ ] the tendency toward lawyer domination."[844] Further, while some of us have long worked with churches—from the sanctuary movement to living wage initiatives[845]—they can be allies even in unexpected areas. For instance, a local sexual-orientation anti-discrimination ordinance recently "brought together radical [gay rights] groups . . . with religious organizations seeking to show an alternative Christian approach of inclusion."[846] On the other end of the nonprofit spectrum, we might also involve policy advocacy groups for their unique positives: greater expertise in certain areas of law and working with government; and capacity to commit more consistent time and resources to policy projects, since they have no urgent direct service obligations pulling them away.

Broadening our partner horizons, universities can play important roles in local government collaborations as well. To begin with, they often already have significant city connections: "Indeed, in some places and some periods, philosophers have thought of universities and cities as indissolubly connected."[847] And universities have recently worked with cities on issues important to our communities,[848] as discussed more below.[849] Legal aid attorneys often have positive existing connections with universities as well, through law school clinics and student volunteers.[850] Increasing the odds of university interest, some academic funding is geared expressly towards such collaborations.[851]

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[842] *See* Cummings, *supra* note 42, at 1931.

[843] Golden, *supra* note 599, at 555; *see also* Brescia et al., *supra* note 598, at 859 ("Legal services offices and community institutions can collaborate in carrying out their collective missions.").

[844] Gordon, *supra* note 163, at 2144.

[845] *See* Lynch, *supra* note 11, at 576 (noting church involvement in living wage campaigns); Cummings, *supra* note 42, at 1958 (same, as to the anti-big-box movement); Volz et al., *supra* note 608, at 535 (same, as to a workforce development project).

[846] Shaw, *supra* note 23.

[847] Goldsmith, *supra* note 271, at 1218.

[848] *See id.* at 1229-33 (discussing such partnerships in public education, transportation, and other important policy areas); Deakin, *supra* note 689, at 1303-04 ("[U]niversities have worked with local governments to address issues of joint concern . . . .").

[849] *See infra* Part III.B.1.

[850] *See* Ashar, *supra* note 184, at 1893 ("Law school clinics were among the first legal organizations to collaborate with worker centers.").

[851] Volz et al., *supra* note 608, at 541 (discussing certain federal funding).

Universities can also be powerful and well-funded allies, significantly compensating for any collaboration power imbalances and inspiring other parties to participate.[852] For instance, with "about 10,000 jobs and 32,000 students, UC Berkeley is the largest employer . . . in the East Bay" and a "major property owner in three cities."[853] Universities are often big spenders too: they "have huge construction budgets" and "are large purchasers of food, linen, furniture, office supplies, transportation equipment, landscaping, and janitorial services."[854] Some universities thereby "serve[ ], in effect, as . . . private municipal government[s]" in their own right.[855] Academic institutions also bring significant prestige and credibility,[856] including a degree of independent neutrality—since, unlike us, they do not formally represent specific communities.[857] Looking a bit further ahead, nurturing university connections may provide our organizations with future benefits as well, given the substantial resources they might share.[858]

With their academic assets, universities can also provide relevant technical support, training, and research for collaborations[859]—from initial analyses of project costs to subsequent studies on real world impact, facilitating the experimentation benefits of local action.[860] Further, while we sometimes have our own volunteers, universities can offer enticing academic credit to entire student bodies. Thus, most law schools have legal clinics, which could provide free,

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[852] *See id.* at 545, 549 (noting that academic institutions "can help create broad local partnerships" and have "a highly successful fund-raising capacity").

[853] Deakin, *supra* note 689, at 1306; *see also* Andrew J. Gold, *The Trinity Initiative in Economic Perspective: Place or People Prosperity?*, 30 CONN. L. REV. 1317, 1321 (1998) ("Urban universities . . . are large institutions in terms of employment and spending . . . .").

[854] Volz et al., *supra* note 608, at 541.

[855] Goldsmith, *supra* note 271, at 1236 (quoting historian David Hammack).

[856] *See* Golden & Fazili, *supra* note 79, at 78 (noting the credibility of law school programs); Volz et al., *supra* note 608, at 551 ("The new role for higher education is to lend influence, resources, and moral leadership . . . .").

[857] *Cf.* Golden & Fazili, *supra* note 79, at 76, 79 (positing that law school clinics can provide "appropriate independence" and, at times, offer "cities less controversial alternatives for collaborative leadership" than "other interest groups and community leaders").

[858] *Cf.* Volz et al., *supra* note 608, at 544 (noting Swarthmore College's efforts "to develop new funding streams" and programs to "improve legal services"); John A. Powell & Marguerite L. Spencer, *Remaking the Urban University for the Urban Student: Talking about Race*, 30 CONN. L. REV. 1247, 1277 (1998) (discussing a university project that, among other things, provides research assistance to community organizations).

[859] *See* Deakin, *supra* note 689, at 1307 ("[F]aculty . . . are frequently asked to provide technical assistance to governments . . . ."); Volz et al., *supra* note 608, at 549 ("[T]hey can help convene forums, publish articles, and advocate for new legislation . . . .").

[860] *See* Volz et al., *supra* note 608, at 549 ("Partnerships between academic institutions and public interest law organizations will allow higher education entities to conduct research on successful . . . programs . . . .").

and some claim high quality, legal support to our collaborations.[861] Students from other programs could provide equally important assistance, such as economic analyses, health studies, or media outreach. Such interdisciplinary involvement would diversify our collaborations as well, enhancing opportunities for creative problem solving. In return, our projects may offer unique opportunities to students interested in innovative, collaborative, and relatively short-term government policy projects; as scholars note, such experience is particularly lacking in law schools.[862] Activist student organizations might also be useful allies, effectively organizing and attracting media attention.[863] Moving up the academic ladder, professors can provide the same kinds of assistance as student volunteers, but bring their greater expertise, prestige, and credibility.[864] They may also be inclined to do so, given interesting academic opportunities or personal political interests.[865]

Involving universities, however, may have its disadvantages too. First, universities have their own priorities and obligations—education, endowments, research, and the like—and therefore may not be as committed or accountable to underrepresented communities and their interests.[866] With their elite status and power, there is also the risk that universities could wrest project control from community representatives.[867] In fact, due to these priority and status disconnects, universities sometimes cause serious harm to lower income communities—for instance, by promoting student housing even where it "threaten[s] to trail gentrification and displacement in its wake."[868] University assistance may

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[861] *See* Wizner & Solomon, *supra* note 665, at 478 ("[M]any landlords, including wealthy corporations, would jump at the chance to have free representation of the quality that they observe our students providing to their adversaries."); Golden & Fazili, *supra* note 79, at 76, 79-80 (explaining how law school clinics can provide "high-level support" to "collaborative problem-solving efforts"); Ashar, *supra* note 184, at 1894 ("[S]tudents bring a high level of energy, focus, and progressive political commitments to the work.").

[862] *See* Tokarz et al., *supra* note 602, at 399-400; *cf.* Golden & Fazili, *supra* note 79, at 91 ("[C]ollaborative approaches help enrich a law school's pedagogical offerings . . . ."); Ashar, *supra* note 184, at 1894 (noting student benefits from worker center collaborations).

[863] *See* Lynch, *supra* note 11, at 576-77 (noting student group involvement in living wage campaigns).

[864] *See* Cummings, *supra* note 42, at 1989 (noting that Professors "[Sean] Hecht and Erwin Chemerinsky[ ] were enlisted both because of their relative expertise and because it was thought that they would lend academic legitimacy to the [big-box] site fight").

[865] *See id.* at 1990 (noting such incentives for one professor); Deakin, *supra* note 689, at 1304 (noting that faculty "increasingly view [community] projects" as "enhancing academic teaching and learning and providing important contributions to research").

[866] *Cf.* Volz et al., *supra* note 608, at 538-39 (discussing higher education's retreat from real world issues, dependence on government funding, and accumulation of "astronomical 6and embarrassing" endowments).

[867] *Cf.* Powell & Spencer, *supra* note 858, at 1279 (calling on universities to "avoid acting as the experts" in community partnerships).

[868] Gordon, *supra* note 163, at 2135 (discussing Columbia University's "proposed expan-

also be too academic and theoretical at times, and therefore "of little direct use in addressing practical . . . problems" on the ground.[869] Further, because of their size and structure, universities might suffer from the same bureaucratic inertia as government entities. Last, student volunteers are, of course, only students, and may understandably prioritize class work, stay only a short period of time, and therefore not always provide the best work or most dependable assistance.[870] Nonetheless, I suspect that the benefits of including universities and students will often outweigh any concerns. Plus, like local governments, universities are participating in collaborations regardless. Therefore, as aid attorneys, we might alleviate some of the concerns and create valuable synergies: melding our legal experience, direct client connections, and positive community reputations "with the influence, resources, and prestige of academic institutions," to "provide[ ] a powerful and dynamic model of community collaboration."[871]

Another potential ally that may have "sufficient political power to shape local decision making in the interests of low-income residents" is organized labor.[872] Like universities, unions have recently become more involved in collaborations with local government and nonprofits, as discussed in detail below.[873] Although unions understandably focus on workers' rights, we share similar redistributive goals and are natural allies in many areas.[874] Also, while we have had our past differences—due, in particular, to a "long history of racial discrimination" by organized labor[875]—unions have made positive changes. For instance, unions now often partner with undocumented immigrants on labor issues.[876] Unions can bring substantial resources to collaborations as well, including their own attorneys.[877]

On this note, public interest-minded private lawyers and firms can also be useful allies, with significant resources and expertise[878]—including substantive knowledge in legal areas, such as land use or corporate law, that we may be

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sion into West Harlem"); *see also* Goldsmith, *supra* note 271, at 1230 (noting university participation in controversial development).

[869] Deakin, *supra* note 689, at 1308.

[870] *See* Foster & Glick, *supra* note 283, at 2069-70 (discussing such significant limits).

[871] Volz et al., *supra* note 608, at 508, 537-38.

[872] Cummings, *supra* note 42, at 1949.

[873] *See id.* at 1942 (noting that labor is "turning away from the traditional paradigm of federally supervised union organizing and toward an alternative model emphasizing local coalition building and policy reform"); Gordon, *supra* note 163, at 2137 (noting "unions' new willingness to work with community organizations" on a wider variety of campaigns).

[874] *See* Cummings, *supra* note 42, at 1949.

[875] Foster & Glick, *supra* note 283, at 2052.

[876] *Cf.* Park, *supra* note 184, at 91 ("In recent years, organized labor has made efforts to be more inclusive by serving the needs of immigrants and communities of color . . . .").

[877] *See* Cummings, *supra* note 42, at 1952.

[878] *See* Rhode, *supra* note 597, at 1448.

unlikely to find elsewhere. Likewise, we may "want to invite other professionals," such as social service or health workers, where they have relevant expertise.[879] Local businesses, on the other hand, might bring practical knowledge and political leverage to city collaborations when they share our interests[880]—for example, in opposing competing national or multinational corporations. Yet even large corporations can occasionally be our allies—when it comes to immigration, for instance. They are then very powerful fellows that we cannot afford to exclude from our collaborative beds.[881] Also, corporate employees can sometimes be "relatively independent actors" and "contribute[a] . . . balanced voice."[882]

Finally, in addition to our primary local government partner, we should consider involving other public sector institutions and actors. Agencies from school districts to law enforcement can share our interests in a variety of areas—for instance, integrating immigrant communities to promote public education and safety. Local officials from other jurisdictions or former officials from the city at hand might also provide important insider expertise. State attorney generals, legislators, or congressional representatives might share similar know-how or their own political capital. Expanding even further afield, foreign dignitaries could bring influence and extra media attention to relevant projects in human rights or immigration. In sum, with all of these potentially important partners, broad and diverse collaborations will often be the best path forward.[883]

4. Client Communities and Opponents

In one sense, client communities are simply another potential collaboration partner. But as our collaborative raison d'être as well, their inclusion merits special consideration. Importantly, not only can involving clients empower them, as discussed, but "experience indicates that projects and programs are more effective when beneficiaries participate in the design and implementation."[884] Client communities, in particular, can bring direct information and insights as to problems that they face and their causes. As one scholar ex-

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[879] Golden, *supra* note 599, at 559.

[880] *See* Shaw, *supra* note 23, at 389 ("The [anti-discrimination] amendment's supporters attributed their success . . . to the support of small businesses . . . who said they had no objections to hiring gay or lesbian employees."); Trubek, *supra* note 35, at 592 (discussing the participation of a "progressive insurer" in a public health collaboration).

[881] *See* Rodríguez, *supra* note 22, at 597-98 (noting Home Depot's interest and involvement in day laborer issues).

[882] Lobel, *supra* note 15, at 463 (discussing the involvement of professional safety engineers for construction companies in collaborations to address health and safety issues).

[883] *See* Volz et al., *supra* note 608, at 535 ("If [the legal assistance organization] succeeds, it will be because it formed . . . alliances with traditional 'friends' of the poor, . . . but also dared to nurture and develop support from new and nontraditional allies . . . .").

[884] Foster-Bey, *supra* note 275, at 40.

plains: "Disadvantaged populations have a uniquely powerful understanding of the ways in which systems and institutions help or hinder their progress," which "may understandably be different from that of well-meaning, affluent reformers."[885] Thus, clients might suggest project improvements or entirely distinct, more effective approaches to the issue at hand. Clients can also provide projects with needed factual support, such as their own testimony or physical evidence. On the other hand, directly involving clients can be time consuming—and perhaps unnecessarily so at times, where we have learned enough through our usual client interactions. Also, clients may not always best know the causes of or solutions to their problems. For instance, we will often be in a better position to determine the political feasibility of potential solutions. Nor should clients' goals automatically trump our own when they conflict. Rather, "the lawyer, as an autonomous agent, also has views and principles that deserve recognition and expression."[886] Indeed, because a single client community is made up of many individuals with often complex internal dynamics, it "may speak with several voices and give rise to apparently competing goals" that someone will need to evaluate and reconcile.[887]

These concerns notwithstanding, affirmatively involving clients, at least to some extent, will generally be worthwhile. Specifically, we might involve clients from the outset by considering their own project ideas. Especially at legal aid organizations immersed in their communities, such client suggestions may informally filter in.[888] But we can also actively solicit ideas, with pre-collaboration surveys or discussion groups.[889] Client project suggestions not only have the advantage of the clients' direct experience, but may be more diverse and innovative than our ideas, since they are unfiltered by legal frameworks. Taking community members' suggestions seriously may also be necessary if we expect them "truly to 'buy in' to the entire process."[890] To maximize these benefits, we should therefore avoid inadvertently limiting creative ideas, per-

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[885] *Id.*; *see also* Eagly, *supra* note 605, at 455 (discussing the need "to speak directly with community members" to understand the problems they identify as important); Golden, *supra* note 599, at 540 (explaining that aid lawyers must learn from their client communities to determine the strategies necessary to meet their needs).

[886] Diamond, *supra* note 596, at 114

[887] *Id.* at 114, 117.

[888] *Compare id.* at 115-16 (explaining that such immersion is necessary to understand the issues and aspirations of community residents), *with* Brescia et al., *supra* note 598, at 845 (noting that legal services programs' physical withdrawal from low-income communities results in a "breakdown of lines of communication" between them).

[889] *See* Klawiter, *supra* note 610, at 1686-87 (suggesting that lawyers, early on and without exercising too much control, help facilitate strategic planning); Park, *supra* note 184, at 98 (discussing use of a survey to identify "the most important issue to workers"); Foster & Glick, *supra* note 283, at 2071 (discussing use of workshops to elicit a "rich array" of suggestions); Eagly, *supra* note 605, at 455 (noting use of "a series of 'discussion groups'").

[890] Volz et al., *supra* note 608, at 532.

haps by asking for clients to share before we suggest any of our own solutions. With a project in place, we can then continue to "conduct[ ] workshops and presentations to educate [client communities] about the campaign," and "solicit[their] input . . . as to what they would like [it] to achieve."[891] To reach more people and save time, we might also use technology such as video presentations.[892] Finally, we can ask clients to directly participate in projects as they progress, and provide the clients with any training they may need to do so. Among other things, clients could participate in strategy sessions, collect and present relevant evidence, meet with elected officials, talk to the press, or testify at public hearings.[893]

On the opposite end, we may face the more difficult choice of whether to involve a project's potential opponents in the collaboration. As discussed, doing so might lead to win-win solutions, better than the results of confrontation after the fact. As one scholar notes, opponents "forced to defend their positions face-to-face[may] resist[ ] being extreme or unrealistic."[894] But powerful adverse interests might also coopt our collaborations and use them to legitimize existing inequities. Accordingly, my inclination would generally be not to risk the latter, except where we are exceptionally confident we can avoid project cooption—for instance, because we have particularly powerful allies firmly on our side.

5. Initial Local Government Contacts

As important as choosing partners for a particular project may be identifying the best offices or individuals within local government to initially work with. Similar to deciding the right level of government in the first place, we then need to strategically determine who is most willing and able to help the project succeed.[895] To some extent, certain institutional trends can assist in this analysis. City attorneys, for example, may tend to be more wary of progressive projects than are other local officials, both because lawyers in general are risk averse and because the attorney's office will be stuck with any time-consuming legal research or defense. As one advocate found, working on an ordinance to regulate big-box stores: "Repeated revisions . . . washed away any reference to

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[891] Lozner, *supra* note 422, at 791 (internal quotation marks omitted); *see also* Narro, *supra* note 86, at 507 (noting that a coalition "conducted legislative workshops for their immigrant worker-leaders"); Foster & Glick, *supra* note 283, at 2042 (noting use of workshops and presentations to encourage community suggestions and involvement).

[892] *Cf.* Eagly, *supra* note 605, at 447, 461-62 (discussing use of educational videos).

[893] *See* Cummings & Eagly, *supra* note 54, at 472-73 (discussing how a legal organization helped clients to participate in these ways); Gordon, *supra* note 163, at 2140 (same); Narro, *supra* note 86, at 507 (same, as to a coalition); Foster & Glick, *supra* note 283, at 2041-42 (same); Cummings, *supra* note 42, at 1973 (same, as to a labor lawyer).

[894] Freeman, *supra* note 576, at 54 (discussing an instance of regulatory negotiation).

[895] *See* Foster & Glick, *supra* note 283, at 2027-35 (discussing in detail a coalition's assessment of the various local government players potentially important to its campaign).

prevailing or living wages," apparently because "the city attorney's office was reluctant to defend against a [preemption] challenge."[896] Elected city attorneys, however, also have political incentives to be portrayed and perceived as enforcers of the law. They may therefore aggressively pursue headline grabbing—and potentially community benefiting—affirmative suits against "wrongdoers," as one can easily confirm by perusing the websites of California's bigger-city city attorneys. But even elected attorneys are likely to find legislative projects unappealing, when another official will enjoy the political credit while the attorney's office bears the legal costs.

City councilmembers, on the other hand, may be more open on average to innovative projects, especially where they are elected by district and a project would particularly benefit their constituents. However, councilmembers are also sometimes beholden to potentially problematic constituents, such as property or business owners who generate revenue for the city or contribute to personal political campaigns. In my own experience, councilmembers friendly with property owners sometimes obstructed city attorney efforts to force the owners to repair substandard housing conditions harming their tenants.

Accordingly, although certain tendencies may aid our decisions on specific projects, there is no consistently best institutional entry point for successful local government collaborations. Instead, the appropriate initial contact will depend on particular individual and office characteristics in a given jurisdiction. Indeed, as practitioners have found, we can expect widely varying policy positions within a single city,[897] from officials often engaged in heated personal and political conflicts with one another. We must therefore ask ourselves: "What position ha[ve the] various government agencies and actors taken in the battle, and what stake d[o] they have? How could they be moved toward [our] side?"[898] Among other factors to consider, positive personal relationships are likely to make initial contacts safer and more successful. Particularly ambitious politicians can also be ideal sponsors of an innovative project, anxious to "call attention to it in an effort to distinguish themselves in bids for higher office."[899]

Whatever our first point of contact, we must keep certain entry methods in mind. As politicians often have big personalities and bigger egos, and are used to being cajoled, we usually should not come in kicking down their doors. I make this perhaps obvious point because, as aid attorneys, many of us are understandably forceful and confrontational in our usual interactions with potential adversaries, since we are often the only, outgunned advocate for our disenfranchised clients. When asking politicians for help, however, it is generally better to handle them with kid gloves—saying, for instance, "if you would do

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[896] Lefcoe, *supra* note 123, at 859.

[897] *See* Cummings, *supra* note 42, at 1975 (noting city council support but mayor and city attorney opposition to an anti-big-box effort, and thus efforts to circumvent the latter).

[898] Gordon, *supra* note 163, at 2136.

[899] Engel, *supra* note 40, at 173.

this, it would be wonderful," instead of "you need to do this." At the same time, it will often be worthwhile to tactfully make potential personal benefits, such as positive media coverage or public perceptions, clear to the elected official. As discussed, coming to the door with a coalition, client representatives, and some completed work in hand can also increase our persuasive potential. But even when none of this is practicable, I have found that we can sometimes sway councilmembers simply by sharing poignant individual client narratives relevant to the project. Last, some advocates suggest seeking memorandums of understanding early on, to avoid project cooption. In my own experience, I have never felt that we had sufficient leverage to do so; but that may be because, unlike these practitioners, I have not been involved in collaborations with powerful university or union allies.

6. Ongoing Considerations: Media, Monitoring, Migration, and More

From the initial stages to post-collaboration, we should consider a number of other important strategies for successful projects and their proliferation. First, involving the media can be critical initially to convince local government and other partners to take a project seriously,[900] then later to persuade relevant decisionmakers, reward positive action, and spread news of the project. It is also important that we stay involved beyond successful action initiation and "provide[ ] inspiration, guidance, and feedback throughout the process."[901] We can thereby help maintain project energy and have a say in the devilish details. With legislative projects we might review ongoing ordinance drafts and meet directly with actors involved in their eventual implementation, like city clerks and third party RFQ responders. Similarly, monitoring and influencing what happens after an ordinance is passed or a lawsuit is filed can be critical to project success. This is especially true since the practical incentives to do so drop precipitously—because media publicity rewards come at the creation stage, not with nose to the grindstone follow-through. Thus, in my experience, local officials are often all too willing to implement or settle actions in the most expeditious and least contentious way, so they can turn their resources to the next big thing. Most other project participants also largely check out at this point and defer to these decisions. It is therefore left to the committed few to ensure that actions instead have their intended impact. Accordingly, we might organize informal monthly meetings or serve on official advisory boards or task forces to monitor project progress.[902]

In addition, after completing our initial project, we can help minimize the

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[900] *Cf.* Bettinger-López, *supra* note 106, at 71 (noting that "shaming strategies" can pressure local governments and persuade them "to take the moral high ground").

[901] Susan L. Waysdorf, *Families in the AIDS Crisis: Access, Equality, Empowerment, and the Role of Kinship Caregivers*, 3 TEX. J. WOMEN & L. 145, 214 (1994).

[902] *See* Narro, *supra* note 86, at 507 (discussing monitoring and other oversight by coalition parties following the passage of workers' rights ordinances); Lozner, *supra* note 422, at

size and externality downsides of local action, and maximize the experimentation advantages, by supporting the project's spread to other locales or higher levels of government. Typically, we would be passing the project torch to other advocates, since it would be too much for us and our "collaborations on the side" role to move on to other jurisdictions ourselves. We could help fan the flames while doing so, however, by sharing our experiences at meetings or assisting in other small but important ways arguably "essential to the success of subsequent . . . experiments."[903] We should also consider future collaborations with the same local actors and other participants.[904] As discussed, collaborative capacity should only improve following successful engagement. Future collaborations should be less resource and time demanding as well, especially where we keep coalition and client partners together, since all of our research, organizing, training, and other investments can be recycled into the new projects. Yet, to avoid cooption and ensure personal and institutional integrity, we must also carefully monitor and maintain our willingness to adversarially confront local officials and other collaboration partners, when it is the appropriate action for our client communities.[905]

B. *Collaboration Case Studies*

In this final section, I will discuss a number of local government collaborations that have taken place, some from the existing legal literature and others in which I was personally involved. As mentioned, it is important to consider real world examples because there are no hard and fast rules for when such collaborations will be the best approach to a problem; and unless and until we can conduct broader empirical research, these case studies are the only data available.[906] Fortunately, scholars and practitioners have described a variety of relevant collaborations. To increase our sample size, I have also included similar partnerships led by actors other than legal aid attorneys, such as other nonprofit organizations, universities, and unions. As the reader will note, I have already discussed many of these collaborations where they were otherwise relevant to

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779 (discussing a task force, including community-organization representatives, "empowered to carry out local implementation of [a CEDAW] ordinance").

[903] Lozner, *supra* note 422, at 768.

[904] *See* Diamond, *supra* note 596, at 81 (advocating "the creation of repeat players at the bargaining table . . . to influence outcomes on an ongoing basis").

[905] *Cf.* Golden & Fazili, *supra* note 79, at 75 (noting the ongoing "need to protect client interests from government action or, more often, lack of action"); Reynoso, *supra* note 578, at 186 (suggesting that CBOs "promot[e] engagement with the public sector from the street-level up, while continuing to demand accountability from government agencies").

[906] *Cf.* Cummings & Eagly, *supra* note 54, at 492-93 (arguing that a strategy comparison "should be grounded in an empirical analysis of the[ir] relative effectiveness"); Volz et al., *supra* note 608, at 537, 552 (noting that "little research is being conducted to assess the most effective legal strategies," and calling for comparative studies).

my Article, particularly in the section on recent progressive local action.[907] Therefore, to avoid unnecessary repetition, I will not go into much detail here, except as to the projects in which I personally participated and that have not been discussed elsewhere. For the other projects, I instead refer the interested reader to the primary sources for more information.

1. Others' Projects

a. *Immigration and Human Rights*

Immigration and human rights have been the focus of numerous local government collaborations. In some ways, this is unsurprising. As discussed, both important areas have been left largely unaddressed by the federal government.[908] Cities also have significant room to act in these areas, often moreso than more explicitly regulated and carefully scrutinized states; and cities are particularly impacted by immigration. Legal aid organizations and other nonprofits have therefore partnered with cities to tackle immigration issues in innovative ways. We have worked to improve conditions for day laborers, important to cities also because of the workers' impact on the local economy and public spaces where they often gather. With our support, day laborers in one town "negotiated . . . for a better place to wait for work—one in a more visible commercial area where they would be protected from harassment and supported by the town government."[909] Advocacy groups have also collaborated "with local governments and [other] nongovernmental organizations to . . . create centers that provide bathrooms, sponsor self-help workshops, and set rules by which day laborers and employers must abide when accepting or offering work."[910] Some of these worker centers offer "legal representation for unpaid wages" as well.[911] These centers have had significant successes. One center, in Herndon, Virginia, enabled workers to "agree[ ] upon a minimum wage" and rendered wage nonpayment "virtually nonexistent," which—as anyone who works with day laborers can attest—is an incredible feat.[912]

Universities have also led immigration-focused collaborations. As part of an innovative cultural exchange project, the University of North Carolina sent state and local officials, along with nonprofit and community leaders, to "study abroad" in Mexico.[913] The hope was that the officials' "contribution[s] to emerging public policy w[ould thereby] be informed by a heightened understanding of political, social, and economic factors driving the decisions behind

[907] *See, e.g., supra* Part I.B.1.b.

[908] *See supra* Part I.B.1.c.i.

[909] Gordon, *supra* note 201, at 433.

[910] Rodríguez, *supra* note 22, at 598.

[911] *Id.*

[912] *Id.* at 599. Sadly, political pressures led to the eventual closing of this particular center and ousting of the city officials involved. *See id.*

[913] *See id.* at 585; Hing, *supra* note 82, at 894.

immigration as well as a first-hand experience with the richness of Mexican culture and family structure."[914] In fact, the project led to a "near-miraculous turn around in attitudes and relationships" for some of those involved,[915] "changing at least one . . . public official's focus from a fixation on preventing illegal immigration to finding ways to help immigrants adjust to life in the United States."[916] Further, these personal transformations resulted in concrete programs and policy shifts, from "training programs for Mexican nurses," to law enforcement learning Spanish and changing its "strategy for interacting with immigrants."[917] As discussed in more detail below, Yale Law School also helped New Haven establish the first city identification card available to undocumented immigrants.[918]

Turning to human rights, local implementation of CEDAW is a notable example of "dynamic . . . collaboration between nonprofits and local government" to "grant[ ] specificity to general [human rights] norms."[919] As discussed, CEDAW was first implemented in San Francisco by a coalition of nonprofits working with local officials. Coalition members were involved throughout the process: helping draft the law and as part of the task force "bring[ing] together governmental and nongovernmental actors" to put it into practice.[920] Perhaps due to this continued coalition involvement, the ordinance has been more than expressive, leading to concrete policies and improvements for women's rights.[921] Similar collaborations were involved in CEDAW's consideration by subsequent cities,[922] and a huge coalition has helped it to spread nationally, with hundreds of cities and dozens of counties and states passing or considering similar laws. At least one sexual-orientation anti-discrimination ordinance also passed after a local coalition led town lobbying, organizing, and meetings similar to, if not quite, collaboration *per se*.[923]

b. *Employment and Economic Decentralization*

Local government collaborations have perhaps been most widespread in the area of workers' rights. This is likely due to the long history of union organizing and coalition building on labor issues, as well as labor's more recent shift to

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[914] Hing, *supra* note 82, at 894.

[915] *Id.* at 895 (internal quotation marks omitted).

[916] Rodríguez, *supra* note 22, at 585; *see also* Hing, *supra* note 82, at 896 ("[The official] explained how the experience had changed his life and admitted that his earlier judgment of the Latinos was wrong; he also pledged to help the community in his area.").

[917] Rodríguez, *supra* note 22, at 585; *see also* Hing, *supra* note 82, at 894 (noting that a state DMV official's participation "led to the development of cross-cultural training").

[918] *See infra* Part III.B.2.a.

[919] Lozner, *supra* note 422, at 770.

[920] *Id.* at 779, 799.

[921] *See supra* notes 108-110, 392, 407 and accompanying text.

[922] *See* Lozner, *supra* note 422, at 790-91 (discussing a New York City collaboration).

[923] *See* Shaw, *supra* note 23, at 388-90.

"take[ ] strategic advantage of the spatial configuration of political power, deemphasizing advocacy within the now more conservative federal government and instead building political alliances with progressive big-city officials who possess the political will to advance regulation on behalf of their low-wage worker constituents."[924] Legal aid and other nonprofits have therefore collaborated with unions, local officials, community groups, and religious organizations to pass living wage ordinances across the country.[925] Similar coalition efforts led New York City to consider innovative legislation to "strengthen enforcement of wage and hour laws in the restaurant industry" by allowing for "revocation of restaurant licenses."[926] Nonprofit coalitions in Los Angeles also: (1) promoted an anti-sweatshop ordinance for city contracts, which included funding to monitor compliance even by foreign-based subcontractors; and (2) helped pass a resolution declaring the rights of immigrant workers.[927]

In the big-box fight, on the other hand, unions and policy advocacy groups have taken the local collaboration lead. For instance, such a coalition "met regularly for several months with Inglewood City Council member[s]" and the Mayor, in helping pass an ordinance "to head off [a Wal-Mart] development bid."[928] At least one former aid attorney also played a part in the collaboration.[929] The coalition then worked to secure similar legislation in Los Angeles. Despite some compromises, "the campaign was by all accounts a resounding success. Wal-Mart has yet to open a Supercenter in Los Angeles or Inglewood, and the cities' ordinances hold the unique distinction of having avoided legal challenge from the retailer." As a result, Wal-Mart has moved away from prounion and metropolitan areas and is instead focusing on international and small domestic markets.[930] Although not the primary project goal, a legal aid organization similarly promoted economic decentralization by working with a "group of community activists, non-profits, and county service providers to address the dearth of banking and financial services" in West Oakland—"a community of 30,000 low-income people without a single bank." Instead of seeking out large financial institutions to fill this gap, the coalition "pooled [its] expertise" and established a community-based credit union to meet the residents' "banking needs."[931]

Universities and nonprofits have also paved the collaborative way on local-

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[924] Cummings, *supra* note 42, at 1942.

[925] *See* Lynch, *supra* note 11, at 576-77 (discussing such coalitions in cities nationwide); Cummings & Eagly, *supra* note 54, at 478 ("[L]awyers at Greater Boston Legal Services collaborated with a coalition of labor, clergy, and community activists, to secure the passage of [Boston's living wage law].").

[926] Ashar, *supra* note 184, at 1891.

[927] *See* Narro, *supra* note 86, at 471-82, 511-12.

[928] Cummings, *supra* note 42, at 1958.

[929] *See id.* at 1966.

[930] *Id.* at 1975-76.

[931] Harris, *supra* note 314, at 2097-98.

resident workforce development and employment projects. In Hartford, for example, Trinity College "broke ground on a revitalization effort for the neighborhood surrounding its campus," with a "$175 million comprehensive initiative"[932] involving an "extraordinary partnership among major health and educational institutions; the public and private sectors; city, state, and federal government; and community and neighborhood groups."[933] Among other concrete benefits, the initiative "utilize[s] an innovative first source hiring agreement" to recruit local residents for the employment opportunities involved. According to one scholar, it thereby "confirms the positive power of collaboration between multiple non-poor institutions and a poor community."[934] Similarly, the Delaware County Legal Assistance Association "work[ed] closely with" local colleges, City of Chester officials, and other partners "to prepare Chester's [low-income] workforce" for a $350 million revitalization project on the Delaware River.[935]

c. *Housing and Development*

Legal aid organizations, universities, and other actors have also collaborated with local government on an array of housing and development projects. For instance, a collaboration between "the City of New Haven, [a] Yale Law School [clinic], and nonprofit agencies" recently took on the city's foreclosure crisis.[936] Among other significant actions, the partnership provided legal assistance to prevent foreclosures and helped purchase foreclosed properties to make them available as affordable rentals or homes.[937] Before the crisis—and a good example of a smaller collaboration step we might take—legal aid and other nonprofits also participated as amicus curiae in the defense of an Oakland anti-predatory lending ordinance against state preemption. Unfortunately, the city lost, but the amici were cited by the dissent.[938] Focusing instead on homelessness, "a coalition between the Los Angeles City Attorney's Office, the Legal Aid Foundation of Los Angeles, the Los Angeles Community Action Network, and private practitioners" is working to address L.A.'s infamous Skid Row.[939] And in Baltimore, one prolific legal service provider "collaborat[ed] with neighborhood associations" to "develop[ ] a Vacant House Receivership Statute" and a "new drug nuisance abatement law" that "improved access to the legal system." The organization also assists in "joint police/community actions

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932 Volz et al., *supra* note 608, at 542.

933 *Trinity/SINA Neighborhood Revitalization Initiative*, Trinity College, http://caribou.cc.trincoll.edu/depts_pub/heights (last visited July 16, 2011).

934 Volz et al., *supra* note 608, at 543.

935 *Id.* at 534-35.

936 The ROOF Project, *About*, http://theroofproject.org/about (last visited June 9, 2012).

937 *See* Golden & Fazili, *supra* note 79, at 49 n.50, 50-51.

938 *See Am. Fin. Servs. Ass'n v. City of Oakland*, 34 Cal. 4th 1239, 1270-71 (2005) (George, C.J., dissenting).

939 Rhode, *supra* note 597, at 1448.

such as eliminating drug housing through civil legal actions."[940]

With regard to community development, "CED has always included collaborations between the government, nonprofits, . . . academic institutions, and corporations."[941] The East Bay Community Law Center, for example, worked "alongside labor, environmental and neighborhood groups in West Oakland, and with *pro bono* assistance from [a] law firm," to ensure that a local development project met community goals, such as "affordable housing" and "sound environmental practices."[942] Similarly, nonprofits "WE ACT in New York and Just Cause Oakland in California[ ] . . . triangulated between municipal officials and entities and a private developer to turn new development to the advantage of communities that would otherwise have been pushed out by it."[943]

d. *Public Health, Education, and the Environment*

Similar collaborations have forayed into other areas for the public good. For instance, legal aid, advocacy, and academic institutions in Los Angeles helped local officials implement a direct service program and anti-discrimination ordinance to assist people with HIV/AIDS. "City government was the driving force . . . in the development of . . . [these] public health legal services. But . . . it was not the only force. City leaders worked with an array of partners, steering rather than doing all the rowing itself."[944] Likewise, in Washington, D.C., "legal aid and advocacy communities work[ed] in partnership with local government" to write and pass legislation making it easier for families and guardians "to provide adequate and timely health care for the children in their care."[945] Yale Law School's impressive collaborative credentials also include its CED clinic's "represent[ation of] a coalition of municipalities and non-profits seeking to reform Connecticut's school financing system."[946] Last, nonprofits have long participated in administrative rulemaking on environmental issues, and they are now joining "networks of new 'partnership' and 'collaborative governance' agreements," to "resolve conflicts over exploitation and conservation of natural resources."[947]

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[940] Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 CLINICAL L. REV. 227, 253 n.110, 264 (2000) (noting also that Baltimore "[d]omestic violence groups actively train and work with police and prosecutors in protecting victims").

[941] Trubek, *supra* note 571, at 471.

[942] East Bay Community Law Center, *2005 Year-End Report* 2 (2005), http://ebclc.org/documents/2005EBCLCYear-EndReport.pdf; *see also* Harris, *supra* note 314, at 2101-11.

[943] Gordon, *supra* note 163, at 2137.

[944] Schulman et al., *supra* note 634, at 750 (footnote omitted); *see also id.* at 750-57 (discussing the project and participation by the ACLU, UCLA, and local legal services).

[945] Waysdorf, *supra* note 901, at 214, 210.

[946] Wizner & Solomon, *supra* note 665, at 478.

[947] Breckenridge, *supra* note 699, at 692; *see also* Paretchan, *supra* note 590, at 40 ("[C]ollaborating with public and private partners on plans to protect the environmental val-

2. Personal Experience

While I hope to have so far provided helpful analysis, synthesis, and the occasional novel thought, we have now arrived at the genuinely original portion of this Article: describing the collaborations in which I have participated. All have taken place in Oakland, which is representative in some ways of many other urban cities. It is diverse, progressive, and community oriented, but struggling with poverty, unemployment, and crime caused, at least in part, by macroeconomic policies and interlocal inequality beyond its control.[948] Thus, that meaningful local action has taken place here, despite these constraints, should be encouraging and informative for those working in similarly situated cities.

a. *The Oakland City ID Card Coalition*

As a legal aid attorney, working to create an Oakland city ID card was my most extensive involvement in a local government collaboration. As mentioned, New Haven was the first city to issue its own ID card available to all residents regardless of immigration status, and San Francisco soon followed. The cards' primary purpose is to integrate undocumented immigrant communities. Proponents emphasize the cards' potential to reduce immigrant fear of local police, thereby increase crime reporting and cooperation with law enforcement, and in turn, improve public safety. Similarly, the cards should encourage and help immigrants to report workplace and housing violations and participate in the formal economy, both also benefiting the city as a whole. Access to banking is especially important because immigrants are otherwise more likely to carry cash and be targeted for violent robberies. The ID cards also benefit other vulnerable groups—such as the elderly, runaway youth, sexual minorities, domestic violence victims, and the homeless—who have limited access to, or needs unmet by, other forms of identification. The cards function expressively as well, as important counternarratives to federal immigration policy, showing cities' acceptance and support of their undocumented residents.[949]

Turning to our tale, winds of the San Francisco ID program drifted in from across the Bay with the help of La Alianza Latinoamericana por los Derechos de los Inmigrantes ("ALIADI"), an advocacy organization that had been involved in the San Francisco campaign. As mentioned, it is often easier politically and practically for Oakland to follow in the policy footsteps of its wealthier western neighbor, which is quicker to pull the progressive trigger. I first

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ues of rivers and streamflows can be a long and involved venture, but the NGO efforts described here attest to the significant successes that can result.").

[948] *See* Harris, *supra* note 314, at 2081-92 (discussing Oakland's history).

[949] *See supra* notes 87-92, 391 and accompanying text; NEWMARK ET AL., supra note 391, at 5-18; Jocelyn Wiener, *Crimes Against Immigrants Provoke Call for More Police*, E. BAY EXPRESS, Aug. 20, 2008, http://eastbayexpress.com/ebx/crimes-against-immigrants-provoke-call-for-more-police/Content?oid=1091354.

learned of the idea for Oakland to follow ID-card suit from two of my coworkers at Centro Legal de la Raza, a longstanding legal aid provider in Oakland's largely Latino Fruitvale district. They suggested that we hold a public meeting to discuss an Oakland ID. With organizational approval, my intrepid coworkers planned and hosted an informational presentation and open discussion attended by an array of important actors, including nonprofits, political representatives, private attorneys, students, and client community members. Among other positive results from the event, my coworkers thereby obtained direct community input from the outset. In particular, community members made clear their primary concern: routine police traffic stops leading to detention, and then deportation, because undocumented immigrants lacked drivers' licenses.

From this large initial meeting, we were unintentionally whittled down to a small working group. We invited everyone to participate but, as is often the case, most wanted the project idea to become more of a reality before they invested additional time and resources. This self-selection was beneficial, however, as we found ourselves with a core coalition largely in agreement on goals and therefore with little need to compromise. The coalition included: my coworkers, Lorena Garcia and Carol Perez, and me, from Centro Legal; Wilson Riles, a former city councilmember and current community advocate representing the Black Alliance for Just Immigration; Maria D. Dominguez, a Mills College student and then graduate who had studied city ID card programs; Marc-Tizoc González, a professor and direct service attorney for the Alameda County Homeless Action Center;[950] and John Morton, a community advocate from the Oakland Green Party. Together, we became the Oakland City ID Card Coalition.[951]

Although unplanned, the Coalition thereby met some of the strategy suggestions set forth above. With only two legal aid attorneys, the Coalition was not lawyer dominated, but composed of diverse actors with a wide range of experience and abilities. Wilson's insider political knowledge and economic expertise were critical to navigating Oakland city government and assessing card costs and benefits, respectively. John brought similar political savvy and took the technological lead, establishing and maintaining a listserv and website. Maria was most knowledgeable on existing city ID card programs and our spokesperson in meetings with local officials and the media. Lorena and Carol, unable to stay as involved due to work and family constraints, still used their extensive community and media experience effectively throughout the project and to give it life in the first place. Finally, Marc-Tizoc and I brought our respective aid attorney benefits: direct contact with lower income and immi-

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[950] At the time, Marc-Tizoc was a UC Berkeley Ethnic Studies professor. He went on to become a law professor at the St. Thomas University School of Law.

[951] *See* Oakland City ID Card, About, http://oaklandcityidcard.org/about (last visited June 9, 2012).

grant clients; substantive expertise in public benefits, immigration, housing, and employment law; and general legal research, writing, and negotiation skills. Also helpful, a representative from ALIADI, Miguel Robles, often shared important experience from the San Francisco campaign. Further, while we all worked hard, the non-attorneys were able to be more consistent and cover for Marc-Tizoc and I, as we still had to prioritize urgent direct service matters.

As our first order of business, we decided to meet regularly as a coalition and take certain substantial project steps before involving city officials. We recognized that doing so would help us maintain project control and prevent cooption.[952] We also quickly realized that even with our shared ideals, we had a potential policy tension to resolve in order to ensure a united coalition front. While everyone was in favor of a local currency component to the city ID card, some of us were clear that we would sacrifice the former for the latter. For the aid providers in particular, the immediate needs of our immigrant and other vulnerable clients trumped the potential economic benefits from a local currency. Fortunately, following a brief discussion, everyone was in agreement that the ID card came first.

With our priorities in place, we began planning the project details. Enjoying the experimentation benefits of local action, we learned from the experiences of New Haven and San Francisco. For instance, New Haven police reported improved public safety post-ID card,[953] providing us with important empirical support. We also assessed the political opposition that our predecessors had faced, and monitored a successful legal defense of the confidentiality of cardholders' information. Thanks to their groundwork, we had more time to consider improvements and unique local conditions as well. In particular, it appeared that San Francisco was having logistical difficulties producing ID cards quickly enough with their own machines to meet demand. But it also seemed that demand might not be sufficiently widespread across communities regardless, and that the IDs might therefore inadvertently serve as an identifier of undocumented status. To address the latter difficulty, we broadly imagined ways to make an Oakland ID card more desirable to other demographics. For instance, the ID could double as student identification, pay for parking meters or public transportation, provide local discounts, or function as a debit card—possibly with a local currency component. The debit-plus aspect could also entice private companies to manage the finances and produce the cards, perhaps avoiding the technological difficulties encountered in San Francisco and adding legal privacy protections to cardholders' data. Further, the local reality was that Oakland, facing ongoing budget cuts, was unlikely to cover the costs of producing cards by itself. With a debit component, however, the cards might

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[952] One councilmember's assistant, however, attended a number of the initial meetings and, to his credit, made helpful suggestions without constraining the project.

[953] *See supra* note 391 and accompanying text.

pay for themselves and more.[954] Local discount or currency components could also contribute to the local economy, tie in nicely with an existing "buy local" campaign,[955] and thereby attract the support of local merchants—a potentially powerful political ally.

Thus, with our ideal ID program in mind, the Coalition began bringing allies on board. We decided to cast as wide a net as possible, inviting anyone interested in a city ID card. We simultaneously limited our outreach, however, to requesting endorsements. We did this to maintain project control and minimize the heavy time costs associated with trying to contact, convince, and involve parties reluctant to invest in the initial stages anyway. We also strategically started with allies that we knew we could count on, like other local nonprofits where we had personal contacts. Then, with existing signatories as bait—validating the legitimacy of the project—we tossed our line out to progressively bigger, more risk adverse allies. The strategy was successful and we ultimately reeled in most of the partner species suggested above: universities, professors, unions, state legislators, private lawyers, local businesses, and an array of nonprofits—from small service providers to powerful advocacy organizations. Particularly exciting for our goals, one community college district expressed interest in using the card as student ID.[956] We also drafted an extensive ID card proposal, describing the project's importance and feasibility, and our ideas to maximize both.

Simply having these partners and this proposal on paper was critical as we wrapped up endorsements and began formally approaching local officials. They helped prove the project's potential, define its details, and establish its possibilities. They also demonstrated the Coalition's seriousness and value. We hoped to have thereby built up enough steam to leave local officials only the rhetorical choice: hop on the train or be left behind. In deciding the stops on this local collaboration express, we chose city instead of county government because the latter was more conservative on immigration issues. I do not remember making a conscious decision, but in retrospect it was also wise to avoid the city attorney. Although the elected attorney's office had been progressive on other policies, the complex legal issues surrounding the ID cards predictably resulted in its eventual wariness of the program. Instead, we met with city councilmembers in strategic order based on personal relationships and political factors—for instance, because Oakland's councilmembers are elected by district, some have significantly more immigrant constituents than others.

At the meetings, everyone in the Coalition played an important role. For our part, the aid attorneys shared compelling client stories and credible descriptions

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[954] *See* NEWMARK ET AL., *supra* note 391, at 29-31; Matthai Kuruvila, *Oakland Immigration ID Cards to Work as Debit Cards*, S.F. CHRON., Nov. 27, 2010, http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/11/26/BA721GDSTU.DTL.

[955] *See supra* note 127 and accompanying text.

[956] *See* NEWMARK ET AL., *supra* note 391, at 4, 24.

of problems on the ground. Given the police department's interest in public safety, we requested and received its project blessing as well. The department also shared details on relevant police policies and its expertise and preferences on ID card uses and limits. We devoted some time to initial media and continued community outreach as well, giving presentations and soliciting input.[957]

Eventually, when it appeared that we had the council votes needed, one councilmember took the lead in drafting an ID card ordinance. We insisted on reviewing and editing drafts, however, thereby using our legal skills to stay involved and avoid project cooption. As we should all know from Schoolhouse Rock,[958] the proposed ordinance then had to pass through committee and full-council hearings. At these public hearings, our allies and client communities again played essential roles. For example, Centro Legal's two immigration attorneys, Allison Davenport and Cassandra Lopez, had understandably refrained from extensive earlier involvement, prioritizing the community's need for urgent legal assistance to stop ICE detentions, deportations, and more. But critical to the collaboration, they made time to attend the final hearing, invite clients, and together share moving and persuasive stories. Indeed, presenting personal and professional experiences together on a packed and diverse public stage, with the ears of local officials and eventually their overwhelming approval,[959] seemed empowering for the entire community.

After the ID card program passed "in concept," the Coalition continued with the important work of monitoring its practical implementation. As discussed, local officials who have already enjoyed the early publicity benefits might otherwise leave legislation by the wayside or implement it in the quickest, easiest, and therefore, often least meaningful way. Unfortunately, and confirming the concern of aid attorney impermanence, my personal experience came to a close at this point, as my fellowship at Centro Legal ended and I joined the city attorney's office. However, I understand that the city issued an RFQ, and that the Coalition then contributed a detailed assessment of the responses and lob-

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[957] *See, e.g.*, Jocelyn Wiener, *Coalition Seeks Oakland ID Card*, E. BAY EXPRESS, Sept. 17, 2008, http://eastbayexpress.com/ebx/coalition-seeks-oakland-id-card/Content?oid=1091718; Clare Major, *Oakland Considers Controversial Municipal ID Cards*, OAKLAND N., Oct. 12, 2008, http://oaklandnorth.net/2008/10/12/oakland-considers-controversial-municipal-id-cards. Orlando Johnson, from the Oakland Community Action Network, also creatively used technology by preparing a video presentation.

[958] *Compare Schoolhouse Rock: I'm Just a Bill* (ABC television broadcast 1975), *available at* http://vimeo.com/24334724 (last visited May 30, 2012), *with* Scott Scantis, *Prickly City - Just a Bill*, CHI. TRIB., Jan. 16, 2011, http://newsblogs.chicagotribune.com/taking-a-stantis/2011/01/prickly-city-just-a-bill.html.

[959] *See, e.g.*, KTVU, *Oakland Passes Controversial ID Card Program*, June 3, 2009, http://ktvu.com/news/19641397/detail.html; Anna Gorman, *Oakland to Offer Identification Cards for Illegal Immigrants*, L.A. TIMES, June 5, 2009, http://articles.latimes.com/2009/jun/05/local/me-idcard5.

bied the council when it appeared poised to make a bad choice.[960] The Coalition also suggested an official task force to monitor the ID's implementation and vetted mayoral candidates during a recent election on their ID program plans. This continued involvement may be critical to ensuring that the project meets its intended goals: that the ID cards are widely used and do not instead serve to identify vulnerable communities, that the cards are accepted by local police and thereby increase public safety and decrease deportations, and that they do not lead to disclosure of cardholders' information, among other aspirations.

Regardless of the program details in Oakland, however, the initial success has added a bit more fuel to the fire spreading these progressive policies. At least three additional "city governments . . . now endorse or issue photo identification cards to residents,"[961] and others have active campaigns to obtain them.[962] Local ID cards even garnered state support through a California bill that would have endorsed and facilitated such programs, but which the governor recently vetoed.[963] The Coalition has also assisted in these efforts, if only a little, by sharing its experiences—for instance, at a national conference on local ID cards.[964] In addition, the Coalition's allies have followed up on the ID project with a related local government collaboration. Specifically, a community-based organization and a legal aid attorney worked with the mayor, council, and police department to change Oakland policy on impounding immigrants' cars following traffic stops.[965]

In all of the ways discussed, the ID card collaboration clearly benefited from the involvement of aid organizations and attorneys. In turn, the collaboration benefited us. It provided important political experience and contacts. And it gave us the opportunity to work on a manageable collaborative project far dif-

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[960] *Cf.* Laura Hautala, *Council Doubles Pot Farm Permits, Chooses City ID Card Supplier*, OAKLAND N., Nov. 10, 2010, http://oaklandnorth.net/2010/11/10/council-doubles-pot-farm-permits-chooses-city-id-card-supplier (noting ongoing Coalition action).

[961] Semple, *supra* note 188 (discussing Trenton and Princeton, New Jersey).

[962] *See* Oakland City ID Card, *Municipal ID Card Conference in Oakland, Sat, Aug 21*, http://oaklandcityidcard.org/2010/08/13/municipal-id-card-conference-in-oakland-sat-aug-21 (last visited June 9, 2012) (noting projects in Chicago, Minneapolis, Marin County, and Richmond).

[963] *See* Martin Hill, *Schwarzenegger Prevents Cities and Counties from Issuing Government ID Cards*, L.A. COUNTY LIBERTARIAN EXAM'R, Oct. 18, 2010, http://examiner.com/la-county-libertarian-in-los-angeles/schwarzenegger-prevents-cities-and-counties-from-issuing-government-id-cards.

[964] *See* Matt O'Brien, *City ID Cards May Spread to the East Bay*, CONTRA COSTA TIMES, Feb. 9, 2009, http://fullidentity.com/Default.aspx?Page=NewsArticles&NID=299.

[965] Email from Christy Hogan, Oakland Community Organizations (June 2, 2010); *see also* Cecily Burt, *Oakland's Undocumented Drivers Can Keep Their Cars; Avoid Thousands in Impound Fees*, SAN JOSE MERCURY NEWS, Jan. 25, 2011, http://piconetwork.org/news-media/coverage/2011/0520.

ferent, but not taking too much time, from our usual direct services. The project also illustrates the difficulty of weighing the one against the other: Who knows whether ID cards will ultimately prevent more deportations than if we had instead invested all of our time in direct removal defense? And regardless, how would we value more nuanced project benefits into the equation? Thus, unable to personally resolve this dilemma, I split the baby—but unevenly and hopefully with better results than the metaphor taken literally. I stuck primarily with traditional aid, but took some time to aid in the collaboration.

Local government also brought unique benefits to the table, beyond the obvious: that only the city could authorize city ID cards. As theorized above, supportive city officials have had less turnover than Coalition members, many of whom have moved or moved on to new careers. Councilmembers with fewer immigrant constituents also acted as an important democratic check on the project, expressing reasonable concerns as to whether any card costs would justify resulting spending cuts elsewhere. In addition, the ID project is a good example of where collaboration may be better than traditional organizing. Undocumented immigrants are understandably wary of government officials and often busy just trying to make ends meet. Thus, they may have preferred the collaborative project and us acting as a go-between, to more frightening and time-consuming direct confrontation. Also, in light of widespread popular anti-immigrant sentiment led by a vocal and confrontational core, I am not sure we would have won in a head-to-head organizing clash. Whereas, because we stayed largely under the radar until we had significant momentum, the self-proclaimed "minutemen" arrived hours too late to stop or slow things down.

To be fair, however, there are also things we could have done better. First, we probably should have sought greater involvement from universities. Law or economics professors might have brought much-needed knowledge of financial and privacy matters. Professors or students could also have provided independent analyses of card costs and benefits, and studied the eventual impacts of the ID program. Moreover, a powerful university more involved in the project might have contributed political capital or even funding to ensure the best ID program possible. We could also have done more to directly involve client communities, for the project's sake and their own experience. Finally, it is important to recognize the limits of local action as to the underlying issue. What our immigrant communities need most is federal law reform and state drivers' licenses. They also need counties to reverse course on harmful sheriff and jail policies. As discussed, however, these limits are no criticism of local action where, as here, the higher level changes were not politically or practically feasible, at least for aid attorneys moonlighting as collaborators.

b. *Fighting Fraud Against Immigrants*

Although becoming a city employee ended my work on the ID Coalition, it also enabled me to promote and experience collaborations from the inside. Right off the bat, I had another opportunity to collaborate on behalf of our

immigrant communities. As practitioners know all too well, unscrupulous attorneys or non-attorney "notarios" regularly prey on undocumented immigrants' hope for legal status, promising immigration options that do not exist.[966] They thereby leave their victims with empty pockets, broken dreams, and sometimes, tragic immigration consequences—such as deportation—from the fraudulent services. While strong state laws exist to combat such conduct,[967] there are multiple impediments to their regular enforcement. First, having just been defrauded by supposed professionals, immigrants already wary of government officials are now doubly gun-shy of authority and often understandably reluctant to report the fraud. Further impeding detection and enforcement, the fraudulent operations are often low profile and mobile. But even with a tenable target and evidentiary ammo, it can be difficult and time consuming to prove fraud, because the prosecutor must be able to understand and clearly explain complex and convoluted immigration law. These hurdles notwithstanding, California governments have had some success confronting such fraud,[968] as we recently did in Oakland.

Our action was collaborative from the start. Dan Torres, then an attorney for a local advocacy organication, the Immigrant Legal Resource Center ("ILRC"), connected us with a fraud victim family brave enough to come forward. Instead of only making a referral, Dan contacted us directly and provided a detailed memo outlining the complicated immigration law and relevant facts. All too common, the culprits here had: (1) falsely claimed to be attorneys; (2) convinced the family that they were eligible for legal immigration status when they were not; (3) charged the family exorbitant fees; and (4) filed improper immigration applications that caused the family to be placed in deportation proceedings. Atypically, however, the bad actors were operating openly, with multiple high profile office locations, widespread advertising, and even state "immigration consultant" licenses.[969]

By providing us with this information, Dan made clear the seriousness of the problem, the solutions, and his ability and willingness to help. As discussed, all of this makes the city's job easier and thereby increases the odds of its involvement. As to choice of government, Dan reasonably first tried the county district attorney's office, which could have responded more quickly and forcefully, given its authority to pursue criminal investigations and charges. But the district attorney did not respond, perhaps because the county is less progressive on immigration issues, as mentioned, or because they simply had higher priori-

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[966] Ann M. Simmons, *Immigrants Exploited by "Notarios,"* L.A. TIMES, Aug. 10, 2004, http://articles.latimes.com/2004/aug/10/local/me-notarios10.

[967] *See generally* KATHERINE BRADY, ILRC, IMMIGRATION CONSULTANT FRAUD: LAWS AND RESOURCES (2000), http://ilrc.org/files/district_attorney_manual.pdf.

[968] *See, e.g.*, Press Release, Cal. Att'y Gen., Attorney General Lockyer Obtains Judgments Against Immigration Consultants (Sept. 30, 2003), http://oag.ca.gov/news/press_release?id=1115.

[969] *See* CAL. BUS. & PROF. CODE § 22443.1 (2006).

ties at the time. In any event, the city attorney's office was a smart second choice. As discussed, city councilmembers may be more reluctant to attack local business, given personal connections or concerns with aggravating an already troubled local economy. The elected city attorney, on the other hand, stood to benefit politically from the publicized prosecution of such consumer fraud, with only the limited cost of assigning an attorney to the lawsuit. This cost could also be potentially reimbursed, and then some, by the large penalties for such fraud under state law.[970]

Thus, filing a civil suit was exactly what our office planned to do. But we needed help, so the collaboration continued. First, I had to wrap my head around the various state laws relevant to the lawsuit. Dan immediately stepped up, sharing his legal knowledge in this area. Again, his initiative helped move the suit forward, reducing the city's initial workload and inspiring our confidence in the case. Further, while our lawsuit could secure restitution and prevent future fraud, the victim family was still facing deportation. I therefore reached out to my aid alma mater, Centro Legal, and immigration attorney mentor, Allison Davenport. She also readily accepted the opportunity to collaborate, consulting with and ultimately representing the family in their removal proceedings. Certain that these consultants had defrauded other families, we further hoped to find and help as many of these families as possible—simultaneously strengthening our case with each additional victim-witness. We also knew that this was not the only company defrauding our immigrant communities, and we therefore wanted to prevent such conduct more broadly. Accordingly, with Dan and Allison's assistance, we planned an initial meeting of interested parties to help address these issues, using our combined contacts and unique attributes to ensure that the right partners were invited and interested. In particular, the aid attorneys' community credibility may have persuaded advocates hesitant to work with local officials. The city's participation, on the other hand, likely inspired actors that expected proof of the project's seriousness before getting involved.

As a result of this synergy, an array of actors attended the anti-fraud meeting, including representatives from the Oakland and San Francisco city attorney's offices, ILRC and Centro Legal, and various other nonprofit and private immigration service providers. At the meeting, we learned from each other's experiences and expertise, with concrete positive results. First, Oakland secured important buy-in for its civil suit, as the team confirmed that these particular consultants had been involved in other instances of fraud. Second, the aid attorneys used their combined expertise in immigration law to evaluate options to help the victim family avoid deportation. Third, we decided on a strategy to find other victims of these consultants. Finally, we discussed other bad actors

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[970] Our complaint requested $8.2 million in penalties. *See* Jude Joffe-Block, *City Attorney Files Lawsuit Against Immigration Consultants*, OAKLAND N., Feb. 3, 2010, http://oaklandnorth.net/2010/02/03/city-attorneyfiles-lawsuit-against-immigration-consultants.

and collaborative steps we could take to address future fraud, such as holding regular group meetings, establishing an anti-fraud listserv, and jointly hosting an "immigration workshop" with fraud prevention training and free individual immigration consults for city residents. The meeting also brought the more intangible collaboration benefits of positive energy and improved relations, where there had been previously been some lack of confidence in one another.

Straight out of the meeting gates then, we worked together to put these plans into practice, taking advantage of our respective skills. In order to find other victims of the fraudulent consultants, the direct service providers kept an eye out during their usual client interactions and put us in touch with their private attorney volunteers. As a result of these efforts, we gradually connected with a number of additional victims who felt safe participating in our suit because of encouragement from their immigration advocates. The city attorney's office, in turn, used its media pull and spokesperson to spread the word on the fraud, holding a press conference and helping arrange other coverage. But the aid providers were also critical to this effort: speaking with the press, supporting victims willing to do the same, and providing a safe contact point for new victims. For instance, Centro Legal's amazing front office worker, Esmeralda Izarra, kindly agreed to take on this latter role before the first television report. The TV station therefore provided Centro's contact information instead of our own. This substitution was probably key to the half-dozen new victims who joined our action over the next couple of days, as it enabled them to first contact and receive reassurance from Esmeralda and a "safe" aid organization. Indeed, although a few victims contacted us directly over the months of media coverage, it was aid intake that brought in most of the fifteen or so families who ultimately came forward. This is therefore an excellent example of how a small collaborative step—extra intake—can have a huge impact.

The city's primary role was leading the ever-growing lawsuit. No one else was willing and able to take on the time-consuming litigation, by then bordering on a class action. The city also had access to critical supporting resources, such as law enforcement and private investigators. But the nonprofits and private immigration attorneys helped here too. The attorneys hired their own investigators and the nonprofits conducted investigations themselves, calling the consultants with mock immigration stories to gather additional evidence of fraud. Aid attorneys continued to act as unofficial expert witnesses for the city as well, explaining the complex immigration law underlying the fraud and helping draft declarations for themselves and the victims. The city also successfully reached out to other government actors for assistance with the lawsuit. For instance, lawyers from the state attorney general's office shared advice and documents from their prior actions. Exemplifying the possibility of unexpected partners, U.S. Immigration and Customs Enforcement even contacted us to collaborate, expressing a shared interest in preventing fraud. Unfortunately, our efforts to work with ICE, and previously to involve the DA, also illustrate the partner-outreach risk of investing substantial time with little or no payout. At

least by the time my involvement ended, neither ICE nor the DA had taken the steps we had hoped—*i.e.* using the powerful tools at their disposal to assist the victims and stop the fraud.

Aid attorneys, on the other hand, more than lived up to expectations. Most important, they continued to take the lead on the victims' immigration cases. Centro Legal's immigration attorneys—first Allison, then Kyra Lilien—either directly represented or found pro or low bono attorneys to represent all of the victims who needed assistance. ILRC attorneys Dan, Nora Privatera, and Helen Lawrence also continued to investigate potential immigration solutions for the victims. These efforts illustrate one way in which direct service attorneys can sometimes participate in collaborations without significantly compromising traditional legal aid: where their collaborative role is to provide aid as usual, simply giving special priority to relevant clients. Further, the city and other government actors provided significant support to the aid attorneys in this endeavor. Our office wrote letters to immigration judges on behalf of the victims and even sponsored a parole request for a victim who had been misled into returning to her home country with no lawful way to reenter. As we explained to the immigration officials, these victims were critical witnesses in our ongoing civil prosecution and efforts to stop fraud. Similarly, we reached out to Congresswoman Barbara Lee's office, to help another defrauded victim cut through red tape at the U.S. consulate in her country of origin. We also helped the aid attorneys organize a group meeting for the victims, to discuss important strategic decisions that needed to be made.

Finally, the entire team worked together to bring the planned immigration workshop for city residents to fruition. Again, we used our combined media and community contacts to spread the word.[971] The city then provided the physical space—hosting the workshop at City Hall—and led the time-consuming logistical coordination: planning meetings, coordinating volunteers, and preparing written materials. In turn, the nonprofits were indispensable sous chefs on all the above, and brought the essential personnel ingredients: a couple dozen support staff and student volunteers to help with intake and interpretation; another couple dozen private attorney volunteers to provide the free individual immigration consults; and a handful of expert aid attorneys to run the anti-fraud training, supervise the private attorneys, and handle consults themselves.[972]

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[971] *See, e.g.*, Irene Florez, *Everything You Want to Know About Immigration Law But Are Afraid to Ask*, OAKLAND LOC., Feb. 15, 2010, http://oaklandlocal.com/article/everything-you-want-know-about-immigration-law-are-afraid-ask; Immigration Workshop Flier, http://oaklandcityattorney.org/PDFs/Immigration Workshop (F).pdf.

[972] Besides the participants already mentioned, the collaboration involved or received help from: Alex Nguyen, Alex Katz, Amber Macaulay, David Hall, and Jim Hodgkins from our office; Kristine Poplawski, Joshua White, Daniel Zaheer, and Meghan Higgins, from the San Francisco city attorney's office; Colin Foard and Daniela Quintanilla from Congresswoman Barbara Lee's office; Claire Fawcett and Cassandra Lopez from Centro Legal; Susan

Thankfully, all of this collaborative work has had important positive impacts. Although the civil suit was still moving like molasses when I left Oakland, the consultants closed their two primary offices immediately upon our filing. The extensive media coverage also reduced the potential for future fraud from these consultants, by informing the community of their unlawful conduct. The lawsuit coverage may also have given at least a little pause to other fraudulent immigration attorneys and notarios. In addition, although not all of our efforts have been successful, the victims facing deportation and other immigration hardships have at least obtained appropriate representation and some concrete benefits—such as long continuances in their removal proceedings—in return for their assistance. The victims were also empowered by the group meeting, where they saw firsthand that they were not alone in being defrauded, reducing some victims' feelings of fear and self-blame. More broadly, the immigration workshop provided anti-fraud training and free consults from reputable attorneys to almost one hundred Oakland immigrant families, speaking a half-dozen different languages, who will hopefully share what they learned with family and friends.

The suit and workshop have also strengthened connections between Oakland and its immigrant communities, putting real meat on the city's sanctuary ordinance bones and likely increasing immigrant trust of city officials. The project partners have benefited from improved city relations as well. For instance, our office provided concrete assistance to one of the nonprofits on a separate matter. Finally, the project has had impacts beyond the borders of Oakland and our original goals. Our anti-fraud legwork made it easier for San Francisco to hold their own successful immigration workshop and bring legal action against an infamous attorney in their neck of the Bay.[973] Specifically, their city attorney's office used contacts made during our initial meeting to gather evidence for the action. We also shared materials and experiences from our Oakland lawsuit and workshop to assist them. Back in Oakland, the positive connections between our office and Centro Legal almost spawned a project to address immigrant deportations resulting from a city contract with a county jail. While this project was probably ruled out by the county's unfortunate decision to become an ICE-secured community,[974] our office then considered reaching out to our prior pro-immigrant partners to plan responses to this county move.

Despite these successes, however, the collaboration was far from perfect.

Bowyer and Sebastian Zavala, from the International Institute of the East Bay; Laura Hurtado from the Lawyers' Committee for Civil Rights; Robert Uy, from Asian Pacific Islander Legal Outreach; Nelly Reyes, from the Spanish Speaking Citizens' Foundation; the Asian Law Caucus; private attorneys Virginia Sung, Tammi Ho-Hodsdon, Erin Quinn, Christine Stouffer, Kevin Crabtree, and Scott Mossman; and numerous other generous individuals.

[973] News Release, S.F. City Att'y, Herrera Sues 'Notorious Predator' Over Unlicensed Immigration Law Services (Nov. 17, 2010), http://sfcityattorney.org/index.aspx?page=320.

[974] *See supra* note 208 and accompanying text.

First, we failed to follow through on our longer term plans, such as holding regular meetings. Without such continued collaboration, even the lawsuit could still be compromised. As previously discussed, cities have some incentive to quickly settle suits regardless of the outcome, to save resources after having received most of the PR benefits. I also wonder whether it might have been better to take an organizing approach instead of or in addition to our legal action. Unlike the city ID card project, nobody was on the other side—the side of the fraudulent consultants—to oppose any direct action. Thus, protests outside of the consultants' offices might have shut them down more immediately and completely than our civil suit, which has proceeded even slower than usual because of limited city resources in the current economy.

c. *Foreclosures, Evictions, and Housing Conditions*

Previously as an aid attorney and then working for the city, I also had the opportunity to participate in local collaborations to help Bay Area tenants. The first of these involved the Fair Lending Coalition, formed by the Oakland city attorney's office and an array of aid providers and advocacy organizations to tackle foreclosure-related issues.[975] Relevant here, multinational banks and their local real estate brokers were blatantly violating the city's eviction control ordinance, by trying to evict tenants for no reason other than the foreclosure against the prior property owner. With Coalition support, the city therefore filed suit to stop these illegal evictions. For reasons discussed above, this project was ripe for local action: the banks were politically safe targets for the city, as non-constituents currently unpopular with everyone who does not own a yacht; and the suits had the potential to pay for themselves or even generate city revenue.

The city took the lead on the lawsuits, given its special standing under local law[976] and available attorney resources, while direct service lawyers were overwhelmed simply trying to stem the tidal wave of immediate eviction actions. Yet aid attorneys still managed to make significant contributions to the city's suits. For instance, EBCLC and Centro Legal—the latter at the wise insistence of then legal services director Timothy Griffiths—figured out who the worst actors were and provided evidence of their violations. Of course, the hours we spent compiling lists of culpable banks and brokers, obtaining client consent forms, and copying illegal eviction notices were taken away from traditional aid. But I suspect that the city's suits ultimately stopped more evictions than we would have by instead devoting this time to direct services. Our participa-

[975] *See* J. Douglas Allen-Taylor, *Oakland City Attorney Announces Predatory Lending Fight*, BERKELEY DAILY PLANET, Oct. 19, 2007, http://berkeleydailyplanet.com/issue/2007-10-19/article/28255?headline=Oakland-City-Attorney-Announces-Predatory-Lending-Fight—-By-J.-Douglas-Allen-Taylor.

[976] *See* OAKLAND, CAL., MUN. CODE § 8.22.370(C) (2010).

tion also had indirect benefits, as the city appreciated and made efforts to repay the assistance.

Unfortunately, the collaboration had its downsides as well. Most notable, the Coalition meetings and nonprofit involvement tapered off early on. Perhaps as a result, the city eventually agreed to what advocacy organizations later criticized as a weak settlement of its biggest suit, against JPMorgan Chase.[977] To be fair, there is also a reasonable argument that the settlement was the best Oakland could do, given that the behemoth bank would have overwhelmed the overburdened city in litigation. But my point is not to resolve this debate, it is simply that through continued collaboration we could have at least discussed and perhaps reached some understanding as to settlement beforehand. Ongoing collaboration may also have enabled us to better respond to the new tricks the old banks then learned in their bad-dogged pursuit of tenant evictions.

In another collaborative project to help tenants, I had the unique opportunity to work on both the aid attorney and city sides. For more than ten years, an infamous individual landlord had rented multiple multi-unit properties to hundreds of mostly lower income, immigrant, and/or disabled tenants. In doing so, she had continuously violated every landlord-tenant law in the book. She maintained atrocious apartment conditions, caused constant gas and water shutoffs, initiated illegal evictions and rent increases, and retaliated against tenants who exercised their lawful rights. For instance, she threatened to call immigration officials to report Latino tenants who she discriminatorily assumed were undocumented. This cacophony of problems was also crying out for collaboration. Aid organizations, city and county agencies, utility providers, and private tenant attorneys had tried everything but the (leaky) kitchen sink to deal with the landlord over the past decade. These efforts included constant inspections, reinspections, re-reinspections, notices, compliance plans, fines, liens, and even lawsuits. But like the apartment fixtures, nothing was working.

Thankfully, we finally heard the call of the collaboration. We started slowly, as Patricia Salazar and I—both aid attorneys at Centro Legal at the time—informally communicated and coordinated with a councilmember's staff and the city attorney's office. Patty and I shared information and helped the tenants feel safe engaging with the government actors. The city, in turn, sent building and fire inspectors to address the most immediate and severe problems, and even filed a civil lawsuit to recover some of its costs. Like the landlord, however, these mild measures were not truly going to fix things. It was at this point that I joined the city attorney's office and had the chance to conspire with my city coworkers, aid organizations, and private tenant attorneys: "Then [w]e got an idea. An awful idea. The [team] got a wonderful, awful idea."[978]

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[977] Rents & Rants, The Official Blog of Tenants Together, City Attorney Lets Bank Off Easy in Oakland Eviction Case, http://rentsandrants.blogspot.com/2009/07/city-attorney-lets-bank-off-easy-in.html.

[978] DR. SEUSS, HOW THE GRINCH STOLE CHRISTMAS (1957).

First, we pooled our knowledge of the landlord's violations through the years and presented it to the county district attorney's office, hoping to convince it to join an amended civil suit. This was key because most California cities, Oakland included, can only bring an unparalleledly powerful "unfair business practices" cause of action for civil penalties with the DA's permission.[979] Fortunately, Deputy District Attorney Tony Douglas found the case compelling and boarded the collaborative flight, bringing his substantial professional experience and credibility to the effort as well. Thus, packing the right legal tools and overwhelming evidence, our case seemed airtight. However, instead of fully litigating the case, we negotiated a stipulated judgment with the landlord that we hoped would have a faster and more meaningful impact. Among other things, it required the landlord to immediately hire a reputable property management company to repair the apartments and handle all tenant matters, since she had proven herself unwilling or unable to do so. But not so naïve as to count on compliance, we included powerful penalties for violating the judgment—most significant, that the landlord would then be prohibited from collecting any rent from tenants until she had fully complied with the judgment and relevant laws.

Unfortunately but not unexpected, the landlord did what she had done so many times before: she wholly ignored her promises and the law. We therefore prepared to ask the court to enforce the stipulated judgment by ordering its expressly provided remedies. The city attorney's office took the lead in this motion, as I was the only attorney with time to accumulate and organize the extensive evidence of the landlord's past and present violations. As suggested above, I also had the advantage of internal access to relevant city staff and records—here, building and fire inspectors and their reports. Likewise, I suspect that other public agencies, including county vector control and the regional water district, as well as private entities such as the gas company, were particularly responsive to my requests for evidence and declarations because I represented a government actor. On their end, aid attorneys provided their own important declarations and evidence. They also connected us to tenants and private tenant attorneys who did the same, but might otherwise have been resistant to helping the city due to past adversarial relations.

As a result of this teamwork, we had some exciting successes. Barely a month after we filed our motion, the judge ordered all of the remedies requested, including the prohibition on collecting any rent. Although mere conjecture, I imagine the judge was quicker and more willing to order this relatively radical remedy because of the uncommonly broad consensus condemning the landlord; this likely eliminated any concern that the city was unfairly or unduly targeting her. Then, when the landlord ignored the court order too, we initiated contempt hearings, culminating in a mini-trial and second court order. Among other things, the order: (1) appointed a receiver to repair and sell the properties; (2)

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[979] *See supra* note 705.

canceled all back rent; and (3) prohibited the landlord from ever again owning multi-unit rental properties in Oakland. This time, it was clear that the judge found the wide array of witnesses against the landlord compelling.

Our office spokesperson also used his media contacts effectively throughout the action, bringing in reporters who provided thorough and respectful coverage.[980] Not only might this coverage convince other landlords to clean up their acts and properties, but it empowered the tenants by acknowledging the seriousness of their problems. As direct service providers know, such validation from a respected individual or institution—whether an attorney or the media—is sometimes as important to clients as practical solutions. Of course, not wanting to neglect the latter, we also organized a group information session for the tenants at Centro Legal's office in East Oakland. We thought that this would be the most convenient and least intimidating location, which might explain the packed house and inspiring meeting. Here, aid attorneys Patty from Centro and Sharon Djemal from EBCLC ran the show, using their legal expertise to answer tenants' questions. But the dozens of diverse tenants went beyond passively receiving our advice, as they quickly began validating, teaching, and learning from each other. As usual, the broader collaborative effort also established more positive relations among the participants.[981] However, also as usual, we could have done certain things better, such as meeting formally as a full group instead of irregularly with only a couple of partners at a time. This way there would have been an organized coalition to watch the watcher, ensuring that the city does not later drop the litigation ball. Likewise, the various partners would have been able to get better acquainted with one another and perhaps establish a long-term coalition to take future action against similar landlords without reinventing the collaboration wheel.

Finally, I was also involved in a handful of more limited collaborative efforts on behalf of tenants, worth quickly reviewing to illustrate the many possibilities for aid attorneys who want to start small. First, as a lawyer for Centro Legal, I briefly collaborated with the City of Hayward on a single eviction case. At issue, Deutsche Bank was trying to evict a tenant family after foreclosing on the prior property owner. It was arguable but not entirely clear that the city's eviction control ordinance prohibited the bank's action. I therefore cold-called a deputy city attorney who was warmly receptive and wisely advised me to prepare a letter supporting my reading of the ordinance both legally and as a

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[980] *See, e.g.*, *Oakland Judge Cracks Down On Landlord, Landlord Defends Herself*, KTVU, Mar. 30, 2011, http://ktvu.com/news/27366191/detail.html; *Notorious Oakland Landlord Barred from Owning Rental Property*, KTVU, July 12, 2011, http://ktvu.com/news/28517495/detail.html.

[981] In addition to individuals already mentioned in this Article, the collaboration included or received assistance from: Eduardo Blount and Tivonna Stern, from the Oakland city attorney's office; Anne Omura, from the Eviction Defense Center; Patricia Zamora, from Causa Justa-Just Cause; private attorneys Ken Greenstein and Roxanne Romell; and a number of representatives from city and county agencies and utility providers.

matter of policy. As discussed, completing such initial work makes it that much easier for the city to get involved. Indeed, the city attorney ultimately agreed to either appear in court or file an amicus brief in support of my tenant-friendly interpretation; although, unfortunately for my story, the case settled before this came to fruition. This small collaboration is also a good example of where under the radar action may have paid dividends, as the city attorney suggested that anything more public—such as a clarifying regulation—was politically infeasible.

Second, then working for the City of Oakland, I again collaborated with Centro and EBCLC attorneys to confront the owner of an East Oakland rental property.[982] This time, years of substandard housing conditions had led tenants to finally withhold rent from an absentee landlord. But a new owner then purchased the property and, without making any repairs, immediately filed eviction actions against ten or so tenants for the unpaid rent. The landlord was ignoring the aid attorneys who therefore contacted me, hoping he might be more responsive to the perceived if not actual clout of local government. The city agreed to threaten and, if necessary, file suit. This led to a compliance plan under which the owner dismissed all of the evictions. For their part, the aid attorneys advised us on relevant landlord-tenant law and acted as our go-between with the tenants. Thus, by taking only a small amount of time away from traditional legal aid, these attorneys almost certainly had a quantifiably greater impact on the tenants. Defending individual eviction actions would have been significantly more time consuming, with a far less certain outcome; as discussed, many judges are biased in favor of property owners.[983] This point, however, is no proof of collaboration's overall efficacy as a strategy, since we would also have to count any times the aid attorneys had sought city assistance to no avail. Further, perhaps illustrating the limits of more limited collaborations, the initial success here may be the only one. Last I heard, the landlord was continuing to harass the tenants and had yet to make the required repairs. Finally, truly exemplifying the possibility for meaningful baby steps into collaboration land, aid attorneys have helped the city simply by sharing substantive legal expertise and providing brief declarations in two tenant rights cases: one involving a housing project for low income senior citizens, and the other concerning the city's interpretation of its eviction control ordinance.[984]

3. Suggestions

In addition to these real world examples, I also want to share a few suggestions for future projects that might be conducive to local collaboration. Contin-

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[982] Here, in addition to the city attorney staff and nonprofit advocates already mentioned, Jaimee Arnone and Bren Darrow helped on behalf of EBCLC.

[983] *See supra* notes 622-623 and accompanying text.

[984] Lisa Greif, from Bay Area Legal Aid, and Jim Grow, from the National Housing Law Project, helped the city with the former.

uing first with tenant rights, perhaps the biggest hurdle to addressing substandard housing is inadequate city code enforcement—whether due to indifferent, incompetent, or even corrupt inspectors, or limited agency accessibility for tenants and their representatives.[985] This is tremendously unfortunate because many local code enforcement agencies, including Oakland's, have the legal power to take prompt and effective action against derelict owners.[986] For example, they can administratively impose substantial liens and then foreclose on dilapidated properties,[987] or trigger lawful tenant rent withholding simply by issuing qualifying notices to abate.[988] More effective code enforcement could therefore prevent landlords such as those in my examples from leaving atrocious housing conditions unabated for years.

Fortunately, there are steps we could take to get broken code agencies working again, and these steps should be amenable to legal aid-local government collaboration. As discussed, both sides are interested in decent housing, and improved enforcement can generate revenue for cash-strapped cities.[989] Accordingly, cities might agree to policies that make it easier for us and our client communities to schedule inspections and review the results. At least in Oakland, a promptly answered email address for such requests would be a significant improvement. Cities could also easily make inspection reports publicly available online. This would negate the need for constant individual requests and responses, and perhaps productively shame deserving landlords as well.[990] Information sharing could go in the other direction too, in ongoing local collaborations. For instance, as a result of nonprofit pressure, New York City now not only "publishes a list of . . . major problem owners," but also "uses information on problem buildings and landlords gathered by [nonprofits] to inform its own system of code compliance."[991] Similarly, cities might host regular coalition meetings to discuss tenant issues, from habitability violations to un-

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[985] *See* David Zahniser, *Third L.A. Building Inspector is Fired in Corruption Probe*, L.A. TIMES, June 23, 2011, http://latimes.com/news/local/la-me-building-inspector-corruption-20110623,0,2913667.story; Dan Abbott, *FBI Sting Nabs City Inspector*, ALAMEDA SUN, June 29, 2006, http://alamedasun.com/index.php?option=com_content&task=view&id=76&Itemid=10.

[986] Mark Ferenchik, *City Code Enforcers Don't Track Problem Landlords*, COLUMBUS DISPATCH, Jan. 8, 2012 http://dispatch.com/content/stories/local/2012/01/08/city-code-enforcers-dont-track-problem-landlords.html (comparing lax code enforcement policies in Columbus, Ohio, with more stringent and effective policies in Cincinnati).

[987] *See* OAKLAND, CAL., MUN. CODE § 15.08.130 (2010).

[988] *See* CAL. CIV. CODE § 1942.4 (2003).

[989] *See supra* Part II.A.2.b and note 145 and accompanying text.

[990] For two other innovative shaming ideas, see Tenants Together, Landlord Hall of Shame, http://tenantstogether.org/article.php?id=1537 (last visited June 9, 2012), and *Columbus Official Uses Out-Of-State Media to Call Out Absentee Landlords*, 10TV.COM, Jan. 17, 2012, http://10tv.com/content/stories/2012/01/17/columbus-absentee-landlords.html.

[991] Reynoso, *supra* note 578, at 180 (internal quotation marks omitted).

lawful evictions. We could thereby focus our efforts on the worst actors and eliminate the needless work of reestablishing ties each time we take collaborative action.

With aid attorney encouragement, aggressive and progressive local officials might also shed light on shady inspectors, perhaps by implementing surprise spot checks of their work or similar oversight. To continue collaborating and reduce expenses, cities might even agree to train and deputize nonprofit staff to perform these checks or inspections more broadly. Cities could also formalize ways for us and our client communities to report and challenge questionable inspections and inspectors, perhaps with code enforcement equivalents of citizen police review boards. As suggested, measures like these may be more politically feasible as well, since they do not entail any new rights or remedies, only improved enforcement of existing law. This makes it harder for powerful landlord lobbies to credibly argue against them, and in defense of owners already ignoring the law.

Turning to other remedies, cities and tenant attorneys might collaborate to more frequently yank problem landlords' most tangible asset: the steady stream of rent they unjustly receive. As things stand now, aid attorneys typically advise tenants not to withhold rent even where conditions so merit, because of the continued risk of eviction by landlord-biased legal systems.[992] Likewise, city agencies and private tenant attorneys rarely use rent "till taps" to enforce fines and judgments against debtor landlords, instead resorting to legally and logistically simpler, but less effective, property liens.[993] We therefore have good reason to work together to better enforce rent-based remedies and increase the pressure on problem landlords. For example, California cities could formally certify and inform tenants and nonprofits when landlords fail to timely respond to qualifying notices to abate and are therefore precluded by state law from collecting any rent. Tenants could then more safely withhold rent, with the official city determination to show the court in any eviction action. More adventurous cities might also be convinced to implement formal mechanisms to collect and escrow rents from such tenant withholding, to then use to repair the substandard conditions.

Taking it a step further, cities, aid attorneys, and other interested parties could collaborate to promote tenant-owned cooperatives as a remedy for problem properties, perhaps through court or administratively appointed receiverships. Doing so would be significantly redistributive and tenant empowering,

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[992] *See supra* notes 622-623 and accompanying text.

[993] "A 'till tap' is a process by which a sheriff, armed with a writ of execution and notice of levy, is stationed at a retail establishment to collect the judgment amount directly from the cashier (the till) as customers pay for services or merchandise." Lora Jo Foo, *The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation*, 103 YALE L.J. 2179, 2199 & n.116 (1994) (citing CAL. CIV. PROC. CODE § 700.070 (1982)). In the rent context, tenants' rent would thereby get paid directly to the local agency or tenant attorney, instead of to the landlord, to satisfy the fine or judgment.

but complex enough to require multi-party skills and resources.[994] Where politically and legally feasible, we might also require at least larger landlords to be licensed. Many cities already use such a system effectively for liquor stores. They thereby shift the power to shut down bad actors from reluctant courts to local agencies able to administratively revoke licenses. As part of a licensing scheme or on its own, a landlord insurance requirement is in our shared interests as well:[995] it would incentivize city and private attorney suits by increasing the odds of collection, and gradually preclude the worst landlords from operating at all, as repeat payouts render them uninsurable. Finally, most cities are also in need of countless important but less ambitious tweaks to local landlord-tenant laws. In Oakland, for instance, mold and mildew on the walls inexplicably violate hotel operating standards but not the building code for our own permanent residents.[996]

Stepping outside of housing, any actions that would promote economic decentralization are much needed and particularly fitting for local collaboration. As discussed, unduly powerful corporations are responsible for tremendous local harm.[997] Among other things, they take meaningful jobs, profits, and decision making away from local jurisdictions and residents, and instead ship them off to central headquarters. As one congressperson therefore rhetorically asked decades ago: "Will the country's interest be promoted in a better way by the million and half retail stores being owned by more than a million local citizens, or will the country be better off if these million and half retail stores are owned and controlled by a few childless brothers?"[998] This question resonates today, with added empirical and popular support stemming from the recent economic meltdown at the hands of too-big business. Indeed, if we fail to take concrete steps to vent rising popular anger against the culpable corporate actors, it is likely to trickle down (unlike tax breaks for the rich)[999] and unfairly fall upon the usual vulnerable scapegoats: immigrants and public benefit recipients.

Aid attorneys and nonprofits should therefore work with cities to promote

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[994] Indeed, there are strong ethical reasons to disapprove of the current economic arrangement: where countless lower income families would like to own homes, but must instead pay rents to affluent property owners acting as little more than absentee investors.

[995] *See* Ferenchik, *supra* note 986 (noting that Cincinatti requires property owners to maintain liability insurance).

[996] *Compare* OAKLAND, CAL., MUN. CODE ch. 8.03 (2010) (Hotel, Motel, and Rooming House Operating Standards), § 8.03.080(G) ("All surfaces, including carpeting and flooring, and fixtures shall be free from mold, mildew or bubbling conditions"), *with id.* ch. 15.08 (Oakland Building Maintenance Code) (making no express provision as to mold or mildew).

[997] *See supra* Part I.C.2.c.

[998] Schragger, *supra* note 5, at 1079 (quoting Wright Patman, *Absentee Ownership*, 5 VITAL SPEECHES OF THE DAY 69, 70 (1938)).

[999] *See* Paul Krugman, *Egos and Immorality*, N.Y. TIMES, May 24, 2012, http://nytimes.com/2012/05/25/opinion/krugman-egos-and-immorality.html (questioning the myth of trickle down economics more broadly).

alternatives to large corporations, such as local and worker-owned businesses.[1000] We can also continue collaborating on the big-box blockades discussed above and expand the fight, perhaps relinking localities to the anti-chain movement they once helped forge. Cities facing budget cuts might be particularly willing to revisit the creative array of municipal taxes previously proposed or actually imposed on chain stores.[1001] Braver jurisdictions could even search for legal openings into a new world of size limits, as Justice Brandeis suggested long ago:

> Businesses may become as harmful to the community by excessive size, as by . . . the commonly recognized restraints of trade. If the state should conclude that bigness . . . menaces the public welfare, it might prohibit the excessive size or extent of that business as it prohibits excessive size or weight in motor trucks or excessive height in the buildings of a city.[1002]

Finally, with our encouragement and assistance, cities might expand the movement to combat excess privatization, by starting government or nonprofit-owned businesses.[1003] Small and local, these public enterprises could selectively cut into economic areas where big-business dominance is simply the status quo—*i.e.* not the result of economies of scale, special expertise, or entrepreneurialism. For instance, so far as I can tell, multinational corporations bring no unique added value to basic banking (other than the ability to procure taxpayer bailouts). Thus, localities and nonprofits might collaborate to create community bank alternatives, from checking accounts to credit cards.[1004] If done right, I am hopeful that many of us would prefer that the profits from our interest and fees recycle into the public good, rather than fly away on the wings of CEOs' private jets.

CONCLUSION

In conclusion, I hope to have sparked a bit of excitement, but not undue

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[1000] *See* Bernard Marszalek, *Worker Cooperatives—A Viable Economic Alternative?*, BEYONDCHRON, Apr. 14, 2010, http://beyondchron.org/news/index.php?itemid=8015; Marcela Valente, *Worker-Run Companies Quietly Surviving*, INTER PRESS SERV., Nov. 8, 2010, http://ipsnews.net/news.asp?idnews=53488.

[1001] *See* Schragger, *supra* note 5, at 1056, 1076 (noting that some cities "taxed the chains according to their total number of stores nationally," while others "adopted anti-department store laws that forbade the mixing of goods on the same premises").

[1002] Schragger, *supra* note 5, at 1052 (quoting *Louis K. Liggett Co. v. Lee*, 288 U.S. 517, 574 (1933) (Brandeis, J., dissenting)).

[1003] *See* Schragger, *supra* note 5, at 1085 n.430 (noting proposals by Professors Barron and Frug "that cities engage in commercial enterprises, own their own corporations, and reform the tax system to permit entrepreneurial government").

[1004] *Cf.* Peter Seidman, *State Bank Drawing Interest*, PAC. SUN NEWS, June 7, 2012, http://pacificsun.com/news/show_story.php?id=4427 (discussing the financial success of North Dakota's publicly owned bank and recent interest in other states).

optimism, in the potential for legal aid attorneys to collaborate with local government for progressive change. Like other legal models, this strategy has significant positives and negatives, which we must carefully consider in deciding the appropriate approach under specific circumstances. At the same time, I want to reiterate my belief that if this or any other proposal for direct service providers feels more overwhelming than empowering, it should simply be ignored. It is hard enough to defend the underrepresented, often feeling like you bring only wet spaghetti noodles to gun fights against the powers that be, without also feeling that this is not enough—that you must be skilled in rigatoni and ravioli warfare as well. Rather, with so much need in so many areas and so few of us, it *is* enough to genuinely and thoughtfully engage in the daily, lifelong, heartbreaking, but beautiful struggle for our client communities, whatever strategies we employ.

But for those of us who do want to try something new, it is because we are so outgunned that I am particularly enamored with lawyering strategies that bring us together—so we can intertwine our individual noodles into a powerful pasta whip, more capable of stinging the powers that be. Of course, working with local government is only one of many exciting options for such collaboration. Some aid attorneys instead team up with health care and other non-legal service providers, to offer one-stop shops for low income communities.[1005] For example, Harvard's criminal defense clinic has social workers on staff, who help clients make longer term changes, while we try to keep them out of jail.[1006] Other legal aid lawyers similarly partner with community hospitals or schools to offer site-based services.[1007] For instance, during my fellowship at Centro Legal, I spent part of each week at the East Oakland junior high school where I used to teach (in my pre-lawyer life). The school's location and staff helped me reach families who lacked the time, information, or trust to turn directly to aid organizations for assistance. I was also able to teach an introductory law class for the students, taking a refreshing but challenging break from traditional aid.[1008]

Finally, there is no need to despair if such professional opportunities do not

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[1005] *See* Trubek & Farnham, *supra* note 940, at 229, 239 (discussing multidisciplinary "social justice collaboratives" where lawyers work with doctors, psychologists, and other nonlegal professionals); Voyvodic & Medcalf, *supra* note 739, at 101 (discussing "a community legal clinic staffed by lawyers and social workers").

[1006] *See History of CJI*, CRIMINAL JUSTICE INSTITUTE, http://law.harvard.edu/academics/clinical/cji/about.htm (last visited June 9, 2012) (discussing the program, directed by Professor Charles J. Ogletree).

[1007] *See* Schulman et al., *supra* note 634, at 758-70 (discussing two such programs).

[1008] Current Skadden fellow Michelle Kuo has continued the classes at the junior high school. Also, two of my incredible students are now part of Centro Legal's innovative "Youth Law Academy." Started by Mara Chavez, the program provides extracurricular opportunities to Oakland high school students. *See Youth Law Academy*, CENTRO LEGAL DE LA RAZA, http://centrolegal.org/youth-law-academy (last visited June 9, 2012).

present themselves. It may be changes that we make outside the workplace that most benefit our client communities and ourselves. As one author explains:

> The accountability of our decisions is seen in the concrete choices that we make—where to live, where to raise our children, which schools to attend, which doctors to use, where to work, what sports events to attend, where to eat out. Each of these choices is an allocation of our own resources. And whether or not we are paying attention, we are affecting the lives of others by our choices of resource allocation.[1009]

Thus, while certain lawyering models might promote more meaningful client interaction from 9 to 5, there is something more real about keeping our personal lives connected to the communities we represent. As privileged professionals, we can reject the unjust advantages that would separate us—for instance, by sharing neighborhoods and schools with our client communities, instead of escaping to wealthier enclaves. We can also put our money where our mouths are, by shopping locally at social enterprises and second-hand stores; or better yet, by not shopping at all for unnecessary luxuries and instead directly redistributing the money to those in need. Indeed, at the end of the day, how can we hope to change the system if we will not change our own harmful actions? If we would buy a new car for ourselves, while an unemployed parent lacks money for rent? If we would set aside private-college funds for our own kids, while equally deserving children drop out of high school to work to support their families? If we would spend millions on medical treatment to prolong our own lives—or worse, to cosmetically improve our appearances—while millions die in developing nations from illnesses that we could prevent or treat for fractions of the cost? Perhaps then, if we are truly committed to change, we should focus first on these straightforward personal steps to address local, national, and global inequalities, before we worry too much about the tricky professional issues discussed in academic articles.

[1009] Tokarz et al., *supra* note 602, at 398. *See generally* Ezra Rosser, *Obligations of Privilege*, 32 N.Y.U. REV. L. & SOC. CHANGE 1 (2007) (arguing persuasively for an increased social and legal focus on the obligations of the rich).