2007

Lawyers and Community Economic Development

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Introduction: Lawyers and Community Economic Development

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The Articles in this symposium and the experiences they report show that, for lawyers, Community Economic Development (CED) has become a more expansive and more complex subject than it was when we discovered it two decades or so ago.

The Articles and the experiences are particularly revealing about what I would guess have been the two central preoccupations of lawyers in the field. The first, of course, is what we mean by community, and more specifically, how a community can become—or be regarded as—a legal and political actor. The second concerns lawyer accountability. Progressive lawyers have long been preoccupied with accountability to their disadvantaged clients—too much, I sometimes think—but the concern seems particularly pressing where lawyers represent groups. CED is the newest and in some respects most mysterious form of group representation.

I
COMMUNITY

These Articles suggest that the concept of community is becoming more capacious and flexible. We have not solved the problem of defining community, but we are becoming more comfortable with its ambiguity. I take three points about the evolving conception of community from these Articles.

First, community need not, as some of us once assumed, be defined exclusively or even primarily in terms of residential proximity. Of course, residential proximity remains a prominent link, as four of these Articles show. The residents of West Harlem, West Oakland, Umoja Village, and Inglewood have ties to each other and practical interests that arise in

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substantial part from residence.[1] But the national labor movement also makes an appearance in all of these stories, and it is central to Sameer Ashar's account of the Restaurant Opportunities Center in New York City.[2]

Here we find work as an alternative principle of affiliation—workers forge community ties on the basis of common employment experiences, often in the same industry.

On the other hand, while residence is not the sole focus of these stories, one might say that localness is. As Scott Cummings points out, labor organizing in the private sector in the last decade has tended to focus on industries insulated from global competition, among them service markets such as hotels and restaurants. Like housing and land development, these industries are intensely local in both their economic vision and their political practice.

Second, the fact that communities are made up of constituencies with actual or potential conflicts of interest is no longer a dark secret, but a fearlessly acknowledged reality.[3] The tendency to talk about low-income communities as if they were homogeneous and single-minded seems to be a thing of the past. The advocates in these Articles recognize that they can rarely commit themselves to communities without taking sides in intra-community conflicts.

In Inglewood, California some residents expected job or shopping benefits from Wal-Mart; others dreaded its exploitative labor policies and its negative developmental externalities. In West Oakland, California, Village West, Florida, and Central Brooklyn, New York, homeowners looked forward to property appreciation from market-rate development and saw little benefit from affordable housing while tenants feared displacement and upscaling of commercial services. In these cases, our participants squarely committed themselves to the more disadvantaged constituency in the community.

That the University of California, Berkeley's East Bay Community Law Center clinic changed the name of its program from "Community Economic Development" to "Community Economic Justice" may be some

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1. Sheila R. Foster and Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CALIF. L. REV. 1999 (2007) (West Harlem); Angela Harris, Margaretta Lin, & Jeff Selbin, *From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neo-Liberal Age*, 95 CALIF. L. REV. 2073 (2007) (West Oakland); Anthony V. Alfieri, *Faith in Community: Representing "Colored" Towns*, 95 CALIF. L. REV. 1829 (2007) (Umoja Village); Scott L. Cummings, *Law in the Labor Movement's Challenge to Wal-Mart: A Case Study of the Inglewood Site Fight*, 95 CALIF. L. REV. 1927 (2007) (Ingelwood).

2. Sameer Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CALIF. L. REV. 1879 (2007).

3. See William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Regan, Post-Modern Era*, 48 U. OF MIAMI L. REV. 1099 (1994).

kind of a milestone. One interpretation of the change is that it showed a shift from a developmental perspective to a distributive one. But I do not think that would be correct. Even as the Berkeley lawyers focused on the interests of the most vulnerable members of the community, there was a vision of development in their project. In purely distributive terms, their clients at Wood Street might have done better by trading their places in the neighborhood for benefits somewhere else—portable section 8 vouchers or priority in affordable housing in some other neighborhood. But the thrust of the advocacy effort seems to have reflected a vision of development (albeit a reactive one)—a vision that saw mixed income use and preservation of neighborhood ties as an important value. For me, the name change acknowledges that there are likely to be multiple visions of development in any community and that the project's commitments are not necessarily to every sector of the community but to its subordinated ones.

Third, CED involves an increasingly complex interrelationship of local and nonlocal ties. Recall that a major critique of CED has been that political development at the local level has relatively low returns. The "inside game" of community empowerment brings lower rewards than the "outside game" of broad-based politics. Or so it was said by people like David Rusk, and in some moods, Scott Cummings.[4] According to this critique the community perspective ignores what Mark Granovetter calls "the strength of weak ties."[5] CED cultivates the strong ties of local proximity, but arguably, weak ties—shallower but more numerous connections to broader regional and national institutions—are critical for political power.

My response to this critique has been that the inside game and the outside game are not mutually exclusive; one can strengthen strong local ties and forge links to broader-based institutions at the same time. I see the descriptions of complex local- and super-local coalitions in these Articles as a vindication of that answer. I also see that my answer was somewhat simplistic in the light of the possibilities revealed in these accounts.

The early CED reacted to the urban policies of the 60s and 70s, which neglected residential neighborhoods for the benefit of downtowns or squeezed out their residents to promote development for incoming higher-income groups. There was a tendency to view the community as an enclave against the outside world, trying to protect itself from expropriation.[6] These Articles, however, show disadvantaged communities reaching out to

4. DAVID RUSK, INSIDE GAME/OUTSIDE GAME: WINNING STRATEGIES FOR SAVING URBAN AMERICA (1999); Scott Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 400 (2002).

5. Marc Granovetter, *The Strength of Weak Ties*, 78 AM. J. SOCIOLOGY 1360 (1973).

6. *See, e.g.*, WILLIAM H. SIMON, THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY 69-112 (2002).

ally themselves with broader-based groups. So in Inglewood, we find two local groups, each purporting to speak for the community and each with a genuine vision of community development, one allied with outside capital and one allied with outside labor. Indeed, the role of labor in four of our stories is especially striking. Community in these stories is not just the site of broader-based struggles, but neither is it a self-contained enclave.

In this light, Sameer Ashar's suggestion that there is a global dimension to CED is especially interesting and provocative. I still think that localness remains a central defining characteristic of CED practice, but I think Ashar has a point. He emphasizes the important ties that the immigrant members of the Restaurant Opportunities Center have to other countries where relevant social experiments are taking place. He also points out that the ROC is situated in various global networks of activists that exchange information and support.

However paradoxical, it may be true that localness and globalness are both distinctive features of CED. Scott Cummings notes one way in which globalization re-orients attention to the local: labor's tendency to focus on non-tradeables, especially local service businesses. We can see that in other industries such as high technology. Globalization leads simultaneously to the cross-national diffusion of production (for example, outsourcing to India) and to the cultivation of intensive local face-to-face collaborative associations (for example, start-ups in Silicon Valley).

The connection between globalization and localization might be this: Globalization means that weak ties can be formed with minimal regard for distance. I can collaborate with someone in India as easily as with someone in Florida. But distance remains a key factor with strong ties. The kind of ties that depend on everyday face-to-face relations do depend on proximity. So potential ties at the national or regional level have no a priori advantage over potential ties at the global level. But local ties, across a range of activity where everyday face-to-face relations are the most productive or satisfying, do. It is hard for me to imagine what a fully elaborated configuration of local-global associations around CED issues would look like, but this is a theme worth thinking about.

II
ACCOUNTABILITY

Accountability has always been a central theme in CED discussions among lawyers and remains prominent in today's symposium. The problem, of course, is inherent in collective representation. Lawyers are supposed to be loyal to the interests of the client. Their presumption has always been that the client is the best judge of her interests. There are situations where this presumption does not work. Actually, I would argue,

there are quite a few situations where it does not work, and not just with minors and mentally disabled clients. But generally, with individual clients, we at least know to whom we should be listening, and the inquiry about interests is localized to a single person.

Collective representation is more difficult. Multiple individuals will rarely have entirely convergent interests. The inquiry is simplified if they have organized themselves in a way that gives them a unitary voice. However, even with a single, well-structured organizational client, issues of intra-client conflict can arise, as we see in the business corporation context routinely.[7] In the CED context, organizational client accountability is often more complex. Sometimes the people we aspire to serve are not organized, or are imperfectly organized. Sometimes we serve multiple organizations or coalitions of organizations. These organizations rarely embrace or coherently coordinate all the elements of the "community" to which we feel committed.

So a distinctive feature of accountability in collective representation, especially of disadvantaged people, is that the lawyer who wants to be accountable has to create, or help create, a client capable of holding her accountable. The more the organizational client is inclusive, democratic, and effective at reconciling difference and coordinating action, the more accountable the lawyer will be. Yet the extent to which the organization has these qualities will be partly a function of the lawyer's own efforts.

This kind of accountability, the kind discussed in the Articles, might be called Principal-Agent Accountability. The client is the principal; the lawyer is the agent. The lawyer's job is to create or strengthen a Principal capable of holding her accountable. Principal-Agent Accountability is important, but it is not sufficient. The organizations we represent rarely succeed in securing active participation by more than a small fraction of the community. This is not to discredit to them; it just shows that participation is a scarce good for most people. We can not do everything for ourselves. We have to rely on other people to look out for our interests and figure out what they are.

There is another kind of accountability that does not require an effectively organized client. This second kind of accountability has yet to figure very prominently in the CED literature. Consider it an alternative form of accountability to Principal-Agent, one that fits the diffuse nature of the publics that CED practitioners aspire to serve. We might call it Diffuse Accountability. The main elements of this alternative form are transparent, disciplined assessment of goals and measurement of performance. CED groups and their lawyers should publicly commit themselves to goals that

7. See William H. Simon, *Whom (or What) Does the Organization's Lawyer Represent?: A Taxonomy of Intraclient Conflict*, 91 CALIF. L. REV. 57 (2003).

are sufficiently specific to permit assessment as to how much progress they have made. Of course, the goals may be reconsidered and re-specified in the course of assessment. The point is not to fix the commitments in stone, but to induce disciplined consideration and assessment.[8]

Sheila Foster's and Brian Glick's discussion of the response to Columbia's expansion in West Harlem is an excellent example of how such a process ought to start out—with a discussion of client goals and strategic parameters and an indication of tentative strategy. An Article like this, and the planning that it both records and helps clarify, contributes to accountability. By making it clear what West Harlem Environmental Action (WE ACT) was trying to accomplish, it makes it easier for the public to both to contest the organization's goals, and to assess how successful WE ACT is in achieving them. Although it is hard to imagine a better account of an initial planning process than what they have provided, the accountability I envision would require an even greater specification of their goals along with benchmarks for success. Some of these measures might be quantitative. For example, preventing secondary displacement, one of their primary goals, should be susceptible to measurement. Others might combine quantitative and qualitative dimensions, for example, neighborhood satisfaction surveys.

The next stage in this accountability process involves assessment of progress in terms of the initially stipulated goals. This is in part a process of reconsideration and revision of goals. The initially articulated goals may not seem right in the light of subsequent experience. Assessment provides an opportunity to measure the efficacy of strategies and efforts. This latter assessment has a comparative dimension. We can look to the achievements of people with comparable goals and compare our progress with theirs. If they are doing better, it could mean that they face better circumstances or fewer obstacles. It could mean that we mis-specified our goals, and we are not really trying to do the same thing. Or it could mean that they are performing better, in which case we can may be able to improve our strategies by seeing how they did it.

In order to engage in this process, we need both rich descriptions of practice and concrete indicators of performance. These indicators might be rough and informal. They might also be formal. There is no reason why one could not rate, for example, community benefits agreements with the same precision that Standard & Poor's rates bonds or Michelin rates restaurants.

The last piece of the process I have in mind is peer review. Outsiders with expertise in the same field could intensively scrutinize our practice

8. *See id.* at 167-93; on the multiple meanings of accountability, *see* R. W. Grant & Robert O. Keohane, *Accountability and Abuses of Power in World Politics*, 92 AM. POL. SCI. REV. 29 (2005).

and give us structured feedback. The process would be non-adversarial but not too intimate, either. It should be non-punitive and diagnostic, but should not become a mutual admiration ritual.

Of course, we all recognize that our plans will never fully anticipate the future; our metrics will crudely oversimplify the world; comparisons will never control for all the relevant differences; and peer judgments may be tainted by envy, bias, and ignorance. But these problems need not vitiate the worth of the enterprise. The most important value of the enterprise is not to generate some objective ranking of practices, but to induce the kind of reflection and learning that comes when we challenge ourselves to be as explicit as possible about what we are doing and to compare our efforts to those of our peers.

We might borrow the term "mindfulness" to describe an important dimension of this process. This mindfulness is closer to the orientation prescribed by Pragmatism than the one prescribed by Buddhism. It is a more collective and socially activist attitude than the Buddhist notion that Harris, Lin, and Selbin invoke,[9] but an equally valuable one. It entails a disposition to subject our presuppositions to continuous reassessment and reformulation in the light of experience.

This self-assessment, comparative benchmarking, and peer review is attainable; it is increasingly common the business world and in government.[10] It is also making headway in the professions, especially medicine, education, and social work. The legal profession remains an outlier in the primitiveness of its mechanisms for assessing the quality of its practice.

A major failing of the clinical movement is that it has not made much contribution here. Clinical scholarship has made major contributions to pedagogy and to our understanding of the psychology of professional-client relations, but it has not done much to improve our capacity to assess the efficacy of practice in terms of tangible goals. In my experience, peer assessments of clinical programs rarely touch on practice in any detailed or systematic manner. And clinical scholarship similarly fails to do so. Except for Foster's and Glick's, none of the papers here describe the practices they report in enough detail to permit much discussion of how effective the practices were. I do not intend this as a criticism of the Articles themselves. They do other things that are important. But I do intend it as a criticism of the corpus of clinical scholarship that it contains so little analysis of this kind.

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9. *See* Harris et al., *supra* note 1.

10. *See* William H. Simon, *Toyota Jurisprudence: Legal Theory and Rolling Rule Regimes*, *in* LAW AND NEW GOVERNANCE IN THE EU AND THE US (Grainne de Burca and Joanne Scott eds. 2006).

My thinking along these lines has been influenced by my Columbia colleague Charles Sabel but I first encountered this notion of accountability from Gary Bellow when I started working with him in 1979. The idea of disciplined, quantified, self-assessment and peer review was a major preoccupation of his in the latter part of his career. Most of the authors here cite Bellow for his visionary thinking about combining legal advocacy with political organizing.[11] But evaluation and accountability were major concerns of his as well. It is the aspect of his vision of legal services and clinical education that has had the least impact on practice so far.

The reports in this symposium indicate a great deal of progress on Principal-Agent accountability. CED practitioners have looked for organizations capable of holding them accountable and have worked to strengthen the organizations' capacity to do that. But we all know there are limits to this kind of accountability, and in some practices, we may be approaching the limits.

By contrast, the more diffuse mechanisms of accountability I discuss here are relatively undeveloped. An organization that makes transparent its goals and its progress enhances its accountability. If the materials are made public—posted on the web, for example—the accountability is not to a particular principal. It is to the world at large. That world, however, contains myriad sub-constituencies. Some of them have an obvious stake in the activities of any given program. Community members and funders, for example, can take advantage of this kind of information. Peers in the national and global networks to which Sameer Ashar refers can benefit. And these constituencies will react to the information in ways that may generate both "hard" and "soft" feedback. No doubt rivals and opponents will also be interested in our efforts and will sometimes make opportunistic use of them. But any meaningful form of accountability has risks.

It may be surprising that we have seen more success on Principal-Agent accountability than on diffuse accountability. Diffuse accountability would seem to be the easier project; it does not require political transformation or ground-up institution building. The Articles show that we have made enormous progress on the really hard task; we should not forget about the relatively easy one.

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11. Alfieri, *supra* note 1, at 1864 n.159; Ashar, *supra* note 2, at 1919 n.149; Foster & Glick, *supra* note 1, at 2057 n.207; Harris et al., *supra* note 1, at 2097 n.113.