The Antinomies of Poverty Law and a Theory of Dialogic Empowerment

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THE ANTINOMIES OF POVERTY LAW AND A THEORY OF DIALOGIC EMPOWERMENT

ANTHONY V. ALFIERI*

The Tenement Act of 1869
was merciful, well-meant, and fine
in its enforcement
tore 47,000 windows out of hellhole
shelter of no light.

It must be hard to make a window.†

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† J. Jordan, 47,000 WINDOWS, in THINGS THAT I DO IN THE DARK: SELECTED POEMS 88, 91 (1967) (emphasis in original).
INTRODUCTION

Poverty in America is a tragedy of longstanding. Magnified by the cruel spread of hunger and homelessness, it is a tragedy gaining resonance in the daily lives of an increasing number of Americans. Recognizing this growing calamity, many poverty lawyers have redoubled their efforts. Others, given pause for reflection, have attempted to amplify traditionally unheard client


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voices. Still others have fallen silent, succumbing to resignation and abandoning the enterprise altogether.

I submit that the best of these responses are inadequate. While reflection, diversity, and heightened commitment are essential to combat poverty, without more these efforts are destined to fail. To prevail, even to progress, in the battle against poverty, lawyers must rethink their efforts. By rethinking, I do not mean simply a methodological inquiry concerning litigation tactics — individual versus class relief — and strategy — direct service versus law reform. That inquiry, though legitimate, patently illustrates the crisis in the definition of the subject of poverty law itself.

By definition, the subject of poverty law is the poor. It is the poor who experience the objective force of poverty and the deprivation of powerlessness. Yet, the poor are not empowered by the dominant traditions of poverty law, nor are they liberated from the desperate conditions of poverty. This historical quandary warrants a recasting of our conceptual and methodological understanding of poverty law. Recasting is an ideological project.

The crisis in poverty law therefore is at bottom ideological. It is a crisis of the legal imagination uprooted from history, an imagination blind to culture and society. Fundamentally, the crisis in poverty law lies in its politics. Bereft of social theory, it is a politics of historical entropy empowering neither


4. See National Center on Women and Family Law, Challenges Facing Legal Services in the 1990s: Perspectives of Women and Family Law Advocates, 22 CLEARINGHOUSE REV. 457 (1988); National Legal Aid and Defender Association and Project Advisory Group, Future Challenges: A Planning Document for Legal Services, 22 CLEARINGHOUSE REV. 628 (1988); Dooley & Houseman, Legal Services in the 80's and Challenges Facing the Poor, 15 CLEARINGHOUSE REV. 704 (1982); A Discussion of Key Questions Facing Legal Services Programs, 15 CLEARINGHOUSE REV. 2 (Special Issue, July 1981); Krakow, Bleeding the Poor Again, 14 CLEARINGHOUSE REV. 1031 (1981).


individual transcendence nor collective solidarity. 8

By rethinking, therefore, I mean an ideological inquiry regarding the

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The possibility of semantic unity or wholeness, experienced as truth, is central to the arts. In his poem To Elsie, William Carlos Williams writes:

The pure products of America
  go crazy—
mountain folk from Kentucky
  or the ribbed north end of
Jersey
  with its isolate lakes and
valleys, its deaf-mutes, thieves
old names
and promiscuity . . .

   * * *

will throw up a girl so desolate
  so hemmed round
with disease and murder
that she'll be rescued by an
agent—
reared by the state and
sent out at fifteen to work in
some hard-pressed
house in the suburbs—
some doctor's family, some Elsie—
voluptuous water
expressing with broken
brain the truth about us—

   * * *

and we degraded prisoners
destined
to hunger until we eat filth
while the imagination strains
after deer
  going by fields of goldenrod in
  the stifling heat of September
Somehow
  it seems to destroy us
It is only in isolate flecks that
  something
is given off
No one
to witness
  and adjust, no one to drive the car

political object of poverty law and the strategic methods of achieving that goal. Ideological inquiry seeks to reveal the particular assumptions, expectations, and values concealed in dominant habits of perception and interpretation. Once these value-laden underpinnings are exposed, ideological inquiry seeks to ascertain the relation between dominant habits of mind and the maintenance and reproduction of dominant political and socio-economic power. At each stage of the inquiry, focus is placed on the nature of particular beliefs—covert and overt, conscious and unconscious—and their relation to particular formations of power.

The first purpose of this Article is to pursue an ideological inquiry with respect to the habits of perception and interpretation dominant in the practice of poverty law. As I hope to show, these habits reify and reproduce myths of legal efficacy, and inherent indigent isolation and passivity which sustain and reinforce relations of power oppressive to the poor. To explode those myths, I shall critique the dominant traditions of poverty law: direct service and law

In contrast, Wallace Stevens appears more skeptical of unity outside the world of the imagined self. In the Final Soliloquy of the Interior Paramour, Stevens writes:

Light the first light of evening, as in a room
In which we rest and, for small reason, think
The world imagined is the ultimate good.
This is, therefore, the intensest rendezvous.
It is in that thought that we collect ourselves,
Out of all the indifferences, into one thing:
Within a single thing, a single shawl
Wrapped tightly round us, since we are poor, a warmth,
A light, a power, a miraculous influence.
Here, now, we forget each other and ourselves.
We feel the obscenity of an order, a whole,
A knowledge, that which arranged the rendezvous,
Within its vital boundary, in the mind.
We say God and the imagination are one . . .
How high that highest candle lights the dark.
Out of this same light, out of the central mind,
We make a dwelling in the evening air,
In which being there together is enough.


9. See T. Eagleton, supra note 6, at 15, 197-212. Eagleton defines ideological habits to include "modes of feeling, valuing, perceiving and believing." Id. at 15.

10. By direct service litigation, I mean litigation focused solely on individual client representation in either administrative or judicial proceedings. Of necessity, this focus concentrates on the particular problem of the individual client and dictates an approach tailored to specific resolution. See Failinger & May, Litigating Against Poverty: Legal Services and Group Representation, 45 Ohio St. L.J. 1, 6-18 (1984) (identifying direct service litigation as the case selection strategy favored by proponents of the equal access model). This individualized problem-solving approach was articulated by Thomas Ehrlich, a former president of the National Legal Services Corporation (NLSC), in testimony before a subcommittee of the House Committee on Appropriations in 1978. Commenting on the NLSC's "three-year plan to provide minimum access to civil legal assistance for all poor people in the United States," Ehrlich stated:

The Corporation was established to ensure that those who are otherwise unable to
reform litigation. My thesis is that poverty cannot — indeed should not — be remedied by these traditions. Remedial litigation should not be mounted, even where altruistic relief is possible, without the activation of class consciousness among the poor, nor without the political organization and mobilization of the poor.

Implicit in this thesis is the view that the poor are historical actors waging a day-to-day class struggle to assert control over their lives and communi-
ties. The battle against poverty and oppressive welfare systems is their common historical struggle.\textsuperscript{14} By relying on direct service and law reform litigation, poverty lawyers negate the poor as an historical class engaged in political struggle, thereby decontextualizing,\textsuperscript{15} atomizing, and depoliticizing that struggle. Moreover, by reifying the dissociated\textsuperscript{16} category of ingrained indigent isolation and passivity, poverty lawyers reproduce isolation and passivity in the attorney/client relationship, thus inhibiting the potential for political struggle. Because these contradictions plague the practice of poverty law, the best hope for combating poverty lies not with lawyers, but with the poor themselves. It follows that empowering the poor should be the political object of poverty law.

Having established the goal of poverty law, I shall turn to my second purpose and endeavor to demonstrate that poverty can be soundly attacked only by applying an integrated theory of empowerment combining the elements of critical consciousness and discourse, the strategic methods of direct service and law reform litigation, and the collective force of clients acting together in local, state, and national political alliances.\textsuperscript{17} To begin the hard practice of theory, I counsel poverty lawyers to apply critical consciousness, engage in dialogue, and redirect their efforts towards client empowerment, i.e., the activation of liberating class consciousness and the organization and mobilization of grass roots client alliances in local, state, and national communities.\textsuperscript{18} My hope is that client and community empowerment may serve as a strategic weapon in the continuing war against poverty.


\textsuperscript{15} For a demonstration of contextual analysis, see MacKinnon, Sexuality, Pornography, and Method: "Pleasure under Patriarchy," 99 Ethics 314 (1989); Bender, A Lawyer's Primer on Feminist Theory and Tort, 38 J. Legal Educ. 11 (1988).


\textsuperscript{17} For an historical overview of such alliances, see Poor People's Movements, supra note 1, at 264-361.

I.
CRITICAL CONSCIOUSNESS

Empowerment demands critical consciousness. In his pioneering work on literacy in Third World countries, the Brazilian educator Paulo Freire envisions critical consciousness as a learning process encompassing perception of economic, political, and social contradictions, and engagement in remedial action. Consistent with this process, poverty lawyers must learn to perceive the contradictions in their traditional ways of seeing the poor and in their standard methods of practicing law. Learning to perceive contradictions enables poverty lawyers to transform their imagination and acquire a new vision of the poor and legal practice.

The threshold of critical perception is seeing the poor not as a mythologized amalgam of isolate, passive individuals, but as an historical class engaged in a daily active process of making and remaking human relationships. The British historian E.P. Thompson posits the notion of class as an “historical phenomenon, unifying a number of disparate and seemingly unconnected events, both in the raw material of experience and in consciousness.” For Thompson, the notion of class entails an “historical relationship” embodied in individuals acting in the context of daily life. In this historical sense, “class happens” when the common experiences of individuals forge an articulated identity of common interests counterposed against different and usually opposing interests.
Like Thompson's English working class, the American poor are an historical phenomenon of disparate and seemingly unconnected elements unified by the experience and consciousness of besieged survival in an advanced industrial society. But, for the American poor, the raw material of experience and consciousness is no longer shaped primarily by historical relation to the forces of industry, but by relation to the welfare state and by poverty itself embodied in individuals in common communities. This historical relationship is the starting point of critical consciousness.\(^2\)

Consciousness of the historical relationship between poverty, the state, and society as a whole cannot be bestowed willy-nilly on the poor.\(^2\) The poor must feel and articulate the identity of their own interests. Class consciousness is the way experiences are translated into cultural terms and thereby "embodied in traditions, value-systems, ideas, and institutional forms."\(^3\) The operative logic in Thompson's notion of class consciousness is discernible in the responses of similar groups undergoing similar experiences. This logic is reflected "in different times and places, but never in just the same way."\(^3\)

The poor in America share the common experiences of state sanctioned poverty. In the main, these experiences are characterized by governmental regulation and surveillance.\(^3\) The concept of surveillance put forward by the French social theorist Michel Foucault is strikingly applicable to welfare systems.\(^3\) As Foucault explains:

> [T]he system of surveillance . . . involves very little expense. There is no need for arms, physical violence, material constraints. Just a gaze. An inspecting gaze, a gaze which each individual under its weight will end by interiorising to the point that he is his own overseer, each individual thus exercising this surveillance over, and against, himself. A superb formula: power exercised continuously and for what turns out to be a minimal cost.\(^3\)

The exercise of power in the forms of coercion and domination applied

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27. In this sense, the class relationship has assumed the "anonymous, unpolitical form" of welfare rather than wage dependency. See J. Habermas, supra note 6, at 26. See also L. Friedman, Legal Culture and the Welfare State, in Dilemmas of Law in the Welfare State 13-27 (G. Teubner ed. 1986) (on relation between legal culture and the state).
29. Id. at 50-82. See also M. Foucault, Power/Knowledge: Selected Interviews & Other Writings 1972-1977 1-36, 62 (1980) (on popular justice and anti-judicial struggle).
30. E.P. Thompson, supra note 23, at 10. See also G. Lukacs, supra note 28, at 46-82.
31. E.P. Thompson, supra note 23, at 10 (emphasis in original).
32. Regulating the Poor, supra note 1, at 3-42, 183-99, 222-348 (disclosing forms of social regulation).
33. M. Foucault, supra note 29, at 155, 166-82.
35. M. Foucault, supra note 29, at 155.
Deploying an analysis drawn from Foucault’s critique, the German sociologist Jürgen Habermas asserts that the translation of power into forms of social welfare regulation is not secured through passive, propertyless means. Like Foucault, he views the medium of translation to be connected with a praxis characterized by the isolation of facts, the normalization of judgment, and surveillance. The active components of this regulating praxis deform the welfare client-recipient while shifting social conflict from the external material world to the internal psychic world.

Foucault extends this view, claiming the “discourse and techniques of right” central to the protection of the poor ensnared in welfare systems to be themselves an instrument of domination. Foucault contends that “right (not simply the laws but the whole complex of apparatuses, institutions and regulations responsible for their application) transmits and puts in motion relations... of domination.”

36. For enhanced detail, see REGULATING THE POOR, supra note 1, at 248-338; M. FOUCAULT, supra note 29, at 78-133. See also B. MANDELL, WELFARE IN AMERICA: CONTROLLING THE "DANGEROUS CLASSES" (1975); S. SHEEHAN, A WELFARE MOTHER (1975).


38. Id.

39. Id.

40. M. FOUCAULT, supra note 29, at 95-96.


Foucault's contention poses an intractable dilemma to poverty lawyers engaged in the process of welfare rights advocacy. As Habermas shows, rights advocacy within the structures of welfare state regulation constitutes the "legal means for securing freedom" for the poor. Yet, at the same time, the structures of welfare state regulation "endanger the freedom" of the poor.

Endangerment flows from power. To Foucault, the power of a dominant class is exercised as a perpetual strategy manifested in a network of relations constantly in tension, in activity, in battle with the powerless. This network of relations descends into the "depths" of society in localized episodes of class confrontation, instability, conflict, and struggle. Power thus invests and exerts pressure on subordinate classes, and simultaneously is transmitted and resisted by them. In this manner, the arrangements and internal mechanisms of power "produce the relation in which individuals are caught up."

The attorney/client and welfare system-recipient relations are arrangements established by a knowledge and technology of power. These mechanisms of power frame the everyday lives of clients and recipients, molding their behavior, identity, and activity. The control and transformation of behavior stems not only from the development of a knowledge of the client-recipient, but also from policies of coercion and discipline. Foucault claims knowledge, particularly detailed knowledge, brings forth a "political awareness" of techniques and methods of control. Knowledge, for example, of the


42. I. HABERMAS, supra note 37, at 291.
43. Id.
45. Id. at 27.
46. Id.
47. Id. at 202.
48. Id. at 77.
49. Id. at 125, 138-69. Welfare system policies of coercion and discipline are exhibited in the political procedures of recipient registration, administrative documentation, and eligibility assessment and punishment. See, e.g., Legality, Bureaucracy, and Class, supra note 12, at 1204-13 (on quality control documentation requirements); 20 C.F.R. § 246.7 (1988) (on WIC participant eligibility, certification, and processing criteria). These procedures objectify the recipient exposing her to ongoing inspection. Thus, Foucault's phrase the "'anatomy' of power." M. FOUCAULT, supra note 44, at 215-30.
50. Id. at 141. See also Bellow & Kettleson, From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice, 58 B.U.L. REV. 337, 341 (1978). Bellow and Kettleson assert that public interest lawyers possess "the capacity (and sometimes the motivation) to exercise considerable influence over their client's choices and objectives." Id. at 341 (footnote omitted). Indeed, they suggest public interest lawyers sometimes make conscious choices to exercise such influence, and in many instances "virtually control a client's choices and are quite unaware that they are doing so." Id. at 341 n.22. No explanation accompanies their observation of the frequent gap between "what lawyers (not just public interest lawyers) believe they do and what they actually do []" Id.
urgent economic circumstances befalling an individual client-recipient, including detailed information regarding her family and household responsibilities, is a powerful form of political awareness subject to manipulation directed at controlling client-recipient choice.

Exercising control over client-recipient choice need not be conscious or direct. In the attorney/client relation, control is a function of hierarchy and hence is exercised as a kind of disciplinary power. Disciplinary coercion is effected by the normalizing judgment of the attorney.

Normalizing judgment constrains the ambit of client choice by marking the boundaries of permitted and forbidden action. It is a "value giving" judgment establishing both the power and penalty of the norm. When the client expresses a preference for "non-conforming" action in deviation from the traditional norm of resolution (e.g., where the client favors trial to settlement, or community-oriented litigation tactics to conventional litigation tactics), she may be punished by lawyer coercion, override, or withdrawal. The power of normalizing judgment lies in its ability to compose a false reality and ritual of client choice and decisionmaking.

Seeing the poor as a class, perceiving class as an active human relationship involving everyday experience in society, and understanding class consciousness in cultural terms of domination and liberation are together the essence of critical consciousness. Applying these insights to an analysis of the

51. M. Foucault, supra note 44, at 176. See also Simon, The Ideology of Advocacy: Procedural Justice and Professional Ethics, 1978 Wis. L. Rev. 30, 116-17 (arguing that professional ideology, representing the lawyer as the embodiment of a neutral specialized discipline, gives rise to power over the relatively powerless and unsophisticated client).


53. M. Foucault, supra note 44, at 183. By norm, I mean a standard measure or method of resolving a legal dispute. Although objective and neutral in appearance, the applied norm may tend to legitimize the client's victimization experienced in the forms of class, race, or gender subordination. MacKinnon, Toward Feminist Jurisprudence, 34 Stan. L. Rev. 703, 716 (1982).

54. Id. at 183-84. Normalizing judgment acts to silence the poor. On gender silencing, see Jones, On Authority: Or, Why Women Are Not Entitled to Speak, in Feminism & Foucault 119-33 (L. Diamond & L. Quinby eds. 1988); C. Gilligan, In A Different Voice: Psychological Theory and Women's Development (1982). Ritualistic decisionmaking enlists the client in a mechanism of oppressive power, in a practice of subordination, thus limiting the client in who she can be. See Williams, Deconstructing Gender, 87 Mich. L. Rev. 797, 845 (1989); MacKinnon, supra note 54, at 714. Rather than resisting and releasing the limits of clients' lives, normalizing judgment works to fortify those limits. Id. at 736. See Scheingold, The Dilemma of Legal Services, 36 Stan. L. Rev. 879, 888-89 (1984) ("While Legal Services has succeeded in ameliorating the conditions of poverty, it has at the same time helped to legitimate the poor's second-class status.").
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social role of the individual poor (e.g., as transcendent and transformative historical actor or as isolate and passive client-recipient) and the social organization of poor communities (e.g., as active and unified or reactive and fragmented) is critical consciousness at work. 57

Guided by critical consciousness, the poor may embrace what the historians Frances Fox Piven and Richard Cloward term the "solitudes of everyday life." 58 In so doing, the poor may "live their own history" 59 and make class happen. To that end, poverty lawyers must construct a new paradigm and vision of practice. 60

The initial step in the transformation of the poverty lawyer's imagination towards critical consciousness is the shattering of tradition-bound myths. 61 A cluster of two myths comprise the poverty lawyer's core constellation of beliefs. Most basic is the deeply embedded belief that the law - in its constitutional, statutory, and decisional forms - and legal institutions - courts, governmental agencies, and advocacy organizations - can be marshaled into an effective instrument to alleviate poverty.

This bedrock premise, what I shall call legal efficacy, animates and informs the work of poverty lawyers. History teaches that this premise is overbroad. The work of Roberto Unger 62 and Morton Horwitz 63 reveals a pronounced indeterminacy 64 in the interplay of formalism 65 and instrumental-

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57. E.P. THOMPSON, supra note 23, at 11. To be accurate, that analysis must draw upon observations of the poor in the daily patterns marking their relationships, ideas, and institutions. Id.


61. L. ILLICH, TOOLS FOR CONVIVIALITY 110-11 (1973) (discussing interpretive frameworks). Leslie Bender describes this necessary step as "frame-bursting" in the similar context of feminist methodology and consciousness raising. See Bender, supra note 15, at 9.

62. See R. UNGER, supra note 7, at 193-216; R. UNGER, supra note 22, at 88-100.


64. On doctrinal indeterminacy, see M. KELMAN, A GUIDE TO CRITICAL LEGAL STUDIES 15-63, 186-268 (1987); Kennedy, Freedom and Constraint in Adjudication: A Critical Phenomenology, 36 J. LEGAL EDUC. 518 (1986). Compare Kress, Legal Indeterminacy, 77 CALIF. L. REV. 283, 302-37 (1989)(rejecting critical legal scholars' arguments for radical indeterminacy and counterposing claim for moderate indeterminacy); Matsuda, supra note 41, at 341 ("The minority experience of dual consciousness accommodates both the idea of legal indeterminacy as well as the core belief in a liberating law that transcends indeterminacy.").

65. Formalism describes a particular style of legal reasoning operating "when the mere
ism in legal doctrine. Even apart from class relations of domination and subordination, doctrinal indeterminacy warrants skepticism concerning the efficacy of law-induced programmatic change.

The prevalence of a justifiable skepticism concerning the efficacy of law as an instrument of altruistic social change does not warrant a turn towards nihilism. Skepticism notwithstanding, there exists in the law a transcendent spirit, internal logic, and autonomy which may spark and effect altruistic

invocation of rules and the deduction of conclusions from them is believed sufficient for every authoritative legal choice.” R. Unger, supra note 7, at 194. For an elucidation and defense of formalism as an approach to legal understanding and as a concept of decisionmaking, see Weinrib, Legal Formalism: On the Immanent Rationality of Law, 97 Yale L.J. 949 (1988); Schauer, Formalism, 97 Yale L.J. 509 (1988).

66. Instrumentalism is a purposive or policy-oriented style of legal reasoning functioning “when the decision about how to apply a rule depends on a judgment of how most effectively to achieve the purposes ascribed to the rule.” Id. at 194. On the general theory and history of pragmatic instrumentalism, see R. Summers, Instrumentalism and American Legal Theory (1982); Summers, Pragmatic Instrumentalism in Twentieth Century American Legal Thought — A Synthesis And Critique Of Our Dominant General Theory About Law And Its Use, 66 Cornell L. Rev. 861 (1981).


See also M. Foucault, supra note 44, at 82 (on the “space of tolerance” afforded by law and custom); R. Unger, supra note 7, at 52-56 (on the interdependent autonomy of legal order). Compare Abel, supra note 55, at 593 (“[W]e must not assume that because some can invoke law as a shield against state power others can wield it as a sword to alter fundamental class relations. The assumption is false not only because of the essential difference between
change. Yet, even where altruism prevails and the legal rights of the poor expand, their growth is halting and slow.\footnote{72}

The second myth\footnote{72} pervading the work of poverty lawyers is the belief in the inherent isolation and passivity of the poor—the inability of the poor to interconnect and exercise shared control over their own lives and communities.\footnote{74} Freire attributes partial transmission of this myth to the prejudices and deformations of those who “move to the side of the exploited,”\footnote{75} in this context poverty lawyers. These prejudices and deformations are expressed in a “lack of confidence in the people’s ability to think, to want, and to know.”\footnote{76}

Like the mythology of social Darwinism infecting late nineteenth and early twentieth century American thought,\footnote{77} the myth of ingrained indigent isolation and passivity is grounded in a woeful mix of cultural and scientific theory — the culture of poverty.\footnote{78} Founded on the work of the anthropologist

resisting state power and seeking to mobilize it . . . but also because the form of bourgeois law is not equally appropriate to protect all interests.”).


\footnote{73. P. Freire, supra note 19, at 40. Describing the two stages of critical pedagogy, Freire asserts the need for confrontation with the “culture of domination” in order to “unveil the world of oppression.” Id. In the first stage of pedagogy, confrontation occurs through a change in perception. Id. In the second stage, confrontation occurs through the “expulsion” of dominating myths. Id.}

\footnote{74. Id. at 46-54. See also J. Katz, POOR PEOPLE’S LAWYERS IN TRANSITION 40 (1982) (tracing the historical antecedents of the poverty law conception of the “pathological poor”). For a discussion of voluntary and nonvoluntary communities, see Friedman, Feminism and Modern Friendship: Dislocating the Community, 99 ETHICS 275, 277-90 (1989).

\footnote{75. P. Freire, supra note 19, at 46.}

\footnote{76. Id. Freire declares:

Our converts, on the other hand, truly desire to transform the unjust order; but because of their background, they believe that they must be the executors of the transformation. They talk about the people, but they do not trust them; and trusting the people is the indispensable precondition for revolutionary change.

\textit{Id.}

\footnote{77. On the historical evolution of social Darwinism in American business, culture, and society, see C. Russett, DARWIN IN AMERICA: THE INTELLECTUAL RESPONSE 1865-1912 83-123 (1976); R. Hofstadter, SOCIAL DARWINISM IN AMERICAN THOUGHT 6, 13-122, 143-204 (1944).

\footnote{78. Lewis, The Culture of Poverty, in ON UNDERSTANDING POVERTY 187 (D. Moynihan ed. 1968). For a forceful rebuttal assailing cultural theories of isolation and marginality, see Karst, Citizenship, Race, And Marginality, 30 WM. & MARY L. REV. 1, 8-24 (1988); W. Wilson, The Truly Disadvantaged: The Inner City, the Underclass, and Public Pol-
Oscar Lewis, the culture of poverty thesis claims the "major characteristics" of the individual poor to be "strong feelings of marginality, of helplessness, of dependence, and of inferiority."  

Although poverty lawyers may not endorse the culture of poverty thesis, they are enmeshed in a social system — the attorney/client relation — consigning the poor to the status of dependent other.  

Consignment subordinates the poor through a process of eliciting and verifying client dependence. Objectively manifested as docility, passivity, and malleability, client dependence nevertheless is a social construct reified by attorney/client hierarchy.  

Reification — the process of transforming subjective form into "phantom objectivity" — of the myth of inherent indigent isolation and passivity stems from decontextualization of the poor from domination-based social arrangements and relations. Decontextualization follows from the negation of the poor as a social class engaged in historical struggle. Poverty lawyers do not confess to this historical negation, though it directs their engineering of law and legal institutions on behalf of the poor. In this way, negation reproduces isolation and passivity in the attorney/client relationship. The reproduction of isolation and passivity marginalizes the poor.  

Marginalization is part of the demeaning process of domination. Freire
advances two concepts unraveling this process. First, he ventures the concept of self-depreciation:

Self-depreciation is another characteristic of the oppressed, which derives from their internalization of the opinion the oppressors hold of them. So often do they hear that they are good for nothing, know nothing and are incapable of learning anything — that they are sick, lazy, and unproductive — that in the end they become convinced of their own unfitness.83

The concept of self-depreciation also emerges in the historian Harry Boyte’s analysis of American grass roots citizen advocacy and organizing movements.84 These movements are enlightening because they show that while the signs of self-depreciation may vary depending upon the organizing project constituency and terrain (e.g., age, ethnicity, gender, race, religion, geography, and class), the experience of domination is at once common. To Boyte, self-depreciation is the shared experience of “ordinary people, steeped in lifelong experiences of humiliation and self-doubt, barred from acquisition of basic public skills,” an experience demeaning to “people’s self-conceptions and sense of possibility.”85

In addition, Freire offers the concept of adaptation, suggesting that “the more the oppressed can be led to adapt to a situation, the more easily they can be dominated.”86 Freire argues adaptation is encouraged by the paternalistic operation of the welfare state in objectifying the poor as dependent recipients.87

Marginalization of the poor wrought by domination and evinced by self-depreciating passivity is frequently visible albeit misinterpreted by poverty lawyers. More oblique is the marginalization of domination experienced by the poor as a function of their adaptation, integration, and incorporation into welfare programs and relationships.88 The WIC program offers an instructive

83. P. FREIRE, supra note 19, at 49. Self-depreciation implicates Unger’s sentiment of resignation expressed as the “despairing submission to a social order whose claims are inwardly despised.” R. UNGER, supra note 22, at 26.
85. Id. at 179, 15.
86. P. FREIRE, supra note 19, at 60.
87. Id. Freire also complains of the contributing degeneration of knowledge, resisting its conceptualization as “a gift bestowed by those who consider themselves knowledgeable upon those whom they consider to know nothing.” Id. at 58. Deriding this concept for “[p]rojecting an absolute ignorance onto others,” Freire contends that “[k]nowledge emerges only through invention and re-invention, through the restless, impatient, continuing, hopeful inquiry men pursue in the world, with the world, and with each other.” Id. Knowledge, in short, emerges through the process of dialogue.
88. Foucault notes that the goal of integrating and incorporating marginals, particularly the “wilfully idle” — the “bad poor” — through methods of domination has “replace[d] the somewhat global charitable sacralization of ‘the poor.’” M. FOUCAULT, supra note 29, at 169. See also IN THE SHADOW OF THE POORHOUSE, supra note 1, at ix-35.
example. 89

Federal enactment of the WIC program in 1972, as an amendment to the Child Nutrition Act of 1966, 90 and subsequent amendments,91 rest on congressional findings "that substantial numbers of pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both."92 Yet, Congress' declared purpose — to provide "supplemental foods and nutrition education" — is expressly limited by the "authorization levels" set forth in section 1786(g) of the statute, and by the voluntary "participation" proviso governing the eligibility of local agencies. 93 Moreover, federal implementing regulations promulgated by the United States Department of Agriculture enumerate seven categories of participant nutritional risk priority to be applied systematically in order to "fill vacancies which occur after a local agency has reached its maximum participation level."94

Together, WIC statutory and regulatory authorization, participation, and priority limits hinder the distribution of program benefits to the nutritionally-at-risk poor. 95 This hindrance, borne out by the increasing feminization and

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89. See supra note 12.
93. Id. In the fiscal year ending September 30, 1986, Congress appropriated $1,570,000,000 to carry out the declared purpose of the statute. 42 U.S.C.A. § 1786(g) (West Supp. 1988).
95. The Center on Budget and Policy Priorities reports WIC "federal funding levels are insufficient for many of the eligible women and children to participate." CENTER ON BUDGET AND POLICY PRIORITIES, HOLES IN THE SAFETY NETS: POVERTY PROGRAMS AND POLICIES IN THE STATES — NATIONAL OVERVIEW 33 (1988). Indeed, "[n]ationwide, fewer than half (about 45 percent) of WIC eligibles are served under the program." Id. at 34 (citation and footnote omitted). By early 1988, only eleven states were providing funds to supplement federal WIC monies in order to widen service to the eligible. Id.

Habermas suggests a "withdrawal of legitimation" may follow from this type of governmental lag behind "programmatic demands that it has placed on itself." J. HABERMAS, supra note 6, at 69 (emphasis in original). A recent Ford Foundation study buttresses this point, evidencing the deterioration of program legitimacy. See FORD FOUNDATION PROJECT ON SOCIAL WELFARE AND THE AMERICAN FUTURE, THE COMMON GOOD: SOCIAL WELFARE AND THE AMERICAN FUTURE 10-29, 85-88 (1989). The study confirms that states can and often do choose to serve only a limited number of those who are [WIC] eligible and some states are reluctant to search vigorously for needy children who qualify for the program. Only about half of the eligible women and children are reached by the WIC program as it is currently constituted.

Id. at 15. See also FOOD RESEARCH AND ACTION CENTER, FEEDING THE OTHER HALF vi (1989).

Findings indicate states may increase WIC participation and decrease related program,
infantilization of poverty$^{96}$ and the stabilizing of infant mortality rates at unacceptably high levels,$^{97}$ marginalizes the poor even as they are integrated and incorporated in remedial welfare programs. Domination is expressed then not merely in unabated hunger and infant mortality, but in adaptation to these conditions. When adaptation inhibits the imagining of alternative conditions, domination reigns.

To subvert domination in this instance, poverty lawyers must unmask the identity of the WIC program. For Habermas, unmasking can be accomplished

hospital, and Medicaid costs, see, e.g., United States General Accounting Office, Briefing Report to the Chairman, Subcommittee on Nutrition and Investigations, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Supplemental Food Program: Savings From Food Purchases Could Increase WIC Participation (July 1988) (reporting that state cost savings may increase the number of WIC eligible participants served); Edelman & Weill, Investing in Our Children, 4 Yale L. & Pol'y Rev. 331, 361 (1986) ("Every dollar we invest in the WIC program saves as much as S3 in short-term hospital costs, and more over the long term.") (footnote omitted); Schramm, WIC Prenatal Participation and Its Relationship to Newborn Medicaid Costs in Missouri: A Cost/Benefit Analysis, 75 Am. J. Public Health 851 (1985) (WIC expenditures associated with reduced Medicaid costs and possible birthweight improvements).


97. Edelman and Weill report:

Our nation's progress in reducing infant mortality has slowed down, dropping from a 5 percent average annual rate of improvement in the 1970s to a 3 percent average annual rate between 1981 and 1983. As the death rates among infants are highest for the poor, this reflects, in particular, a slowdown in improvement for black infants, who are disproportionately poor.


For more recent documentation, see Stevens, Infant Diarrhea Kills Hundreds Yearly in U.S., N.Y. Times, Dec. 9, 1988, at A1, A33, col. 1 (report of new study indicating "that deaths from diarrheas 'constitute an important and preventable fraction' of infant mortality in America"); Infants More at Risk in Poor Rural Areas, New Study Indicates, N.Y. Times, Dec. 8, 1988, at B25, col. 4 (report of study finding levels of infant mortality, low birth weight, and maternal care "deteriorated from 1980 to 1982 nationwide and remained stable from 1982 to 1985"); U.S. Falling Short on Its Infant Health Goals, N.Y. Times, July 10, 1988, at A17, col. 1 (reporting "some significant problems relating to maternal and infant health," and that "[t]he decline in the infant mortality rate has slowed"); Leary, U.S. Urged to Fight Infant Mortality, N.Y. Times, Aug. 5, 1988, at D17, col. 1 (reporting on congressional panel's call for a "comprehensive policy to combat infant mortality," and findings "that, each year, 40,000 infants in the United States die before their first birthday and that 18 other industrialized nations have lower rates of infant mortality").
by confronting the contradiction and incompatibility between program "idea and reality." 98 Without recognition of the asymmetry between WIC program "claims and intentions," domination may remain latent. 99 When programmatic incompatibility is recognized, Habermas argues, conflict may become manifest, and irreconcilable interests may be reconceived as antagonistic interests. 100

II. HEGEMONY AND TRADITION

The dominant traditions of poverty law transmit cultural mythologies through the attorney/client relation, obfuscating perception and interpretation of the common struggle of the poor to survive and overcome the conditions of poverty. 101 The obscurantist influence of myth is best expressed in the notion of hegemony. 102

The Italian social theorist Antonio Gramsci advances the idea of hegemony to signal dominant group continuity and tradition in active development. 103 To Gramsci, hegemony is a process of assimilation, education, and adaptation consistent with the achievement of dominant group goals. 104 In practice, hegemony ensures a "correspondence" between individual acts and admissions, and between individual conduct and necessary group ends. 105

Gramsci concedes hegemonic correspondence may appear at times in the coercive guise of force. He stresses, however, its noncoercive nature. 106 This emphasis both highlights the repressive aspect of hegemony and underscores its potential for liberation. 107

Hegemonic liberation inheres in Gramsci's general conception of law and extends to the specific field of poverty law. Gramsci conceives of law as an instrument to "create and maintain a certain type of civilisation and of citizen (and hence of collective life and of individual relations), and to eliminate certain customs and attitudes and to disseminate others . . . ." 108 On this view,

98. J. HABERMAS, supra note 6, at 23, 26-27.
99. Id. at 27.
100. Id.
101. Reductionism of the term individual from a broad "indivisible" concept implicating the social group to a narrow separate notion implying an opposing disconnected sphere similarly distorts interpretation of the historical struggle of the poor. See C. MACPHERSON, supra note 16, at 3, 263-77.
104. Id. For amplification of Gramsci's idea of hegemony, see Brosnan, Serious But Not Critical, 60 S. CALIF. L. REV. 259, 305-08, 312-17 (1987).
105. A. GRAMSCI, supra note 103, at 195-96.
106. Id. at 196 (establishing a correspondence between hegemony, public opinion, and moral climate).
107. Id. at 247, 246.
108. Id. at 246. Enriching this conception, Tove Stang Dahl adds:
Law is an important part of the cultural hegemony that men have in our type of
the law is a kind of educator tending to foster a "new type or level of civilisation."\(^{109}\)

Conversely, the law may function as an instrument of rationalization legitimating conditions of oppression.\(^{110}\) The key for Gramsci, and for poverty lawyers, is to uncloak the contradictions suppressed by rationalization and to cultivate an alternative or counter hegemony. The turmoil of hegemonic conflict creates the conditions in which an alternative way of life — differentiated by liberation — is imagined possible.

The historian Eugene Genovese interprets Gramsci's idea of hegemony to imply not only class antagonism, but also class legitimacy.\(^{111}\) Like Gramsci, Genovese proclaims the hegemonic function of law as disguising class antagonisms in a cloak of juridical legitimacy, thus minimizing the necessity for the use of coercion.\(^ {112}\)

Although Genovese considers law to be a principal vehicle of dominant class hegemony, he properly rejects simple-minded reduction of the law to a reflexive superstructural phenomenon,\(^ {113}\) contrary to the declarations of more orthodox Marxists.\(^ {114}\) By rejecting a crudely deterministic conception, Genovese grants the law a degree of autonomy in shaping class relations, albeit as an instrument of domination.\(^ {115}\) In his view, the law is not "something passive and reflective," but "an active, partially autonomous force" mediating among competing socio-economic classes.\(^ {116}\)

For Genovese, the legal system molds and is molded by the interrelation
of socio-economic classes evolving in society. This molding becomes more pronounced when a political center emerges within a class clearly perceiving the "interests and needs of the class as a whole." As a class becomes "more conscious of its nature, spirit, and destiny" and reaches a "higher understanding of itself" manifested in a particular world view, Genovese contends the class is "transformed from a class-in-itself, reacting to pressures on its objective position, into a class-for-itself, consciously striving to shape the world in its own image." Once a class acting-for-itself acquires possession of public power, Genovese suggests the juridical system may become both an expression of class interest and a theater of class mediation.

Dominant legal traditions mediate class antagonisms between the poor and competing socio-economic classes. Mediation is effectuated by the mystifying process of legalization whereby class antagonisms are decontextualized and individualized, then channeled into formal, purportedly neutral categories of sanctioned conduct, such as rights and duties. By compelling and validating conduct in terms of apolitical norms and standards, poverty law inhibits consciousness of class and class conflict.

To inculcate consciousness of class among the poor, poverty lawyers must reshape and thereby subvert dominant hegemony. The British cultural theorist Raymond Williams embellishes the idea of dominant hegemony, recasting it to capture the "wholeness" of the "lived social process" experienced by subordinate classes. He construes dominant hegemony as the practical organization of this process around specific dominant meanings and values. Mapping the patterns of the "whole social process" in accordance with specific distributions of power and influence, Williams explains class relations of domination and subordination translate into forms of "practical conscious-

117. Id. at 27.
118. Id.
119. Id. Moreover, Genovese argues the legal system may become an "instrument by which the advanced section of the ruling class imposes its viewpoint upon the class as a whole and the wider society." Id. The imposition of hegemony through law serves to "discipline the ruling class and to guide and educate the masses." Id. Discipline, guidance, and education are accomplished by establishing criminal and civil standards of behavior which compel social conformity, sanction norms, and validate ethical conduct. Id. These standards hold hegemonic sway and mediate class antagonisms until contradictions appear exposing the deceptions undergirding law and society. Id. at 30. When an awareness of rights withheld springs from the exposure of legal and societal deceptions, hegemony may be subverted and world view remolded. Id. at 31-49.

121. On the relation between class mediation and legal formalism, see Gabel, REIFICATION IN LEGAL REASONING, in MARXISM AND LAW 262-78 (P. Beine & R. Quinney eds. 1982). See also M. Horwitz, supra note 63, at 253-66.
122. Williams defines dominant hegemony alternatively as the "complex interlocking of political, social, and cultural forces," and as "the active social and cultural forces which are its necessary elements." R. WILLIAMS, MARXISM AND LITERATURE 108-09 (1977) (emphasis in original).
ness," producing "a saturation of the whole process of living."\textsuperscript{123}

Williams sees that process encompassing economic, political, and social activity together with the "whole substance of lived identities and relationships."\textsuperscript{124} The depth of saturation is such that the "pressures and limits" generated by a specific economic, political, and cultural system appear as the "pressures and limits of simple experience."\textsuperscript{125} In this way, objective relations of domination and subordination become a whole body of subjective practices and expectations permeating the "whole of living," suffusing individual "senses and assignments of energy," and shaping perceptions of self and the world.\textsuperscript{126}

The transmutation of domination into a lived system of subjective meanings and values — a system experienced as a set of "reciprocally confirming" natural practices — is the insidious work of hegemony.\textsuperscript{127} Insidious because that lived system creates a sense of reality verging on the absolute in excluding and selecting out alternative versions of reality. For Williams, this confined sense of reality is a \textit{culture} consisting of the "lived dominance and subordination of particular classes."\textsuperscript{128}

Williams rightly notes that the experience of domination is not passive and one-dimensional, but rather an active, complex process. The process is mutable and textured because it gathers from a web of "experiences, relationships, and activities, with specific and changing pressures and limits."\textsuperscript{129} Hence, it is a process "continually . . . renewed, recreated, defended, and modified."\textsuperscript{130} At the same time, it is a process "continually resisted, limited, altered, [and] challenged by pressures not at all its own."\textsuperscript{131} These pressures are applied by ordinary people acting singly and in relationships to decipher and remake material reality.

Deciphering and remaking reality constitutes the work of alternative or counter hegemony. Williams introduces these concepts to describe "forms of alternative or directly oppositional politics and culture."\textsuperscript{132} He suggests the existence of significant oppositional forces precludes the total and exclusive hold of dominant hegemony over society.\textsuperscript{133}

Williams's cultural analysis is instructive for poverty lawyers in disclosing the integral relation between tradition and domination. Indeed, it is the meanings and values of poverty law traditions which reciprocally confirm

\textsuperscript{124} R. Williams, \textit{supra} note 122, at 110.
\textsuperscript{125} \textit{Id.}
\textsuperscript{126} \textit{Id.}
\textsuperscript{127} \textit{Id.}
\textsuperscript{128} \textit{Id.}
\textsuperscript{129} \textit{Id.} at 112.
\textsuperscript{130} \textit{Id.}
\textsuperscript{131} \textit{Id.}
\textsuperscript{132} \textit{Id.} at 113.
\textsuperscript{133} \textit{Id.}
domination of the poor. Confirmation of this bleak condition diminishes the breadth of attorney/client vision. As vision contracts, the belief in alternative constructs and practices is relegated to delusion.  

Counter hegemony enables the poor to reclaim the belief in an alternative vision of reality. Reclamation must begin with the poor investigating hegemonic alternatives to their socially constructed and reified client-recipient identity. In accord with feminist methodology, this role investigation centers on communication in collective relational contexts by means of consciousness raising.

By developing hegemonic alternatives and oppositional discourses in collective relational contexts, the poor enter the transformational process of breaking free from the subordinate role and identity assigned by the dominant hegemony. With the splintering of dominant hegemony, the poor may converge as a class-for-itself around an alternative vision of reality.

This convergence is congruent with E.P. Thompson's notion of class as a "self-defining historical formation" constructed from the human experience of struggle. Thompson's understanding of men and women as historical "makers" of social class and class consciousness reinforces the importance of grounding empowerment in the concrete historical conditions of poor communities. The object of empowerment is to raise consciousness of class among disparate individuals and groups living in those communities.

A. Dominant Traditions

To elucidate the idea of hegemony as an active process of cultural incorporation interweaving various meanings, values, and practices, Williams sets forth the concept of tradition. Departing from the strictures of antiquated Marxist cultural theory, Williams reasserts tradition as an "actively shaping force" expressing "dominant and hegemonic pressures and limits." As a means of incorporation, this expression is necessarily "selective," representing an intentionally discriminatory version of a "shaping past and a pre-shaped present." Emerging dominant, the selective version directs the "process of

134. See J. HABERMAS, supra note 6, at 96 (remarking on the interconnection between an "individual's perception of his own powerlessness and the lack of alternatives open to him").
136. This term is taken from Nancy Fraser. See Fraser, Talking about Needs: Interpretive Contests as Political Conflicts in Welfare-State Societies, 99 ETHICS 291, 303 (1989).
137. R. WILLIAMS, supra note 122, at 115.
139. Id. (rejecting reduction of social class to a "static category").
140. E.P. THOMPSON, supra note 23, at 11 ("Class is defined by men as they live their own history, and, in the end, this is its only definition.").
141. R. WILLIAMS, supra note 122, at 115.
142. Id.
143. Id.
social and cultural definition and identification."

Two traditions dominate the practice of poverty law. The first tradition is denominated by direct service litigation. The second tradition is designated by law reform litigation. Both traditions deliberately select specific meanings and practices in fashioning dominant conventions, language, and institutional structures.

I. Direct Service

Since the late nineteenth century, the direct service tradition of providing civil legal assistance to the poor has predominated. Initially staffed by volunteer lawyers or operated by private legal aid societies supported by charitable contributions and local governmental funding, organizations tied to the direct service tradition prevailed for nearly five decades.

In the early 1960s, more innovative poverty law programs emerged exemplified by Mobilization for Youth (MFY) in New York City and Community Progress Incorporated in New Haven, Connecticut. Funded by federal, state, and local monies, and supplemented by foundation grants, these demonstration projects presaged later programs developed by the Office of Economic Opportunity, culminating in the National Legal Services Program (NLSP) and ultimately in the National Legal Services Corporation (NLSC).

The direct service tradition is marred by dominant tendencies prescribing the routine treatment of poor clients as isolated and passive individuals with-

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144. Id.
146. On staffing and funding patterns, see Bellow, supra note 11, at 337. See also E. BROWNELL, LEGAL AID IN THE UNITED STATES (1951); J. BRADWAY, LEGAL AID BUREAUS (1935).
147. See J. AUERBACH, supra note 145, at 269-75. See also Note, Neighborhood Law Offices: The New Wave in Legal Services for the Poor, 80 HARV. L. REV. 805, 806-09 (1967).
149. REGULATING THE POOR, supra note 1, at 290, 290-95; Cahn & Cahn, supra note 148, at 1319 n.7.
151. For NLSP history, see Fious, supra note 150, at 378-79; Note, supra note 147, at 806; Note, The Legal Services Corporation: Curtailting Political Interference, 81 YALE L.J. 231 (1971).
out common attributes or bonds. Documenting this treatment — what I shall call the process of dependent-individualization — Gary Bellow observes:

The lawyers treat clients and problems individually. No efforts are made to encourage clients with related problems to meet and talk with each other, or to explore the possibilities of concerted challenges to an institution's practices.

Dependent-individualization forecloses systematic analysis of the common experiences of class domination. The consequent narrow treatment of cases as distinct unrelated disputes, without reference to larger class continuities, sacrifices a valuable opportunity to unmask domination and promote counter hegemony by organizing around legal controversy. The opportunity to engage in dialogue regarding the economic, political, and social forces engendering and surrounding legal conflict is similarly lost. The failure to address legal disputes contextually as individual manifestations of class antagonisms inhibits client politicization and class consciousness, thus reinforcing dependence, isolation, passivity, and fragmentation in poor communities.

Attributable to the cultural pull of dominant hegemony, buttressed by legal education and professional elan, poverty lawyer allegiance to the

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153. For an examination of these tendencies, see Bellow, The Legal Aid Puzzle: Turning Solutions into Problems, 5 WORKING PAPERS FOR A NEW Soc'y 52, 55 (1977) [hereinafter The Legal Aid Puzzle]; Bellow, Turning Solutions into Problems: The Legal Aid Experience, 34 NLADA BRIEFCASE 106 (1977). For a "procedural justice" defense of the direct service strategy within the equal access rights model, see Breger, Legal Aid for the Poor: A Conceptual Analysis, 60 N.C.L. REV. 282, 286 (1982).

154. The Legal Aid Puzzle, supra note 153, at 55. See also Failinger & May, supra note 10, at 6-7 (arguing that equal access and law reform models are compatible with case selection procedures and litigation strategies designed to maximize group impact).

155. Bellow comments:
Nor do the lawyers systematically review cases to identify recurring problems, to deepen their knowledge of the bureaucracies with which they deal, or to expose publicly what they have uncovered. Despite the volume of cases, there are legal services lawyers who have been handling landlord-tenant or welfare cases for several years who cannot describe the nature of the housing market in their area or the supervisory structure of the local welfare department.

The Legal Aid Puzzle, supra note 153, at 55.

156. On rights mobilization, see S. Scheingold, supra note 69, at 131-48; R. Kluger, supra note 70, at 450-79, 748-78; C.V. Woodward, supra note 70, at 149-220.


perceived historical logic of the practice of dependent-individualization redounds to the detriment of the poor. Individualization blankets class antagonisms and shrouds community in Darwinist-tainted liberal theory, a theory inimical to the evolution of class consciousness and too often impoverishing of community.

To heal the conceptual schism between the individual-as-self and community-as-other undermining liberal theory, Drucilla Cornell urges "the role of reason as the enhancement of innovative capability," thus reconciling the distinction between the autonomous subject and the shared community. Cornell argues reason permits criticism of self and community in light of the potential for mutual transformation. The potential embedded in self and in community is actualized "through the critique of what is and through the appeal to the might have been and the should be." Cornell's vision of the self in terms of "innovative capability" enables poverty lawyers to reconcile the "sovereign" client with the "otherness" of community through the reasoned discourse of transformational dialogue.

Poverty lawyers deny the reconciliation of client and community by pressing ahead with individualization until it brings forth routinization. Routinization is a formulaic and mechanical convention devised to process individual cases on a mass scale. The by-product of marginalizing traditions, burgeoning case loads, and meager institutional resources, routinization
paradoxically undercuts the logic of individualization. Liberal theory accords no logic to the routine and standard treatment of the individual poor.\textsuperscript{167}

The genesis of routinization as a convention can be traced to the dominant traditions and institutional economics of poverty law. As Bellow points out, the “demand for legal services increases with supply.”\textsuperscript{168} Thus, while poverty lawyers may “regularly handle 150 to 200 ongoing cases” each year, nevertheless “in most communities 80 to 90 percent of the need is not being met.”\textsuperscript{169} The gravity of this need generates institutional pressure to decrease the level of “care and energy” devoted to individual cases in order to increase the aggregate number of cases processed.\textsuperscript{170}

As a result, individual cases are slotted\textsuperscript{171} into standard patterns of advocacy and resolution — notably settlement — which fail to encourage client empowerment and collective opposition. The centrifugal forces of routinization...
tion and standardization constrain poverty lawyers to distinguish between client interest in empowerment and institutional interest in mass processing. This separation creates a false dichotomy of conflicting attorney/client interest. 173

Poverty lawyers confronted by this dilemma ineluctably yield to institutional persuasion thereby betraying their commitment to individualized service. Comforted by the maxim of "doing less for more," they adopt the methods of routinization and standardization without divulging the elevation of institutional interest over client interest. Overlooked in this rationalization is the denigration of the client not only as individual, but also as class agent and community member.

The rupture between attorney and client interests is endemic, and perhaps irreparable, given the goals and structure of poverty law programs. The overriding objective of "minimum access" commands local programs to design and implement a direct service structure relying heavily on the methods of routinization and standardization. Implementation shunts aside the alternative tradition of client and community empowerment. This ideological shunting causes poverty lawyers to miss crucial opportunities to weave individual cases together in an oppositional strategy of building community organization and mobilization.

Galanter, supra note 165, at 120-22; The Legal Aid Puzzle, supra note 153, at 56-57. Bellow asserts:

The Legal Aid lawyer practices in courts where there are persistent demands to settle every case. Opposing lawyers and agency officials, who are pressed by high caseloads, want quick, certain resolution, of disputes. For a legal aid lawyer willing to go along with prevailing settlement patterns, there are many potential benefits: a break now and then for a client with a weak claim, consideration for the lawyer's busy schedule, or help in looking good when public performance slips a little. On the other hand, there can be severe sanctions against the client of the legal services lawyer who won't cooperate. Most poor clients are vulnerable to harassment by a hostile social worker, or by the attorney for an angry landlord who can almost always serve the client with a late-rent eviction notice.

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Judges often use similar pressures. The courts want the crowded calendar to move, whatever the circumstances of particular cases. A surprising number of judges in the last ten years have punished legal aid clients because their lawyers took too much of the court's time on "frivolous" matters. Some even initiated actions against particular legal aid programs when they thought the staff departed too dramatically from regular ways of doing things in the local system.

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The potential impact of these sanctions on clients creates considerable pressure to go along with the bureaucratic rules of the game.

The Legal Aid Puzzle, supra note 153, at 56-57.

173. The implicit assumption in this formulation is that the mass processing of cases is inconsistent with empowerment both theoretically, because empowerment dialogue is silenced by the monologue and technical dialogue of the mass processing relation, and practically, because empowerment dialogue is temporally demanding and thus precluded by the mass processing relation.
2. Law Reform

The law reform tradition, conceived broadly to encompass test case litigation and legislative advocacy, stems from the effort to ameliorate the laws and institutional policies and practices composing the socio-economic structure of poverty. This effort materialized in 1963 during the incipient development of the MFY program in New York, though its early strains may be uncovered in the late nineteenth century. Engrafted as the welfare progeny of earlier civil rights desegregation litigation, the tradition grew from an enlarged interpretation of the myth of legal efficacy.

While correctly positing the poor's group interest in challenging certain institutional policies and practices, the law reform tradition cannot independently achieve the goal of empowerment. Framing an attack on a particular wrong cannot ipsi dixit unmask domination and liberate consciousness. In the same way, pressing for judicial creation or enforcement of a particular rule or doctrine cannot redistribute class power. Bellow argues

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174. E. JOHNSON, supra note 150, at 130. In a roughly analogous treatment, Lucie White compares the law reform tradition to the "litigation-centered approach" characteristic of public interest lawyers. White, supra note 67, at 757. White classifies this style of lawyering as "first-dimensional," due to its reliance on the courts "as a direct mechanism for redressing the injuries of class, race, and gender, and for redistributing power to subordinated groups." Id. at 755-58.

175. E. JOHNSON, supra note 150, at 128. See also Failinger & May, supra note 10, at 14-18.

176. Id. at 23-24, 131. See also R. SMITH, supra note 145, at 200-18.

177. E. JOHNSON, supra note 150, at 24.

178. Note, supra note 147, at 813-16. A contributing factor, according to Abel, is that law reform "activity expresses a dynamic of professionalism — the valuation of skilled work for its own sake, an elevation of technique over extrinsic goals." Abel, supra note 55, at 518 (footnote omitted).

179. Silver, supra note 166, at 218.

180. Comment, supra note 159, at 1077. Even when framed broadly on behalf of a class of similarly situated individuals, particularized attacks "tend[ ] to substitute for, rather than foster, organization . . . ." Abel, supra note 55, at 496. Devoid of empowerment, this tendency may be ineradicable. By comparison, in circumstances antagonistic to political organization, the tendency may be exploited by initiating a series of class actions on behalf of discrete groups of individuals attacking a range of particularized wrongs thereby exposing the structures and relationships of poverty and arousing insurgent resistance.

181. White appears more sanguine on this point asserting specifically fashioned litigation as a form of "public action with political significance." White, supra note 67, at 758. Classified as "second-dimensional" lawyering, White claims such litigation possesses "cultural meaning" representing a "discourse about social justice." Id. (footnote omitted). For White, success in this approach is measured by a different set of factors, such as public rights education and political mobilization. Id. at 758-59.

182. Comment, supra note 159, at 1077. Abel adds that law reform litigation may actually undermine organization by substituting an individual to represent the group interest, or by bringing a class action because no organized group exists. Abel, supra note 55, at 578-79 (footnotes omitted). The critical point overlooked by Abel is the contingent logic of litigation tactics. See Kennedy, supra note 67, at 1064 ("Litigation served as the Negro's most successful and aggressive form of political activity throughout the first half of this century."). Circumstances of group conflict and disarray or political harassment and surveillance may dictate different forms of litigation appropriate to historical time and place. See Scheingold, supra note 56, at 890 ("In more open political settings, grass-roots political organizing by lawyers working together with community activists has proved feasible.").
that the law reform tradition in fact misconstrues the nexus connecting law and class power.\textsuperscript{183} He states:

The problem of unjust laws is almost invariably a problem of distribution of political and economic power; the rules merely reflect a series of choices made in response to these distributions. If a major goal of the unorganized poor is to redistribute power, it is debatable whether judicial process is a very effective means toward that end. . . . “rule” change, without a political base to support it, just doesn’t produce any substantial result because rules are not self-executing: they require an enforcement mechanism.\textsuperscript{184}

The insufficiency of the law reform tradition as a method of empowerment does not require its outright rejection. To be sure, law reform may blunt empowerment by failing to raise client and community consciousness. That failure, coupled with the concentration of decisionmaking authority among poverty lawyers, also stifles the natural development of client and community leadership. Likewise, law reform may undermine organizing initiatives by focusing disputes on the judicial branch, rather than on the politically more susceptible executive and legislative branches of government, where conflict is transfigured by formalistic rhetoric.\textsuperscript{185}

 Nonetheless, law reform should not be viewed as antithetical to empowerment.\textsuperscript{186} Carefully tailored, law reform may activate political consciousness and precipitate the growth of both client and community advocacy organizations.\textsuperscript{187} Law reform may even establish an interrelationship with client political action at once fomenting and defending progressive change.\textsuperscript{188} Creation

\textsuperscript{183} Comment, supra note 159, at 1077.

\textsuperscript{184} Id. (quoting Bellow). See also Noble, Farm Workers Fault Lack of Enforcement of Sanitation Rules, N.Y. Times, Oct. 4, 1988, at A1, col. 1 (“Just getting regulations on the book is not enough. The other half is enforcement.”) (quoting Valerie Wilk, a health specialist with the Farmworker Justice Fund).

\textsuperscript{185} Wexler, supra note 157, at 1062-67; Comment, supra note 159, at 1077-91.

\textsuperscript{186} Comment, supra note 159, at 1079 (footnote omitted). Failinger and May supply an inchoate example of an integrated law reform empowerment strategy. They suggest:

\begin{quote}
A law reform orientation might lead a lawyer to assist a client wanting changes in nursing home conditions, by helping the client organize a group of similarly minded nursing home residents, by obtaining media coverage for them to air their grievances and demands, by sidling the group in drafting petitions and testimony before legislative committees, and most importantly . . . by initiating a class action law suit against the owners of the nursing home. In this way, the initial unequal power relationship that existed between the poor person and the nursing home owners might be overcome with the additional possibility of far-reaching changes for nursing home residents other than the individual who came to the Legal Services office.

Failinger & May, supra note 10, at 15.
\end{quote}

\textsuperscript{187} Comment, supra note 159, at 1091. Here, White’s “second-dimensional” litigation claim to the contingent expansion of “public consciousness about justice” and mobilization of “direct action for change” seems more appropriately modest. White, supra note 67, at 760.

\textsuperscript{188} Comment, supra note 159, at 1083-89. Abel maintains that “structural reform” of this kind “thrives only when lawyers are subordinated to other political activists.” Abel, supra note 55, at 518 (footnotes omitted).
of this dynamic requires a providently designed and executed law reform strategy centered on political action, a strategy driven by the engine of politics.

B. Alternative Traditions and Oppositional Continuities

Instead of approaching dominant poverty law traditions in strategic candor, lawyers veil these traditions in mystification. Resting on the logic of predisposed continuity, they offer the two traditions as natural and even necessary extensions of past values and practices of celebrated legitimacy. No mention is made of the specific political and socio-historical character or ideological content of the traditions.

The presentation of direct service and law reform litigation as self-ratifying traditions signals a failure by poverty lawyers to grasp the acontextual and ahistorical nature of their world view. To be authentic, ratification must come from without, from contextual practice and historical experience, not from self-serving affirmations. It is these affirmations that have salvaged the traditions of direct service and law reform when historical experience demanded their reformation. Their rescue marks not a ratification of absolute value, but a ratification of dominant hegemony.

Williams argues the clinging embrace of tradition is a powerful process fastened to places, institutions, and language, and hence directly experienced. Because that process is turbulent — battered by the reinterpretation, dilution, and conversion of cultural conventions and forms — it is also vulnerable. This vulnerability is displayed at “vital points of connection, where a version of the past is used to ratify the present and to indicate directions for the future . . . .”

Each day in the conventions of practice — interviewing, counseling, negotiation, investigation, drafting — poverty lawyers experience vital points of cultural connection between the poor, the state, and society. These connections reinforce a deformed version of the poor derived from a mystified past and apply it to ratify and project a present as well as a future version of the poor. None of these versions, however, renders an accurate portrait.

To obtain a fuller version of the poor and to exploit the vulnerability of dominant traditions at points of cultural connection, Williams adjures the recovery of “discarded” traditions and the redress of “selective and reductive interpretations.” Recovery and redress are possible, according to Williams,

189. R. WILLIAMS, supra note 122, at 116.
190. Id.
192. R. WILLIAMS, supra note 122, at 116 (emphasis in original).
193. Id.
because the "real record" as well as many "alternative or opposing practical continuities" are still available waiting to be unearthed.\textsuperscript{194}

For Williams, the selective version of dominant traditions is always moored to "contemporary pressures and limits."\textsuperscript{195} When these moorings snap, dominant traditions may be deprived of contextual verification. Unobscured by rationalization, the contradictions and deceptions of dominant traditions then may be recognized and subverted.\textsuperscript{196} In the light of contradiction, Williams tells us dominant hegemony can be broken.

The lesson in Williams's analysis lies in the importance he attaches to the recovery of the discarded traditions of the dissident poor, and to the redress of selective and reductive interpretations of their human nature and history. In crucial respects, these traditions are bound up in notions of community and solidarity.\textsuperscript{197} The traditions are part of the real record of the poor and can be traced as historical continuities of thought and action.\textsuperscript{198} Together, they comprise a counter hegemony.

Poverty lawyers overlook the alternative traditions and blur the oppositional continuities of the poor. This myopia is the fruit of selective and reductive interpretation of human nature and history. Poverty lawyers daily employ selective and reductionist methods of interpretation in their relations with poor clients, effectively labeling\textsuperscript{199} them a fractured, unrelated mass of dependent "dissociated individuals."\textsuperscript{200} Labeling is itself an act of demeaning subordination.

C. Language

The language\textsuperscript{201} of dominant poverty law traditions privileges the norms

\textsuperscript{194} Id.

\textsuperscript{195} Id. at 117.

\textsuperscript{196} Id. Subversion comports with the deconstructive premise that hidden ideological hierarchies underlying language and thought can be identified, inverted, and liberated. Balkin, supra note 191, 744-46. For a cogent illustration, see Dalton, An Essay in the Deconstruction of Contract Doctrine, 94 YALE L.J. 997, 1007-09 (1985). Compare Brosnan, supra note 104, at 376-88 (appraising Dalton's derivative deconstructive method).

\textsuperscript{197} Unger describes solidarity in terms of concern and responsibility shared with another person. He states: "Solidarity is the social face of love." R. UNGER, supra note 7, at 205.

\textsuperscript{198} For a canvass of this history, see POOR PEOPLE'S MOVEMENTS, supra note 1, at 1-40, 264-361; IN THE SHADOW OF THE POORHOUSE, supra note 1, at 206-73.


\textsuperscript{200} C. MACPHERSON, supra note 16, at 1.

\textsuperscript{201} On the constitutive power of language to shape values, norms, and assumptions regarding human possibilities for transcendence and solidarity, see M. EDELMAN, THE SYMBOLIC USES OF POLITICS 190 (1964); C. MUELLER, THE POLITICS OF COMMUNICATION: A STUDY IN THE POLITICAL SOCIOLOGY OF LANGUAGE, SOCIALIZATION, AND LEGITIMATION (1973).

The language of the direct service and law reform traditions shapes the values, norms, and assumptions held by the poor concerning the human possibilities of empowerment in their own lives and communities. No doubt this process operates on both conscious and unconscious levels. In either event, the process is pernicious in its subtle demarcation of the realm of the possible. As the literature of a society both mirrors and distorts the reflection of social reality,
of lawyer domination and control.\textsuperscript{202} These norms are closed rather than open to possibility, repressive rather than liberating in vision. Bellow aptly describes the forms and terms of the normative language pervading the attorney/client relationship when he states:

The lawyers dominate interaction with clients. In most discussions with clients, the lawyer does almost all of the talking, gives little opportunity for the client to express his or her feelings or concerns, and consistently controls the length, topic, and character of the conversation. Facts are obtained by a series of pointed, standard questions rather than by any process that resembles a dialogue. The lawyer then restates the client's problems in legal terms and suggests the best available solutions based on his or her view of the situation and its possibilities.\textsuperscript{203}

Within the attorney/client relation, therefore, the "production of discourse" is controlled, selected, and organized by norms which exclude the client voice.\textsuperscript{204} This system of exclusion or silencing is maintained by status and power hierarchies.\textsuperscript{205} These hierarchies rest on the authoritative roles and identities reified by the attorney/client relationship.

In deconstructive practice, linguistic signs and metaphors represent "privileged conceptions of social reality."\textsuperscript{206} As such, they are neither self-sufficient nor value-neutral structures. Instead, they are ideologies of a hierarchical social life. Because ideologies obtain legitimacy from the denial or exclusion of alternative possibilities of social life, real or potential, they are subject to contest.\textsuperscript{207} The crux of deconstructive practice is to seize, affirm, and emancipate those human possibilities denied or excluded by dominant modes of discourse.\textsuperscript{208}

\textbf{D. Williams v. Axelrod}

The infirmities passed on by dominant poverty law traditions often conspire to marginalize the poor under the rubric of aid. Marginalization may be sustained even where the poor are in fact aided. This process is illustrated by

\footnotesize{so too does its language. See R. Williams, \textit{supra} note 122, at 21-54; T. Eagleton, \textit{supra} note 6, at 194-217.}

\footnotesize{202. The Legal Aid Puzzle, \textit{supra} note 153, at 55.}

\footnotesize{203. Id.}

\footnotesize{204. Foucault, \textit{The Order of Discourse}, in \textit{LANGUAGE AND POLITICS} 108, 109 (M. Shapiro ed. 1984).}

\footnotesize{205. Edelman, \textit{The Political Language of the Helping Professions}, in \textit{LANGUAGE AND POLITICS}, \textit{supra} note 204, at 44, 45-60.}

\footnotesize{206. Balkin, \textit{supra} note 191, at 764.}

\footnotesize{207. Relying on Derrida, Dalton notes the disfavored conception — here, the client voice denied, excluded, and silenced — harbors the "dangerous" potential of revelation, of disclosing that "things are not, after all, what they seem." Dalton, \textit{supra} note 196, at 1007 (footnote omitted).}

\footnotesize{208. Balkin, \textit{supra} note 191, at 763-65.}
A THEORY OF DIALOGIC EMPOWERMENT

a mixed direct service/law reform case, Williams v. Axelrod, recently litigated in New York State Supreme Court. In Williams, poverty lawyers commenced an Article 78 proceeding on behalf of Deon Williams, a two-year-old child suffering from sickle-cell anemia and related nutritional impairments, against David Axelrod, Commissioner of the New York State Department of Health, and Dosoon G. Min, Director of the Bronx-Lebanon Hospital Center Women, Infants, and Children Program. The Williams lawyers complained these officials had acted arbitrarily, capriciously, and erroneously in disqualifying the child from participation in the state-wide WIC program and in depriving him of recertification.

Alleging that deprivation of WIC benefits had caused the child physical hardship, including weight loss and deteriorating health, the Williams lawyers petitioned the court for relief annulling the challenged decisions. Additionally, they sought a declaration that the disqualification and denial of recertification violated the Child Nutrition Act and its federal implementing regulations, as well as the New York State and United States Constitutions. Moreover, they sought to reinstate the child in the WIC program and restore all benefits unlawfully withheld.

Finding that the child fulfilled all WIC program requirements and reasoning therefore that his parent's actions as a non-participant could not affect his eligibility, the supreme court concluded the child had been unlawfully dis-
qualified as punishment for parental misconduct.\textsuperscript{217} With this conclusion, the court held the challenged decisions were thus arbitrary, capricious, and contrary to law.\textsuperscript{218} Consequently, the court ordered reinstatement of the child's certification at the Bronx-Lebanon Hospital Center WIC program and restoration of all WIC benefits withheld during his period of disqualification.\textsuperscript{219}

Pressed by the exigencies of circumstance\textsuperscript{220} and the potential import of altruistic rule expansion, the Williams lawyers departed from the tradition of direct service routinization. Nonetheless, they failed to withstand the tendency of decontextualization and atomization manifested in the continued isolation and disconnection of the Williams family from other WIC clients and the larger welfare community. That tendency, part of the process of dependent-individualization, went unnoticed and unbridled.

The garnering of a settlement award of damages for the Williams family did not reverse this process and the accompanying reproduction of dependence, isolation, and passivity. These reified myths of helplessness were as real at the outset of the Williams litigation as they were at the close. The negation of class and class consciousness was similarly constant throughout the litigation.

Framed in terms of empowerment theory, Williams required poverty lawyers to synchronize\textsuperscript{221} the vindication of the child's individual interest in regaining WIC benefits with the activization of community interest in improving the WIC program as well as similar welfare programs. Harmonization of these mutual interests necessitated attorney/client engagement in dialogue, specifically in socio-economic and political discourse relevant to enhancing community health and nutrition.\textsuperscript{222} Amplification of that discourse warranted meetings between the Williams family and other WIC client families to create a client/client study group. Further expansion of discourse entailed the participation of the surrounding community, especially neighborhood churches, clinics, day care centers, schools, and self-help associations, in organizing community consciousness raising and action groups.

Client/client and client/community discourse might have commenced with a series of small informational meetings regarding the nature of the WIC

\begin{itemize}
\item \textsuperscript{217} Williams v. Axelrod, 133 Misc. 2d 817, 821-22 (Sup. Ct. 1986). Although acknowledging the state's interest in protecting WIC agency staff from harm, the court stressed the importance of alternative means to achieve this legitimate goal short of terminating the benefits of an eligible and needy WIC program child participant. \textit{Id.} at 822.
\item \textsuperscript{218} \textit{Id.}
\item \textsuperscript{219} \textit{Id.} at 823.
\item \textsuperscript{220} The Williams lawyers secured a temporary restraining order on December 24, 1985, from the New York State Supreme Court enjoining Axelrod from continuing to deny the child current WIC benefits, pending a full hearing on a motion for a preliminary injunction. \textit{See} Petitioner's Order to Show Cause, Williams (Dec. 24, 1985).
\item \textsuperscript{221} Cornell, \textit{supra} note 162, at 1226.
\item \textsuperscript{222} The historian J.G.A. Pocock deems "verbalization itself as a political act." Pocock, \textit{Verbalizing a Political Act: Towards a Politics of Speech}, in \textsc{Language and Politics}, \textit{supra} note 204, at 25 (emphasis in original).
\end{itemize}
program, particularly its controlling rules and regulations on matters of eligibility and participation. Out of these meetings an organizing committee might have formed to call forth a plenary community meeting specifically to address the WIC program and related health and welfare issues. From this meeting, clients and community members might have planned numerous actions, from study groups to demonstrations, including establishing a physical presence (e.g., an advocacy table) at or outside local WIC programs to distribute information and aid independent client action.

Bounded by tradition, these opportunities for empowerment were left unexploited in *Williams*. Deprived of discourse, neither the Williams family nor their lawyers were able to engage in a joint effort to educate, organize, and mobilize similarly aggrieved individuals, groups, and communities. Even the basic groundwork of attorney/client and client/client dialogue — discourse on socio-economic history and political strategy, consciousness raising meetings, and study groups — was neglected.

With the exception of standard attorney/client interviews, no meaningful dialogue was established between poverty lawyers and the Williams family. Accordingly, the monologue and technical dialogue of the traditional attorney/client relation prevailed. Nor were rights deconstructed and synthesized to expose their contextual and transcendent nature. Thus, the transformational potential of dialogue, client organization, and community mobilization was dismissed. In sum, the preconditions — critical consciousness and dialogue — for empowerment were discarded, and with them the alternative traditions and oppositional continuities of the poor accumulated in their long struggle against state sanctioned poverty.

### III.
**DIALOGIC EMPOWERMENT**

The salutary results procured in *Williams* and like cases ratify the relative value of dominant poverty law traditions, but leave a tragic legacy for the poor. Tragic because those traditions are mired in an orthodoxy that ultimately marginalizes the poor. The attorney/client relation stands at the epicenter of this marginalization.

By seizing upon a critical theory of class and class consciousness, poverty lawyers can unfetter that relation. Although this seizure may occur abstractly, its application must be grounded concretely in the daily cultural experiences of the poor. To connect with and share in these experiences, and thereby facilitate a transformation in the social role of the individual poor and

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223. Cf. C.V. Woodward, *Tom Watson: Agrarian Rebel* iv (1938) (describing agrarian Populist battles as "the tragedy of a class, and more especially the tragedy of a section").

the social organization of poor communities, poverty lawyers must enter into a transformational dialogue with the poor.

A. Dialogue

The notion of dialogue has been most profoundly explored by the theologian Martin Buber.\(^\text{225}\) Buber establishes a relational theory of dialogue heralding the sanctity of the “primary word I-Thou” as an open mutual world of relation.\(^\text{226}\) To Buber, this “primary word can only be spoken with the whole being. He who gives himself to it may withhold nothing of himself.”\(^\text{227}\)

Buber’s notion of dialogue as a direct meeting involving affirmation of the other in a lived relation explains the division and separation between poverty lawyers and the poor.\(^\text{228}\) Poverty lawyers withhold relation. They hesitate to “step into direct relation” with the poor.\(^\text{229}\) Without this step into the “solidarity” of dialogic relation, there can be no connection or community, no union or unity between attorney and client.\(^\text{230}\)

Buber exhorts poverty lawyers to destroy the “barrier of separation” and embrace “real relation in the world” of the poor.\(^\text{231}\) Real relation is marked by “individuation” and the “interchange of actual and potential being.”\(^\text{232}\) The “world of relation” consists of many “moments of relation” encompassing different spheres, each part of a “process of becoming.”\(^\text{233}\) This process emerges from the act of relation, from the “wholefulness of real mutual action.”\(^\text{234}\)

Buber’s teachings plant the foundation for a theory of transformational dialogue. From his relational premise, a theory of dialogue can be constructed intertwining the values of directness, mutuality, and openness into an other-affirming whole. Within that world of relation, poverty lawyers and the poor can experience the union of connection and the unity of community.

Riven by marginalizing tendencies, the attorney/client relation has shattered into a cracked monologue or at best a technical dialogue of lawyer domi-


\(^{226}\) I AND THOU, supra note 225, at 4, 6, 8-9, 15.

\(^{227}\) Id. at 10-11.

\(^{228}\) Id. at 11-12, 16, 18, 27, 43.

\(^{229}\) Id. at 76. Direct relation here implies seeing the social world from the standpoint of the subordinated client. See C. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 43 (1987). This approach to interpersonal relations of dominance is avowedly feminist. Id.

\(^{230}\) I AND THOU, supra note 225, at 63, 45, 59, 86-87.

\(^{231}\) Id. at 77, 99-100.

\(^{232}\) Id. at 99, 100.

\(^{233}\) Id. at 101, 103, 101.

\(^{234}\) Id. at 109, 110.
To repair this relation and restore dialogue, poverty lawyers must address and penetrate the marginalized social role of the poor. This role is characterized by cultural and socio-historical signs.3

The prosaic signs of the poor are easily recognized. They are expressed in variations of ethnicity, gender, race, and class, in characterizations of dependence, isolation, and passivity, and in the language of acquiescence, compliance, and deference. The liberating signs of the poor, the signs of potential being and historical becoming, are more opaque. These signs are embedded in particular social roles and forms of organization.

Gramsci and Genovese expose the roots of these roles and formations, locating them in the historical continuities and traditions of class and hegemonic conflict. Thompson and Williams, as well as Foucault and Habermas, provide insight into the manner in which those roots saturate the whole body of lived experience, thus shaping the full realm of consciousness including perception, interpretation, and vision. But it is Freire and Buber who supply a method of shedding a lived domination by reaching out237 and embracing the potential of the individual poor, cooperatively decoding238 signs of domination, culling alternative and oppositional thematics,239 and reconstructing those thematics in collective transformational dialogue.

Transformational dialogue cannot spring serendipitously from the attorney/client relation. Nor can it be boiled down to a formula conjured or incanted. Transformational dialogue is instead a relational process of mutual unfolding between the attorney and client in direct and open meeting.240

Relational unfolding is a process of communication comprised of speech and gesture as well as silence.241 It is a discourse between the attorney and the client-as-other in which the attorney does not merely observe and look upon

236. Id. at 10-13.
237. Id. at 21.
238. P. Freire, supra note 19, at 96-118. Freire employs decoding as a deconstructive method of critical analysis applied concretely to penetrate socially constructed situations and reveal objective meaning. Id. at 96.
239. Id. at 86-95. Freire utilizes thematics to capture the limiting (i.e., dominated) and liberating (i.e., generative) elements, folkways, and traditions pervading specific historical contexts. Id. at 86-95. The dialogic process of decoding takes place in "thematic investigation circles." Id. at 110 (footnote omitted). The investigation proceeds from Freire's central premise of "educational action as liberating cultural action." Id. at 110 n.32.
240. White merges Freire's pedagogy and the feminist method of consciousness raising in classifying the work of "third dimensional" lawyers. White, supra note 67, at 760-66.
the client-as-symbol, but becomes aware of the client-as-historical-actor apart from her marginalized social role as client-recipient. Renunciation of debasing mythology alone is insufficient to meet the poor in transformational dialogue. Real relation requires the further repudiation of those habits tending to negate class and class consciousness, and decontextualize and atomize common struggle. Unless these habits of mind are rejected, the process of dependent-individualization will continue undeterred.

Transformational dialogue reverses that process. In its place, it substitutes the process of dialogic-individuation within a growing community of others. This alternative process encompasses three dialogic moments in corresponding relational spheres. These moments constitute interdependent points of empowerment.

B. Attorney/Client Dialogue

The first moment of dialogue occurs in the sphere of the attorney/client relation. Here dialogue arises from faith, practical wisdom, respect, and sympathy. Each of these elements implies mutuality, a shared sense of direct and open engagement by the poverty lawyer and individual client.

Faith denotes fidelity and trust. It also connotes genuine and sincere belief, a kind of authenticity of motive. Practical wisdom describes reasoning that is principled and rooted in everyday experience. It suggests considered judgment informed by the ordinary lessons of everyday life.

242. Id. at 8-10.
244. BETWEEN MAN AND MAN, supra note 225, at 30-32.
245. Habermas defines these moments as points of "self-supporting higher-level intersubjectivities." J. HABERMAS, supra note 37, at 364.
246. Freire claims dialogue "requires an intense faith in man, faith in his power to make and remake, to create and re-create, faith in his vocation to be more fully human . . . ." P. FREIRE, supra note 19, at 79. He proclaims: "Faith in man is an a priori requirement for dialogue; the 'dialogical man' believes in other men even before he meets them face to face." Id. See also P. TILLICH, PERSPECTIVES ON 19TH & 20TH CENTURY PROTESTANT THEOLOGY 168-76 (C. Braaten ed. 1967) (critique of Kierkegaardian faith); M. HEIDEGGER, BEING AND TIME 322 (1962) (describing the "call of care" as discourse).
247. The interconnection between trust and "good will" is affirmed by Joel Handler in extending the work of Annette Baier, see Handler, Dependent People, the State, and the Modern/Postmodern Search for the Dialogic Community, 35 UCLA L. REV. 999, 1077-79 (1988); Baier, Trust and Antitrust, 96 ETHICS 231, 234-35 (1986). See also Simon, supra note 51, at 133 (defining trust as "a quality which the parties must create or fail to create in each instance.").
248. In Freire's lexicon, practical wisdom flows from "praxis: the action and reflection of men upon their world in order to transform it." P. FREIRE, supra note 19, at 66.
249. Freire recognizes that "the present, existential, concrete situation" of everyday life furnishes the "starting point for organizing the program content of education or political action." Id. at 85. From daily life, Freire suggests, "certain basic contradictions" can be discovered and posed to the poor "as a problem which challenges them and requires a response — not
Respect defines an imparted deference to independent decisionmaking and an honoring of individual client choice and preference. In this way, respect follows from the cultivation of faith and practical wisdom. Sympathy is an ethic and ideal of shared ends experienced in the relation between self and others. For Unger, "[c]ommunity begins with sympathy."

The reaching out of empowerment begins in the first moment of dialogue within the attorney/client relation. At this meeting, the poverty lawyer must engage the individual client in a direct and open discourse concerning the myths of legal efficacy and ingrained indigent isolation and passivity. This discourse inaugurates the task of redressing and rebuilding reductive interpretations of the poor.

Where domination is interpreted and interiorized as dependence and self-deprecation, discourse may fall short. In this circumstance, the client must be encouraged to reassess her expectations of lawyer-engineered legal efficacy and to consider alternative insurgent traditions discarded by dominant poverty law traditions. Client reassessment of the myth of legal efficacy is guided by the concept of legal superstructure analysis. This analysis examines the nature...
of both legal institutions — courts, governmental agencies, and advocacy organizations — and legal ideology — constitutionalism, and statutory and common law jurisprudence. The purpose of the analysis is to enable clients to gather a rough understanding of the potential and limits of social change accrued through direct service and law reform litigation. The goal in enlarging the breadth of discourse is to move the client beyond a subordinate posture of passive lawyer reliance towards an active, participatory recovery of insurgent community traditions. 257

Boyte recounts that people engaged in the process of recovering an oppositional history of insurgency “draw upon rich cultural resources and traditions from the past, unearthing subversive themes of protest, dignity, dissent, and self-assertion, and fashioning them into foundations for a new culture.” 258 By drawing from indigenous sources of cultural dissent, insurgent movements ensure a continuity and vitality of opposition. 259

Demythologizing dominant poverty law traditions in order to recover alternative traditions and oppositional continuities does not — and should not — preclude the employment of the methods of direct service and law reform litigation 260 as instruments of counter hegemonic education, 261 protection, 262

system, its courts, judges, personnel, rules, and folkways. The explanation should note the attendant limits of the judicial process as an instrument of affirmative social change and the radiating force of class, gender, and racial prejudice throughout that process.

Similar analysis should be applied to governmental agencies and their private affiliates responsible for promulgating and implementing welfare policies and practices. As seen in Williams, these agencies and their personnel exercise decisive power over the lives of client-recipients. Williams v. Axelrod, 133 Misc. 2d 817, 508 N.Y.S.2d 371 (Sup. Ct. 1986). It is essential, therefore, that poverty lawyers discuss with clients agency structure, operation, and susceptibility to legal and political attack.

Likewise, legal superstructure analysis should review and summarize, in a simplified form, the substance of the constitutional, statutory, and decisional law impinging upon client grievances. This is not to suggest that clients should be entangled in the complexity of federal or state law, but instead to emphasize that clients should be supplied the opportunity to learn the substantive foundations of specific litigation. Without this background, clients will be unable to participate meaningfully in the planning of litigation tactics and strategy. This learning opportunity should be supplemented by self-help handbooks and manuals.


258. H. Boyte, supra note 84, at 179.

259. Id. at xii. As Taylor Branch points out in his incisive history of the civil rights movement, the vitality of dissent may continue across the dividing lines of class and race. See T. Branch, supra note 257, at 143-205, 451-91 (1988) (contrasting the Montgomery bus boycott and the Freedom Rides).

260. Habermas approves this conversion of method as the “critical appropriation of tradition.” J. Habermas, supra note 6, at 70-71.

261. William Simon puts forth a critical vision of practice “as a process of constituting or reconstituting nonhierarchical communities of interest.” Simon, supra note 60, at 485. He envisions situations “in which the client is encouraged to enter into nonhierarchical relationships by the experience of solidarity and another in which she is empowered to withdraw from or
and positive insurgent growth. Mounting the instruments and institutions of the law either to safeguard or strengthen the rights of the poor, however, requires a prior deconstruction and synthesis of rights theory. This synthesis combines the concepts of individual and class rights in a unified, multi-dimensional theory of contextual and transcendent rights.

The discourse of multi-dimensional rights theory should be held even though the individual client may articulate a limited rights demand. In comparison to Williams, where the client’s rights demand was couched narrowly in terms of regaining WIC benefits, the poverty lawyer should not readily accept such a crabbed interpretation of entitlement. Nor, by contrast, should she disrespect the client’s rights demand. Rather, she should focus discourse on the historical derivation of that narrow, particularized statutory right, especially the economic, political, and social collision of interests underlying its development. At the same time, she should focus on the potential evolution of a broader, more comprehensive nutritional right, a right universal in scope.

By focusing on multi-dimensional rights theory in the “real, concrete, historical situation" of rights demand, the attorney/client dialogue may elevate immediate rights demand to transcendent rights aspiration. The enlargement of rights demand from a contextual to a transcendent dimension is necessary to counterbalance the regressive forces of atomization and negation. In this respect, multi-dimensional rights theory vindicates the contextual rights demand of the individual client while inculcating transcendent rights aspiration on behalf of the client historical class.

C. Client/Client Dialogue

The second moment of dialogue occurs in the sphere of the client/client

challenge hierarchical ones.” Id. (footnote omitted). These situations may be realized in client/client and client/community dialogue and collective opposition.

262. In his critique of CLS scholars, Richard Delgado points out: “Rights do, at times, give pause to those who would otherwise oppress [minorities].” Delgado, supra note 41, at 305. He adds, “[f]or minorities . . . that rights minimize many forms of coercion is of enormous importance.” Id. at 306. See also Kennedy, supra note 67, at 1062-63 (emphasizing the value of formal rights in protecting blacks against invidious racial discrimination); Crenshaw, supra note 41, at 1384-85 (characterizing rights as “the means by which oppressed groups have secured both entry as formal equals into the dominant order and the survival of their movement in the face of private and state oppression.”); Williams, supra note 41, at 413 (defending rights as measures of actual entitlement providing protection against genuine vulnerability).

This point applies with equal force to the safeguarding rights of the poor, and likewise, to women “who are not in a position to abandon hard-won rights for the ephemeral promise of direct political struggle.” Littleton, Reconstructing Sexual Equality, 75 CALIF. L. REV. 1279, 1283 n.24 (1987) (citation omitted). See also Scales-Trent, supra note 61, at 40-41 (claiming that the assertion of rights is the only source of protection for dispossessed black women).

263. P. FREIRE, supra note 19, at 185.

264. The germination of transcendent rights theory is found in Freire’s analysis of cultural synthesis and the “deception of palliative solutions.” Id. See also Matsuda, supra note 41, at 333 (describing an aspirational vision of law as part of the experience of people of color); Schneider, supra note 41, at 629 (presenting the linkage between the specific experiences of women and the universal claim of rights in women’s rights discourse).
relation. As with the attorney/client relation, client/client dialogue emerges from the mutual affirmation of the client-as-other in direct and open meeting. The unfolding of dialogue from the individual interchange of client/client relation is a critical facet of empowerment. The evolution of community, class, and class consciousness is untenable without client/client dialogic relation.

The centrality of this relation is trampled by dominant poverty law traditions. William Simon observes “neither communication among clients nor direct client participation is valued” by these traditions. This devaluation contrasts against his own proffered “[c]ritical notion that a community of interest is something to be created in the course of representation.” On this view, the creation of client relational community becomes linked to “communication among clients and direct participation.” Consistent with empowerment, “[c]ommunication among clients and direct participation are valued for their potential to increase understanding and solidarity and to safeguard against hierarchy.”

Client/client relational communication and participation requires not only the proliferation of client voices, but also the extension of discourse to the subjects of socio-economic history and political strategy. Experience shows this discourse may sprout naturally between attorney and client, as well as among clients, in poverty-law offices, welfare agency waiting rooms, courtroom halls, church basements, and tenement stairwells.

When words empower, they may facilitate client socio-economic identification and class affiliation first in local communities, then gradually in state and national communities. For example, a WIC recipient confronted, as in Williams, by benefit termination caused by hostile and uncooperative agency officials should be told of similarly situated recipients represented by the poverty lawyer’s office in the local community. The client should be further advised of the shared political and socio-economic status — as unrepresented or underrepresented social class — of those recipients both in the community and in wider state and national communities. Additionally, she should be apprised of the history of these local, state, and national client communities, particularly regarding the formation of political alliances.

Once the client understands she is part of an oppressed political community, not simply an individual isolated and disconnected in her experience of oppression, she should be encouraged to join client study and consciousness raising groups and client/community advocacy organizations. Conceding that

265. Simon, supra note 60, at 487. Simon conflates the dominant direct service and law reform traditions into the inclusive concept of “established professional culture” or “professional vision.” Id. at 469, 487.
266. Id. at 487.
267. Id.
268. Id. (footnote omitted).
269. Doubtless, even the most balanced and circumspect methods of discourse may quickly deteriorate into lawyer domination and manipulation. See Ellmann, supra note 251, at 719-33. To safeguard against this marginalizing tendency, poverty lawyers must eschew dominance and manipulation and strive to realize Buberian openness in the attorney/client relation.
the process of individual client empowerment may come slowly, and in some cases never materialize, does not warrant abnegating the undertaking.

Discourse on socio-economic history should focus on enabling clients to locate themselves on the class map of American society. Client socio-economic location entails client study and organized client/client investigation and reflection.270 The purpose of these joint endeavors is to broaden client awareness of self as an historical actor within a larger class and community whole.271

Socio-economic history, even at an elementary level, is vital to the unfolding of client/client relation. Lacking an informed sense of self and place in historical context, individual clients may be unable to overcome narrow self-interest and perceive the common interests of class and shared community. Thus, they may be unwilling to participate in the united resurrection of that

270. Under Freire's pedagogy, attorney and client act as co-investigators of the thematics of domination. P. FREIRE, supra note 19, at 97, 68-74, 93-123. Within this joint investigation, Freire claims "[a]ction and reflection occur simultaneously." Id. at 123. Accordingly, "[c]ritical reflection is also action." Id.

271. Materials relevant to client socio-economic location span a vast range. In a single community, these materials should include quantitative data measuring client poverty populations in terms of age, disability, gender, household composition, income, wealth, and race. Additional data highlighting the gravity of community oppression (e.g., alcohol and drug addiction, battered women, child abuse, crime, hunger, infant mortality, juvenile delinquency, school truancy and dropout rates, and teenage pregnancy) are also pertinent. Data on federal, state, and local funding of public resources, including police, fire, sanitation, parks, hospitals, mental health and drug rehabilitation clinics, and social services are equally germane.

Community socio-economic data should be supplemented by historical materials documenting the evolution of local neighborhoods. Particularly noteworthy are patterns of economic development, employment, housing displacement and segregation, and immigration. In assembling and interpreting this data, efforts should be made to discern and chart factors influencing the growth and decline of neighborhoods. Close attention should be devoted to the role and effect of public and private initiatives in ameliorating and preserving neighborhood prosperity.

Socio-economic materials also should winnow and synthesize data from national, state, and adjacent local sources. The goal in distilling these materials is to present an in depth and detailed profile of client poverty populations. To that end, socio-economic data illuminating the plight of impoverished communities should be accumulated widely. Data then should be analyzed comparatively seeking a correlation between communities connected by factors such as gender, household composition, or race.

Likewise, national, state, and local historical sources should be consulted in tracing client poverty populations. The similar objective is to delineate the history of a client population that goes beyond anecdote and myth. See e.g., COALITION ON HUMAN NEEDS, HOW THE POOR WOULD REMEDY POVERTY (1988); B. LEYSER, A. BLONG, & J. RIGGS, BEYOND THE MYTHS: THE FAMILIES HELPED BY THE AFDC PROGRAM (2d ed. 1985). By combining socio-economic and historical data, poverty lawyers may be able to compose an accurate account of client poverty populations specific to local communities and common to larger state and national communities.

The account should be drafted in conjunction with individual clients and client/community groups. Because client populations may vary in literacy skills, the account should be plainly written with statistical analysis limited to easily grasped illustrations. The account then should be reviewed with individual clients and organized client/community study groups for revision. After revision is complete, the account should be circulated among client/community groups for dissemination. The entire process of drafting and distribution should be client-centered and, to the extent possible, client-participatory.
community. Poverty lawyers should work to sharpen client perception of relational community, of individuals acting in mutual affirmation and solidarity of interest.

D. Client/Community Dialogue

The third moment of dialogue occurs in the sphere of client/community relation. Like the dialogic moments of attorney/client and client/client relation, this relation unfolds from mutual affirmation of the client-as-other in direct and open meeting. This meeting is pluralistic drawing from and coalescing around a community of clients. In that meeting, empowerment of class and class consciousness is enriched.

To promote client/community relation, the attorney/client dialogue must branch off into straightforward political discourse. This turn transports the attorney/client relation outside the conventions of dominant traditions to arrive at a political base theory of representation. Invoked by Bellow and amplified by Simon, this theory proposes to bond traditional litigation tactics to political organizing, protest, and electoral politics, thereby forging an integrated political strategy.

272. Bellow and Kettleson stress that “[p]olitical organization and activity by disadvantaged groups will be necessary to maintain, expand and assure full implementation of any benefits and rights that lawyers might establish.” Bellow & Kettleson, supra note 50, at 383-84 (footnote omitted). See Condlin, “Tastes Great, Less Filling”: The Law School Clinic and Political Critique, 36 J. LEGAL EDUC. 45, 49-53 (1986) (endorsing overt political discourse in clinical setting); Simon, supra note 157, at 558-59 (studying the political character of lawyering and advocating a Political Vision); Stumpf, Law and Poverty: A Political Perspective, 1968 Wis. L. REV. 694, 702-06 (explicating the political dimensions of poverty law, particularly as a community instrument and resource).


274. See Simon, Rights and Redistribution in the Welfare System, 38 STAN. L. REV. 1431, 1499-1513 (1986). Historians contemplating the community action programs of the 1960s confirm the efficacy of the Bellow-Simon theory of “legal intervention” as a framework for reform. P. MARRIS & M. REIN, DILEMMAS OF SOCIAL REFORM: POVERTY AND COMMUNITY ACTION IN THE UNITED STATES 294 (2d ed. 1973). They wisely point out, however, that this strategy encountered fierce and ultimately fatal resistance, at both local and national levels, once legal activists overstepped the “limits of political tolerance.” Id. at 293, 164-90. The inherent risk of political encroachment stands independent of equally nettlesome issues of constituency, coalition, funding, planning, and leadership development. Id. at 56-163. For prospective and retrospective assessments of the community action program, compare Cannon, Enlightened Localism: A Narrative Account of Poverty and Education in the Great Society, 4 YALE L. &
Reconstituting this theory, Habermas recommends “a new division of powers within the dimension of social integration” represented by autonomous self-organized public spheres of solidarity. He contends autonomous public spheres arise from domains of everyday practice and centers of concentrated communication. By means of communication and through forms of self-organization, Habermas claims the collective capacity for action is strengthened.

The imperatives of interest group politics and class power compel poverty lawyers and clients to move towards client community. This movement requires “working with organized groups of poor people, working with organizers, and occasionally even organizing itself.” The collaboration of poverty lawyers, clients, and political organizers in the formation of community empowerment groups assigns a tactical role to the traditional methods of direct service and law reform litigation. Each method “becomes simply one tactic among many available to poor people’s groups.”

The fundamental rethinking demanded by the unfolding of client/community dialogue sparks a moment of democratic renewal for poverty lawyers. Disclaiming marginalizing traditions, they may search dialogically for multidimensional rights issues galvanizing client/community organization at local, state, and national levels. Collaboratively fashioned, these catalyst rights

275. J. HABERMAS, supra note 37, at 364.
276. Id.
278. Comment, supra note 159, at 1078. See also Failinger & May, supra note 10, at 55 (“Group-oriented approaches to legal services recognize that the poor have common interests and are subjected to class treatment, a reality that suggests the desirability of group legal responses.”).
279. Comment, supra note 159, at 1078 (footnote omitted). The implications of this tactical organizing approach are significant. Offering an example of this approach in practice, Bachmann surmises:

[c]onsider an intersection where the lack of a stop sign is causing traffic hazards and threatening children. A lawyer would solve this problem by going to court to get the stop sign put into place. From this process people either do not know how the stop sign got there or learn that lawyers produce change. Both results aggravate people’s perceptions of their powerlessness, which is disastrous from an organizer’s perspective. In contrast to the lawyer, the organizer would knock on all the doors in the neighborhood, organize a meeting of interested people, and help them collectively deal with the problem. They would probably hold a mass demonstration, meet with a city official, and successfully pressure her to provide the stop sign. From this experience, people in the neighborhood would learn that they can have power if they organize, and coordinate their efforts. Because so many individuals participated in producing the sign, nearly everyone in the neighborhood would learn this lesson. Suddenly an aspect of the neighborhood is the product of the residents’ personal actions.
Bachmann, supra note 60, at 6.
280. Comment, supra note 159, at 1079. Scheingold argues that concentrating litigation tactics on “building political coalitions and mobilizing resources on behalf of implementation”

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issues may awaken dormant client/community consciousness and mobilize the building of independent, locally-based client/community empowerment groups.\textsuperscript{281}

This boldly political object transforms the goal of representation from the protection and expansion of individual or group entitlement claims to the establishment of client/client and client/community organization. As Bellow mentions, this methodological transformation must be accompanied by a re-orientation of poverty lawyer perspective. He remarks: “The organization’s purpose is to bring about some change in the situation of its members and to establish some real modification of problems they face. That may involve changing legal rules; it may not.”\textsuperscript{282}

Perceiving traditional litigation methods as tactical organizing techniques\textsuperscript{283} directs poverty lawyers to adopt a role subordinate to clients in organizing client/client and client/community empowerment groups. Lawyer adoption of a subordinate role is crucial to the fecund evolution of these grass roots organizations. Without the separation of lawyers from leadership positions, client and community organizations will be fixed to a lawyer-engineered political strategy.

Commentators have denounced the tendency of poverty lawyers to arrogate leadership through domination. That tendency, charged by force of personality\textsuperscript{284} and professional training, is anathema to independent group formation and leadership development.\textsuperscript{285} Defining the poverty lawyer’s role as secondary to and supportive of client/community empowerment enables may enable the poor to acquire sufficient autonomy to generate and sustain their own entitlement claims, and hence, reduce their dependency. Scheingold, supra note 56, at 891.

281. Comment, supra note 159, at 1086. See also Abel, supra note 55, at 522 (“Individual apathy and feelings of impotence can be overcome through organization and collective action, but again there are obstacles.”).

282. Comment, supra note 159, at 1087 n.28 (quoting Bellow). As Scheingold warns, without the reorientation of consciousness and commitment to the insurgent “dynamics” of social change, poverty lawyers will again “become bogged down in litigation tactics that may be personally gratifying but that are institutionally disruptive and socially inconsequential[].” Scheingold, supra note 56, at 888.

283. Comment, supra note 159, at 1087. Bellow and Kettleson admonish: Unless public interest lawyers find ways of pursuing shorter term legal gains without encouraging dependency and blunting both individual and organized client initiatives to deal with their own problems, they will substantially undermine the possibility of the sorts of political activity essential to any long term resolution of the inequities that burden their clients.

Bellow & Kettleson, supra note 50, at 384 n.182.

284. On charismatic domination and legitimation of obedience, see Weber, Politics as a Vocation, in FROM MAX WEBER: ESSAYS IN SOCIOLOGY 77, 79 (H. Gerth & C. Mills eds. 1946).

285. Commentators decry the “significant dangers” accompanying the involvement of “middle class lawyers” in organizing the poor.

More articulate, better educated, aggressive by nature and training, some lawyers tend to dominate newly formed groups, even when they try not to; such dominance, even if the middle class lawyer has been able to internalize the perspective of the poor, will generally result in the same dependence on the lawyer which a strategy of test case litigation inevitably means for the poor. The organization will not develop the aggres-
her to structure direct service and law reform litigation in accordance with the priorities set by client/community groups. The generation of litigation initiatives activating and reinforcing client/community wholeness must flow from client/community empowerment groups not poverty lawyers.\textsuperscript{286} The primacy of these groups assures client/community-centered decisionmaking regarding the content and direction of group policy.\textsuperscript{287}

The emergence of client/community empowerment groups permits poverty lawyers to deconstruct more effectively the myths of legal efficacy and inherent indigent isolation and passivity in transformational client/community settings. Because counter hegemony must be constructed from these mythological ruins, poverty lawyers must simultaneously communicate multidimensional rights theory. Conveying this information is a cardinal element of empowerment.\textsuperscript{288}

Multi-dimensional rights education may broaden the historical understanding of individual clients, client/client, and client/community groups. Moreover, rights education may serve to encourage clients to communicate and share their common complaints with a community of others in like situations. This dialogue is transformational in its power to invigorate political organization and mobilization around basic, generally held grievances.

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\textsuperscript{286} Comment, supra note 159, at 1091 (footnote omitted). \textit{See also} Abel, supra note 55, at 578-79 (attributing poverty lawyer preference for litigation to "its higher visibility, quicker results, and greater legitimacy"); J. \textsc{Katz}, supra note 74, at 105-22 (describing law reform litigation as a "culture of significance").

\textsuperscript{287} Comment, supra note 159, at 1088. This analysis follows the main outlines of Bell's integrated model of politics. The conceptual precursor of the class advocacy model, based on "representation of the poor with respect to their common or collective interests," is sketched in the earlier work of Jerome Carlin and Jan Howard. \textit{See} Carlin & Howard, \textit{Legal Representation and Class Justice}, 12 UCLA L. REV. 381, 436 (1965).

\textsuperscript{288} As Lawrence Grosberg and Deborah Rhode demonstrate, client/community decisionmaking expressed in class actions may be fractured by internal conflicts over divergent litigation interests commonly arising during "settlement or remedial deliberations." Rhode, \textit{Class Conflicts in Class Actions}, 34 STAN. L. REV. 1183, 1188 (1982). \textit{See} Grosberg, \textit{Class Actions and Client-Centered Decisionmaking}, SYRACUSE L. REV. (forthcoming); Berger, \textit{Away from the Court House and into the Field: The Odyssey of a Special Master}, 78 COLUM. L. REV. 707 (1978). \textit{See also} Meeker, Dombrink & Song, \textit{Perceptions About the Poor, Their Legal Needs, and Legal Services}, 9 LAW & POL'Y 143 (1987) (finding little similarity between the poverty community and community organizations concerning resource allocation priorities).

Derrick Bell shows these internal conflicts also may distort the attorney/client relation. \textit{See} Bell, \textit{Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation}, 85 YALE L.J. 470 (1976).

\textsuperscript{288} A.F. Ginger comments:

\begin{quote}
When a lawyer talks to people about their rights in a fundamental sense, he strengthens the individual client and the organizational client to the point where they are prepared to do things they were afraid to do before. Not that you should tell them what they should do and should not do. But certainly they should know what the law says, and something about the history of this society.
\end{quote}

Comment, supra note 159, at 1086 n.25 (quoting Ginger, \textit{The Movement and the Lawyer}, 26 GUILD PRACTITIONER 12 (1967)).
Poverty lawyers can stimulate client organization and community mobilization by drafting self-help advocacy materials, such as legal handbooks and manuals, which translate the law into a more intelligible and less intimidating medium. This translation is particularly cogent if undertaken in the context of client/community lay advocacy training. Training welfare clients, for instance, to teach others similarly situated about relevant program rules and regulations or agency procedures instills a provocative lesson in the practice of collective self-help.

A more provocative lesson poverty lawyers prudently fear to broach concerns client physical confrontation with oppressive actors, as vividly portrayed in Williams. This fear, however, exerts an overinclusive chilling effect. Viewed as the political venting of either aspiration or dissent, individual and mass confrontation are fundamental to the "process of democratic movement-building." Because these forms of confrontation are at different times unforeseeable and "overarchingly difficult" to fashion, and at all times dangerous, it may be necessary to counsel clients regarding contemplated acts of civil disobedience or political protest.

The object of confrontation is political incitement. As an incendiary act of politicization, confrontation may prove essential to community activiza-

289. Wexler, supra note 157, at 1056-57. Expanding on this point, Wexler states: Having a summary and explanation of the laws which affect their lives means a great deal to poor people. It means that they have a weapon with which to fight back, and knowing that they have the weapon builds the security to engage in the fight. Many poor people do not even know that they have legal rights; very few know the substance of even their most fundamental rights.

Id. at 1057. For concrete examples, see The Legal Aid Society, Homeless Family Rights Project, Homeless Families Know Your Rights! (1987); The Legal Aid Society, Community Advocate Project, The People's Guide to Fair Hearings in New York City (1985).

290. Wexler, supra note 157, at 1056-58. Wexler adds: If properly trained, welfare recipients can help other recipients compute their own budgets, figure their own available income and resources, succeed at eligibility interviews, win fair hearings, negotiate with merchants for credit, lobby for legislative and administrative changes in welfare, appear before hospital boards, and so on. Most often poor people can help each other better than lawyers can; they have easier access to other poor people, know the problems intimately, and can act in ways which lawyers fear to act.

Id. at 1057.

291. L. Goodwyn, supra note 257, at XVIII (construing "democratic movement-building" as a four-stage "sequential process" of formation, recruitment, education, and institutional politicization).

292. Id. at XVII. Where the individual or group client purpose involves civil disobedience, confidentiality doctrines must be assessed. To accommodate the sometimes clandestine needs of political confrontation and the professional canons of compelled disclosure, the attorney must fully explain confidentiality to the client not only to avoid misleading her, but also to permit her to forego legal representation when essential to preserve the act of disobedience itself. For an elaboration of the obligation to explain confidentiality, see Sobelson, Lawyers, Clients and Assurances of Confidentiality: Lawyers Talking Without Speaking, Clients Hearing Without Listening, 1 Geo. J. Legal Ethics 703 (1988).

293. The vagueness of individual and community thresholds of tolerance renders political
tion and mobilization. Its value, when effective, lies in its visceral quality of empowerment as a shared experience of lived political principle.

The poverty lawyer's role in political confrontation is limited. Working in unison with political organizers and client/community groups, she should help provide insight into the legal ramifications of a direct action, in specific the imperiling risk of civil and criminal penalties. In no circumstance should she participate in that action. Nor should she assume the role of political counsel on matters of tactics and strategy. Rather she should cabin her activities to the ken of legal knowledge. Armed with this knowledge, client/community empowerment groups can prepare and execute confrontational political actions in light of legally appraised repercussions.

The dialogic moments of attorney/client, client/client, and client/community relation permit the mutual embrace of individual and collective values of solidarity. Solidarity creates community. The creation of democratic community hinges on "cooperative struggle," on the meeting of the poor "in cooperation in order to transform the world." That transformation re-

--incitement an inexact and explosive empowerment device. Cf. J. HABERMAS, supra note 6, at 63 (commenting on the uncertainty of such thresholds).

With respect to protest in an urban community, Martin Luther King, Jr., explains:

To raise protest to an appropriate level for cities, to invest it with aggressive but nonviolent qualities, it is necessary to adopt civil disobedience. To dislocate the functioning of a city, without destroying it, can be more effective than a riot because it can be longer lasting, costly to the society, but not wantonly destructive, [sic] Moreover, it is difficult for government to quell it by superior force.


294. See L. GOODWYN, supra note 257, at XVIII-XXIV. On the transformation of black dissident consciousness generated by litigation and extra-legal protest (e.g., boycotts, sit-ins, marches, and riots), see Kennedy, supra note 67, at 1064-66.


Wexler reiterates this theme of protest, maintaining:

If the people confront those who oppose them and win, they see that they can beat those whom they will inevitably oppose again. That lesson is more valuable than anything the lawyer can win, or any ease in his style of victory.

Wexler, supra note 157, at 1058 (footnote omitted).

296. For Unger, the values of solidarity come from the practices and institutions of group life; their worth stands independent of their use to individual will or combination of individual wills. R. UNGER, supra note 7, at 29. The subversion of relationships of dependency and domination, according to Unger, is the "crucial determinant of the progress of equity and solidarity in law." Id. at 212-13.

297. L. GOODWYN, supra note 257, at XXIII-XXIV.

298. P. FREIRE, supra note 19, at 167.
quires the unity\(^{299}\) of cultural consciousness and political organization where the poor “see themselves” as a self-liberating class.\(^{300}\) Poverty lawyers can empower liberating consciousness and organization by turning openly to the poor and jointly engaging in a dialogue about the world.\(^{301}\)

Poverty lawyers must be circumspect in naming that world. As Unger reminds us, “[h]e who has the power to decide what a thing will be called has the power to decide what it is.”\(^{302}\) Naming, therefore, must be guided by critical self-reflection and dialogic reciprocity\(^{303}\) as well as by allegiance to the open discourse of diverse community.\(^{304}\)

Naturally, language, like identity and role, is slow to acquire new meanings. Here, the solution advanced by Unger and Minow is instructive: “use of old words in new ways.”\(^{305}\) This solution, however, is itself vulnerable to privileging.\(^{306}\) Privileging new forms of discourse may silence different and opposing voices, thus doing violence to democratic community. Caring for

\(^{299}\) Id. at 172, 173-85.

\(^{300}\) L. Goodwyn, supra note 257, at XXV. To enter that world, the poverty lawyer must personalize and contextualize the poor client's problems. Menkel-Meadow, supra note 239, at 57-58.

\(^{301}\) P. Freire, supra note 19, at 181.

\(^{302}\) R. Unger, supra note 22, at 80.

\(^{303}\) Dialogic reciprocity hinges on the poverty lawyer's ability to maintain a critical self-awareness of the “necessary situatedness” of her own standpoint. C. Mackinnon, supra note 229, at 59-60. See also Sherwin, A Matter of Voice and Plot: Belief and Suspicion in Legal Storytelling, 87 Mich. L. Rev. 543, 595-96 (1988)(discussing dialogic reciprocity). With this understanding of self, the poverty lawyer may gain “some access to the truth of the situation.” C. Mackinnon, supra note 229, at 60.

\(^{304}\) On the chorus of voices and common purposes of community, see R. Unger, supra note 22, at 220-25, 249-64.

\(^{305}\) See id. at 16; Minow, Interpreting Rights: An Essay for Robert Cover, 96 Yale L.J. 1860 (1987). Naming postulates a reinterpretation and reconstruction of both word and practice. That reconfiguration is itself an act of empowerment. See Scales-Trent, supra note 41, at 43 (“Naming oneself, defining oneself and thereby taking the power to define out of the hands of those who wield that power over you, is an important act of empowerment.”).


Minow recognizes the “dilemma of difference” in the multiple contexts of gender, race, ethnicity, and class, as well as in the evolution of current feminist theory and practice, see The Supreme Court, 1986 Term—Foreword: Justice Engendered, 101 Harv. L. Rev. 10, 12 (1987); Minow, Feminist Reason: Getting It and Losing It, 38 J. Legal Educ. 47 (1988).
difference in the context of community is the unresolved task of dialogue.\textsuperscript{307}

CONCLUSION

The theory of counter hegemonic empowerment entrusts the poor with the responsibility for their own historical transformation. Twenty-five years of oftentimes dedicated advocacy have shown poverty lawyers cannot discharge that responsibility. At best, poverty lawyers can provide particularized aid and forge piecemeal reform.

The importance of these efforts should not be denigrated. Fending off hunger and homelessness, even barely or momentarily, is of no small comfort to those who would otherwise go hungry and homeless. Conversely, winning selected skirmishes against a looming poverty should not distract poverty lawyers from larger goals and untoward consequences.

The goal of poverty law should, indeed, \textit{must} be the abolition of poverty. By now it seems painfully clear that the traditional methods of poverty law — direct service and law reform litigation — have fared badly in that abolitionist effort. The tragedy of this effort lies not in being bested by poverty, but in running afoul of history.

Poverty lawyers negate the insurgent history of the poor, a history of dissent and protest, a history of class and class consciousness. This history is daily rewritten by poverty lawyers bent on unmindfully reifying myths of legal efficacy and inherent indigent isolation and passivity. By decontextualizing and atomizing the common struggle of the poor, these revisionist myths deny the poor a history of individual rebellion and collective solidarity, instead reducing their experience to the demeaning label of dependent client-recipient.

Only by redressing this reductionism, restoring the fullness of historical experience, and recovering the oppositional continuities of alternative traditions, can poverty lawyers facilitate the unification of the poor into a class-for-itself consciously striving to remake the oppressive world of poverty. Remaking this world begins with the transformation of the attorney/client relation, the dialogic point of connection between poverty lawyers and the poor.

By recasting the attorney/client relation as a direct and open meeting of mutual affirmation, the historical potential of the poor may unfold. This unfolding may continue in the meetings of client and client as well as client and


The process of dialogic resolution is feminist in employing a method of knowing — consciousness raising — to discern the meaning of difference and exclusion. In the "telling and sharing of experiences," Menkel-Meadow finds the "potential for breakthrough, transformation, epiphanies of knowledge, and change and contribution." Menkel-Meadow, \textit{Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law}, 42 U. MIAMI L. REV. 29, 31-32 (1987). The fulfillment of this potential implies the possibility of coercion-free discourse. Until that possibility is demonstrated, unencumbered by ideological determinations, the task of dialogue must be left unresolved.
community. In these dialogic moments of empowerment, the poor make history happen.