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Symposium

Social Movements and Law Reform

***173** POVERTY LAW AND COMMUNITY ACTIVISM: NOTES FROM A LAW SCHOOL CLINIC

Stephen Loffredo [\[FNd1\]](#)

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Introduction

During the heyday of anti-poverty activism in the 1960s, scholars, lawyers and community organizers recognized that law reform might play an important catalytic role in promoting movements for social change. This insight helped fuel the creation of organizations whose very names (e.g., “Mobilization for Youth,” or “MFY Legal Services”) reflected the goal of cultivating community activism. [\[FN1\]](#) Later efforts to institutionalize legal support--including Ed Sparer's work with the Center for Social Welfare Policy and Law--further drew upon the potential synergies between lawyers pursuing legal reforms and activists building grassroots welfare rights organizations. [\[FN2\]](#) Many commentators ***174** have since analyzed these interactions between poverty lawyers and the welfare rights movement, and have questioned whether the collaboration produced meaningful and sustainable change. [\[FN3\]](#) At least some of the literature credits the lawyers' court-centered campaign for welfare rights [\[FN4\]](#) with improving the material circumstances of large numbers of poor people and precipitating reform of state and federal programs and institutions. [\[FN5\]](#) Likewise, social scientists have examined the impact that the social mobilizations had during this period in liberalizing the welfare system and generating broader attitudinal changes toward the poor. [\[FN6\]](#) Commentators voice a cautionary note, however, criticizing what they perceive as a lack of a consistent, organic connection between the lawyers' judicial strategies and the priorities of the welfare movement itself. [\[FN7\]](#) They express concern that poverty lawyers approached their clients in instrumental terms, [\[FN8\]](#) and ***175** argue, more broadly, that a legal campaign to achieve fundamental social change--such as a constitutional right to a decent income--is bound to fail without a politically effective social movement. [\[FN9\]](#)

The number of lawyers engaged in legal work for the poor has declined over the last two decades, [\[FN10\]](#) and the dominant political culture structurally and affirmatively discourages civic participation and activism by poor people. [\[FN11\]](#) Yet, heartening countercurrents persist. [\[FN12\]](#) At least some commentators believe that a “new poverty law movement” is in process, [\[FN13\]](#) involving a growing number of practitioners and scholars***176** discussing, among other topics, how lawyers for subordinated groups can work with a broader community to precipitate progressive change. Talking variously about facilitating client empowerment, [\[FN14\]](#) about advancing economic justice, [\[FN15\]](#) and about “resist[ing] systemic subordination,” [\[FN16\]](#) the participants in this movement seek to construct practices that reshape the substance and processes of legal advocacy to support community-based activism and promote a substantive version of social justice. [\[FN17\]](#)

This Article examines a collaboration between a grassroots welfare rights organization, the Welfare Rights Initiative (WRI), and a law school clinic that I direct at the City University of New York School of Law (CUNY). Both WRI and the CUNY clinic came into being in response to draconian welfare policies imposed by New York City in the mid-1990s--policies that, among other unfortunate consequences, *177 forced thousands of welfare mothers to drop out of the City University of New York and abandon their pursuit of a college degree. Over the past several years, this joint venture has provided rights education and legal representation to large numbers of individuals, organized grassroots pressure for more humane social welfare policies, and sought, with some success, legislative reforms at the state and local levels.

I present this collaboration as a case study of a purposefully structured, mutually reinforcing interaction between legal advocacy, law reform, and grassroots activism in the poverty context. What emerges from this localized experience is a fluid, multidirectional relationship between social mobilization and law reform, in which each activity can catalyze and in turn be amplified by the other. The WRI activists, the clinic interns, and the individual clients collaborated not solely through case-specific advocacy, but also through group-based transactional approaches, and in ways that reconfigure and redefine the traditional hierarchy of lawyer-client relations. I do not suggest that these very particular and contingent experiences support any firm claims or overarching conclusions. The more modest hope is that this case study might contribute incrementally to the knowledge base of social justice practitioners and help illuminate the relationship between law reform and social activism. [\[FN18\]](#)

Part I situates the case study in the broader context of the “new poverty law” and emerging strategies for the design of collaborative lawyer-client relations that can facilitate and support broader movements for social change. Part II provides a partial account of the social context and “welfare reform” policies that gave rise to the WRI-clinic alliance. Part III presents the case study, describing the establishment of the partnership and the theoretical justifications for the relationship that we sought to generate; the work that we undertook; and the reform that we precipitated, including the indirect effects that the work triggered. Part IV joins the case study with the themes of this Symposium, asking whether prevailing theories of social movement might provide a deeper understanding of this collaboration or similar efforts to realize synergies between social mobilization and law reform *178 in the context of economic justice.

I. The New Poverty Law Movement

During the “War on Poverty” of the 1960s, Ed Sparer and others combined social activism and legal work to create a new form of practice now known through the shorthand “poverty law.” [\[FN19\]](#) The idea was that lawyers for the poor should transcend the customary legal aid model of providing only traditional representation in a series of unrelated, individual, private-law disputes, and instead take on the task of securing systemic and institutional changes that would alleviate poverty itself. [\[FN20\]](#) The innovative work of this period generated a vibrant political discussion about the propriety of this new role, and how poverty lawyers could best contribute to the social transformations they viewed as essential. At the Center for Social Welfare Policy and Law and MFY Legal Services, poverty lawyers worked toward their goal through an ambitious litigation strategy that sought, with many intermediate steps, to establish what Sparer called a “right to live”--a federal constitutional right to economic support. [\[FN21\]](#) But Sparer emphasized that litigation alone could not achieve fundamental social change; legal strategies had to be coupled with grassroots political strategies. The *179 two endeavors might be designed to be mutually reinforcing: law reform efforts might activate movements for social change, and those movements, in turn, might lay the groundwork--or create the political atmosphere or public support-- necessary for further progress through the courts or the legislatures. [\[FN22\]](#) As Sparer later wrote, the role of the poverty lawyer was to help “develop . . . a constituency which will decide for itself.” [\[FN23\]](#) This approach did not require lawyers to be organizers, but it did mean that lawyers would work closely with organizers in groups that afforded welfare recipients and the poor a public space within which to make strategic decisions based on their own experiences and perceived sense of need. Sparer

emphasized that the central role of poverty lawyers should be to help build a welfare rights movement and to put themselves “at the service of [the movement]--so as to help it become a more forceful part of American politics.” [\[FN24\]](#)

Current discussions about the relationship between social movements and law reform take place in a less optimistic context than that of the 1960s. [\[FN25\]](#) By the 1970s, the Supreme Court had definitively placed positive rights outside the domain of federal constitutional law, [\[FN26\]](#) rejecting not only a narrow welfarist conception of minimum entitlements, [\[FN27\]](#) but also the broader idea that the Constitution embraces *180 a right of social citizenship. [\[FN28\]](#) Moreover, by applying only the most feeble and deferential form of rationality review to laws affecting the poor, the Court allowed state and federal welfare programs to function as instruments of subordination that debased and stigmatized the poor and served to perpetuate inequality and indignity. [\[FN29\]](#) As poverty became more entrenched, liberal scholars voiced an increasing lack of faith in the idea that law--at least in its judicialized form--could meaningfully resolve problems of inequality and deprivation. [\[FN30\]](#) Meanwhile, the Legal Services Corporation, changing ideological course, explicitly renounced the goal of “achieving social change.” [\[FN31\]](#) And *181 commentators increasingly questioned the entire premise of the law reform enterprise, suggesting that a law-based strategy may be “ill suited to the poverty law context because it puts lawyers--whose knowledge of the issues facing poor clients is at best second-hand--at the center of power and decision making in the movement.” [\[FN32\]](#)

Poverty lawyers began to reflect self-critically on whether they could play any legitimate role in the struggles that poor people face, [\[FN33\]](#) considering whether they would do best by helping “people subordinated by political and social life [to] learn to recognize and value and extend their own problem-solving know-how.” [\[FN34\]](#) At least some of this second-generation discussion proceeded on pessimistic terms that, ironically, placed the lawyer center-stage in the underlying narrative. [\[FN35\]](#)

In the last decade, however, activists and scholars have begun the hard, constructive project of devising forms of poverty law practice that will allow poverty lawyers to collaborate with individual clients and communities within less dominant and hierarchical structures. [\[FN36\]](#) The discussions build on a shared insight that accepts a more modest account of law's transformative power, [\[FN37\]](#) but also draws on a constitutive theory of law. [\[FN38\]](#) The new poverty lawyers thus emphasize the need *182 to “seek[] to realize collaborative aspirations in everyday institutional settings,” [\[FN39\]](#) so that lawyers maintain in their relations with clients a dynamic that “enrich [es] and extend[s] the range of possible strategies and outcomes they might cooperatively pursue.” [\[FN40\]](#) Commentators offer visions of practice that vary considerably in the emphasis placed on law's comparative advantage relative to other strategic methodologies, on the need for organizational structure, and on the efficacy of court-centered activity. But these visions share a recognition of the bonds that join client and lawyer together in a common enterprise. [\[FN41\]](#)

II. Welfare, Work, and Workfare

The social and political context for poverty law and poor peoples' mobilizations has shifted dramatically over the past thirty-five years. [\[FN42\]](#) The 1980s and 1990s witnessed a wholesale transformation of the War on Poverty into what sociologist Herbert Gans aptly describes as a War on the Poor, with blame for economic distress placed on individual deficiency rather than structural conditions. [\[FN43\]](#) Even before Congress “ended welfare as we know it” in 1996, states had begun to impose punitive restrictions on relief recipients. [\[FN44\]](#) In the process, welfare payments in real terms plummeted to their lowest levels for decades, [\[FN45\]](#) *183 and the income gap between the richest and poorest grew to its widest. [\[FN46\]](#) Then, in 1996, Congress abolished the half-century-old Aid to Families with Dependent Children (“AFDC”) program, [\[FN47\]](#) thus eliminating any federal safety net for indigent families and their children. The 1996 Act was said to reflect a consensus that the legal regime of entitlement, a fixed feature of welfare policy since the 1960s, could no longer be sustained. [\[FN48\]](#)

Deploying the rhetoric of personal responsibility, self-sufficiency and independence, the 1996 Act proceeded on a theory that recipients of governmental assistance must accept a “reciprocal set of obligations” with the broader society. [\[FN49\]](#) Hence, a critical element of federal***184** welfare reform was the imposition of strict “workfare” requirements on individuals receiving relief. [\[FN50\]](#)

Workfare is not work in the classical sense. Although workfare participants labor like any other worker--albeit under far less attractive terms and conditions of “employment”--neither the law nor society accords workfare workers the status, dignity, or protection accorded the regularly employed. [\[FN51\]](#) Workfare is not recognized as a real job: the recipient lacks the status of employee, [\[FN52\]](#) does not receive the minimum wage [\[FN53\]](#) or regular workers' compensation coverage, [\[FN54\]](#) is not ***185** protected against occupational hazards, [\[FN55\]](#) and is ineligible for Social Security coverage, the earned income tax credit or unemployment compensation benefits. [\[FN56\]](#) As Peter B. Edelman explains, “[w]orkfare is simply putting people to work doing tasks that do not make them more marketable, because it is unaccompanied by training, basic-skills education, or assistance in finding a job.” [\[FN57\]](#) Proponents of workfare argue that the program is intended to socialize welfare recipients to the culture of work by cultivating habits and attitudes needed for wage labor, thereby restoring dignity and self-sufficiency to the economically marginalized. [\[FN58\]](#) Critics of workfare read a different message in the program's coercive strictures, arguing that it will create a “workfare***186** caste” tending to “debase” recipients, [\[FN59\]](#) while displacing other low-wage workers and driving wage rates down. [\[FN60\]](#)

In New York City, the Giuliani administration avidly embraced workfare as a pillar of its social policy. [\[FN61\]](#) Like several states around the nation, [\[FN62\]](#) New York City established a substantial workfare program even before the federal government's repeal of the AFDC and devolution of block grant authority in 1996. [\[FN63\]](#) The 1996 Act triggered an expansion of the city's workfare program, [\[FN64\]](#) and further fueled its already ***187** aggressive campaign to purge needy families from the welfare rolls. [\[FN65\]](#) (Regrettably, no commensurate effort was made to lift these families out of poverty or to address the city's staggering poverty rate, which has not declined despite a decade of unprecedented prosperity. [\[FN66\]](#)) The city's approach was both effectuated and symbolized by its plan to convert income support centers--sites where the poor apply for food stamps, Medicaid, and cash public assistance--into “Job Centers” that would implement workfare requirements, as well as a strict sanction policy aimed at terminating benefits of any family deemed to have committed even a trivial infraction of program rules. [\[FN67\]](#)

New York City's welfare-to-work scheme immediately ranked among the most stringent in the nation. The city demanded that recipients perform more hours of “work activity” than required by either state or federal law. [\[FN68\]](#) The city channeled a vastly larger proportion of recipients into the most onerous “work activity”--workfare--than other jurisdictions. [\[FN69\]](#) It has refused to recognize certain educational and training programs as “work activities,” even though the federal ***188** government has allowed states to count such programs as “work” and many counties in New York State do so. [\[FN70\]](#) Further, New York City has systematically pursued policies and practices that have foreclosed higher education as a viable anti-poverty strategy for the vast majority of welfare recipients. [\[FN71\]](#)

By 1997, New York City had the largest workfare program in the country, with approximately 40,000 welfare recipients consigned to menial workfare positions--sweeping streets, raking leaves, cleaning toilets. [\[FN72\]](#) From the City's perspective, the program worked brilliantly. Workfare sanctions combined with other restrictive policies resulted in the removal of hundreds of thousands of needy people from assistance. [\[FN73\]](#)

One of the many tragic consequences of the city's anti-welfare campaign, though certainly not the most dire, [\[FN74\]](#) was that it forced thousands of recipients who had been pursuing college degrees to quit school in order to fulfill workfare requirements. [\[FN75\]](#) A large percentage***189** of these individuals were single mothers struggling to obtain the skills and educational credentials needed for a job that could lift their families out of poverty. Before welfare reform, 27,000 public assistance recipients were working toward degrees in the CUNY system. [\[FN76\]](#) Within a year, the City had forced thousands of these students out of college and into dead-end workfare positions. [\[FN77\]](#)

III. Case Study: The Welfare Rights Initiative and the CUNY Law School Clinic

CUNY Law School viewed this situation as an especially compelling case for intervention. We knew from academic studies that nearly ninety percent of welfare recipients who earned CUNY degrees obtained substantial, living-wage employment and exited the welfare system permanently. By contrast, parents leaving welfare without higher education tended to remain in poverty and cycle back onto relief, [\[FN78\]](#) and those forced into workfare assignments almost never secured sustaining employment. [\[FN79\]](#) We also knew of the human stories behind the statistics--inspiring stories of single mothers struggling against long odds to make ends meet with inadequate funds, to provide decent ***190** homes for their families, and to obtain the education that would enable them to escape poverty and dramatically alter the life chances of their children. [\[FN80\]](#) Here, then, was a situation in which a modest commitment of legal resources might enable large numbers of low-income families to transform their lives in profound and enduring ways. [\[FN81\]](#)

As powerfully as these circumstances motivated the law school to act, we were even more strongly moved by the fact that welfare recipients themselves were already organizing and mobilizing around the issue of higher education and its availability as a humane and effective anti-poverty strategy. A new welfare rights organization--the Welfare Rights Initiative--had sprung up at CUNY's Hunter College campus and was spearheading the effort. The initial concept and design for WRI originated in part from faculty at Hunter College, but leadership and staff positions were soon occupied by women who were themselves current or former welfare recipients. [\[FN82\]](#)

***191** From its inception, WRI set two broad goals for itself and has continued to pursue them. The first is immediate, issue-focused and instrumental: to help thousands of welfare recipients enrolled at CUNY stay in school and to agitate for reforms that expand welfare recipients' access to higher education. In pursuit of this goal, WRI staff provide direct counseling and advocacy for individual students; they conduct know-your-rights sessions at many of the twenty CUNY campuses to equip recipients to advocate for themselves and for others; they train and support peer advocates; they engage in community and campus organizing and mobilize low-income students and their supporters for demonstrations, speak-outs and public testimony; and they engage in legislative advocacy.

Many of these activities also advance WRI's second, more ambitious goal, which is to open up and fundamentally alter the politics of poverty and welfare. The aim is to democratize these politics, to inject the voices of the poor into the poverty and welfare debate, to debunk the negative stereotypes that have driven public policy, [\[FN83\]](#) and to empower poor people to influence public decisionmaking. WRI has pursued this goal through an impressive community leadership program that trains welfare recipients to act as organizers, public speakers, political activists, advocates and community leaders.

In 1997, the CUNY clinic entered into a partnership with WRI, in part as a way of delivering legal services to students in need, but, more fundamentally, because we believed that the collaboration would ***192** promote WRI's goals and magnify its impact as a grassroots social justice organization. [\[FN84\]](#) The design of the clinic and the structure of its relationship with WRI reflect this broader goal. In essence, the clinic serves as counsel to WRI and as its legal arm. The clinic provides legal training and support for WRI's lay advocates, staff and counselors to facilitate the organization's outreach and advocacy efforts. The clinic offers WRI's staff and student activists priority access to legal representation in their own welfare cases, to provide a degree of security and breathing space for the individuals whose assertiveness and activism frequently bring them into conflict with welfare officials. The clinic also lends technical and drafting skills to assist in the production of public education materials and position papers, and clinic students conduct joint community education and training sessions with WRI staff.

At the heart of the collaboration, though, is the arrangement between WRI and the clinic for providing a high

volume of targeted representation to individual students. Both groups understood that if WRI could reliably offer legal assistance to the students it sought to mobilize, the organization would have acquired a potent organizing tool. The clinic therefore agreed to place its entire case-handling capacity at WRI's disposal and committed, insofar as possible, to represent any student referred by WRI. Over the last few years this commitment has meant representing nearly 500 individuals at administrative hearings (most challenging proposed workfare sanctions) and providing counseling or other assistance to a larger number of people. [FN85] WRI refers to its relationship with the clinic as a "collaborative partnership," and to this joint legal effort as a "a model of service provision as an organizing tool." [FN86] It explains the work as follows: "WRI's Supportive Services are provided through a unique collaborative partnership with CUNY Law School. Through an interdisciplinary approach that incorporates law, social work, policy analysis, *193 and community organizing, students on public assistance are gaining the knowledge and skills needed for self and peer-representation at administrative fair hearings." [FN87]

From the lawyer's perspective, this nontraditional "collaborative lawyering" model came with its costs: most notably, it required the clinic to sacrifice a great deal of control over its docket. But the model has also brought significant advantages. As anticipated, it contributed powerfully to WRI's organizing and mobilization campaigns, [FN88] and, incidentally, added sustaining layers of hope and meaning to the clinic's poverty law practice.

In addition to serving as a resource for organizing and mobilization, the WRI/CUNY collaboration has also had implications for a law reform strategy. Because the clinic handles a high volume of administrative hearings relating to workfare, and represents more student welfare recipients than any other law office in the city, it is able to discern patterns and practices in the administration of the program that might otherwise remain invisible, even if illegal or arbitrary. From this vantage point, the clinic has shared insights, data, and evidence developed*194 at individual hearings with law offices throughout the city, to assist in the design and prosecution of law-reform litigation and in the enforcement of existing decrees. Thus, the large volume of targeted representation, coupled with the benefits that Gary Bellow emphasized a generation ago in advocating what may be called a "focused case pressure" strategy, [FN89] magnified the clinic's impact beyond the sum of the individual cases.

Lastly, WRI and the clinic pursued a more direct and explicit law reform strategy. Two years ago, WRI convened a series of meetings with staff, members, attorneys from the clinic and the Legal Aid Society, and representatives of other community groups. The purpose was to develop a state legislative agenda identifying potential reforms to dismantle, or at least minimize, the barriers that have prevented so many families from pursuing higher education as a path out of poverty. Women with firsthand welfare expertise talked about their experiences as college students at CUNY under pressure of the City's workfare requirements, and about the kind of practical changes that would enable them to remain in school and complete their degrees. Participating lawyers from The Legal Aid Society of New York and from the clinic translated these concerns into the technical language of a legislative proposal.

WRI then launched an impressive campaign in support of the proposed reforms. First, WRI staff mobilized CUNY students to educate them about the possible impact of the proposed legislative changes and to organize pressure on state legislators. Next, WRI staff organized public forums to rally support for the legislation. They coordinated multiple trips to Albany to speak with legislators about the proposed changes. They secured backing for the legislation from a number of key organizations and officials around the state. Some of these organizations were natural allies such as college presidents, faculty unions, social welfare agencies and advocacy groups. But WRI won endorsements from less obvious quarters as well, convincing business groups-- such as the New York State Business Council and the New York City Partnership-- that they shared a set of structural concerns with welfare mothers in college. [FN90] With the assistance of local politicians, WRI persuaded several key legislators, including the *195 Republican chair of the New York State Senate Welfare Committee, to attend a "Day at CUNY"--to meet with students on several campuses; to hear stories of struggle and hardship directly from the women whose lives and futures were most at stake and would be most improved by the legislation; and to learn firsthand that the dominant myths

and stereotypes about welfare mothers do not fit the facts.

The lawyers reentered the picture when questions arose about the legality of the proposed changes under federal law and other legal implications of the amendments. The lawyers, in close consultation with WRI, also negotiated specific legislative language with state officials. At this juncture, the danger that the legal professionals' exercise of technical knowledge might overbear or disempower their community-based partners presented itself. [\[FN91\]](#) Understanding this dynamic, and wishing to avoid it, the lawyers attempted to remain in a secondary and facilitative role. [\[FN92\]](#) Others must judge whether these efforts succeeded.

In the end, although the Legislature did not adopt WRI's entire agenda, it did pass legislation that significantly expands welfare recipients' access to higher education. The new law requires welfare departments throughout the State to count work-study positions, internships and externships as "work activities" that can satisfy a college student's workfare obligation. [\[FN93\]](#) The amendment also prohibits workfare assignments that unnecessarily interfere with the student's ability to pursue a college degree. [\[FN94\]](#)

The Giuliani administration vigorously opposed the bill, even after it passed both houses of the Legislature by wide margins. [\[FN95\]](#) But after additional organizing and political efforts by WRI, the governor signed the measure into law on October 4, 2000. [\[FN96\]](#) It took effect in *196 December, just in time for the Spring 2001 semester. So now, in theory at least, a CUNY undergraduate can satisfy her workfare requirement as a WRI intern fighting for progressive reforms to the city's workfare policies.

I do not mean to suggest that these amendments to New York State's welfare laws effected any fundamental or systemic social change. Indeed, they simply reclaim some of the ground lost since the "welfare reform" tragedy of 1996. But for many thousands of single mothers struggling to earn their college degrees and escape poverty, these changes may well make all the difference. [\[FN97\]](#) And given the political climate, it was truly remarkable that a grassroots organization comprised largely of poor women won progressive reforms of any kind in a state dominated by a Republican governor and a Republican Senate. Finally, beyond the instrumental import of WRI's campaign--the legislative victory--the reform campaign itself proved to be exceedingly valuable. The participants not only reaped the "expressive benefits" of activism, they effectively contested existing social understandings of poverty and welfare and altered, at least incrementally, the tone, process and substance of the public discourse. [\[FN98\]](#)

IV. Theories of Social Mobilization and the New Poverty Law Movement

Edward Rubin's introductory Article to this Symposium invites participants to "pass[] through the door" of legal scholarship to consider how the literature of social movements might help us better account for the relation between law and social change. [\[FN99\]](#) Accepting that invitation, this Part examines whether theories of social movement--drawing from different methodologies and foundational premises--might usefully contextualize or be illuminated by the interaction of lawyering,*197 grassroots activism and law reform described above. [\[FN100\]](#)

A. Social Movement Theories

The social movement literature offers no unified account of social change or its relation to legal reform. Happily, Edward Rubin's Article provides an accessible, if provocative, synthesis. [\[FN101\]](#) I offer here merely a sketch of the three leading perspectives--the resource mobilization theory, the new social movement theory, and the cognitive praxis theory--with the hope that by simplifying the theories I do not make them seem simplistic in approach.

1. Resource Mobilization

The theory of resource mobilization, considered the most “American” of approaches to social movements, [\[FN102\]](#) emerged in the last generation of the twentieth century. [\[FN103\]](#) It focuses on the ways in which “an opposition assembles resources for challenging the incumbents” [\[FN104\]](#) and examines “the conditions that enable movement organizations to *198 gather together the political resources necessary to mount an effective protest.” [\[FN105\]](#) Resource mobilization theorists discount efforts to explain social mobilization as the spontaneous reaction of aggrieved masses against an oppressive society. As “grievances are ubiquitous in a society,” they argue, “grievances alone cannot be sufficient conditions for the rise of social movements. The availability of resources and opportunities for collection action were considered more important . . . in triggering social movement formation.” [\[FN106\]](#) In seeking to explain why individuals choose to join social movements, resource mobilization theorists emphasize the free rider problem in collective action, and the role that special incentives play in attracting individuals to participate. [\[FN107\]](#) Commentators have applied resource mobilization theory to study the ways in which marginalized groups assemble necessary resources to obtain political rights or social status. [\[FN108\]](#)

2. The New Social Movements

The theory of new social movements draws from Continental theory and views social mobilization ideologically, as a rejection of conventional participatory institutions and hegemonic regimes. Social movements, by these lights, aim “to politicize the institutions of civil society in ways that are not constrained by the channels of representative-bureaucratic political institutions.” [\[FN109\]](#) These new social movements seek, as Claus Offe explains, “to reconstitute a civil society that is no longer dependent upon ever more regulation, control, and intervention.”*199 [\[FN110\]](#) Social movements, as Alain Touraine says, are not “peripheral phenom[a] of deviation,” but rather “the fabric of social life,” with opposition efforts constitutive of a new form of living that is autonomous and not subject to hegemonic control. [\[FN111\]](#) Participants in the new social movements frequently have been characterized as the “relatively privileged,” who mobilize “on the basis of nonmaterial issues.” [\[FN112\]](#)

3. Cognitive Praxis

The theory of cognitive praxis views social mobilizations as an aspect of a social theory of knowledge, processes that enable participants to forge new identities, and that serve “as temporary public spaces, as moments of collective creation that provide societies with ideas, identities, and even ideals.” [\[FN113\]](#) The cognitive praxis approach regards social knowledge as collectively built, as “the product of a series of social encounters,” in which the experiences of the mobilized, the movement, and the opponent, relate and change in ongoing “processes in formation.” [\[FN114\]](#) Social movements are thus social constructions, constituting the actors’ “movable definition of themselves and their social world, a more or less shared and dynamic understanding of the goals of their action as well as the social field of possibilities and limits within which their action takes place.” [\[FN115\]](#)

B. The Case Study Re-examined

The WRI/CUNY collaboration offers an opportunity to explore the explanatory force of these competing social movement theories in a concrete, if localized, context.

1. Resource Mobilization

The emergence of the WRI/CUNY collaboration and the grassroots*200 mobilization that resulted might plausibly be explained by resource mobilization theory. First, WRI constituted itself at a public university, drawing on the intellectual and material resources of an established academic center. Likewise, the CUNY School of Law committed additional resources and consciously deployed them in ways that would maximize support for WRI and

strengthen its organizing, advocacy and community empowerment efforts. Moreover, WRI's ability to offer legal services might be regarded as a use of selective incentives to overcome collective action problems that could have been a barrier to group activity. Much like the strategy employed by welfare rights organizers in the 1960s (where the offer of help resolving grievances or securing special grants brought thousands of recipients at least temporarily into the movement), WRI's ability to offer legal assistance has drawn large numbers of students from across New York City into contact with the organization. While WRI does not pressure anyone to join or to participate in organizing or advocacy efforts, many of the students who receive representation or other services maintain contact with WRI, respond to mobilization calls, advocate for fellow students, and, in some cases, become allied activists on their own campuses.

Just as importantly, the sheer volume of welfare recipients that have turned to and been served by the collaboration has provided WRI with important capital--a strong claim of expertise and a recognized status as an authentic voice and representative of the thousands of welfare recipients enrolled at CUNY. So, too, WRI's affiliation with a law office, as well as a university, seems to have enhanced its perceived status and legitimacy. These endowment effects may have enhanced WRI's perceived status and legitimacy and positioned it to demand reform from policy-makers outside its grassroots circle.

2. The New Social Movements

Viewing the WRI/CUNY collaborative partnership through the lens of new social movement theory shifts the focus to the project's ideological meaning, as expressed in its challenge to many of the "hegemonic constraints" and prevailing assumptions of post-industrial, post-modern society. [\[FN116\]](#) WRI's organizing, mobilizing and *201 public education campaigns very explicitly aim to displace the dominant stereotypes and belief systems through which society justifies the conventional roles it assigns to individuals. Indeed, the very possibility of single mothers succeeding as college students in a public university while receiving welfare threatens deeply held assumptions of a political and economic system that ordinarily consigns such individuals, along with other selected groups, to a marginalized and often reviled underclass. The specter of welfare mothers acting as effective community leaders and public speakers, and collaborating in joint ventures with attorneys and law students, delivers a similar threat. That an organization of poor women mounted a sophisticated and successful campaign for legislative reform presses the ideological challenge more deeply. Moreover, the social activism WRI facilitated generated many of the "self-realization" effects associated with new social movements. Having claimed a successful role in the process of social value and public policy formation, the WRI activists--by their own report--began to imagine themselves differently and to articulate and assume an empowered collective identity born of their collective action. [\[FN117\]](#)

3. Cognitive Praxis

Finally, the theory of cognitive praxis invites recognition of the cognitive capital that WRI, through its lay leaders and collective participants, creates and cultivates. Although some commentators describe litigation processes as socially debilitating and politically enervating, student participation in the administrative hearing process has generated certain cognitive and political advantages. As WRI explains,

WRI and the law students do not solve students' cases for them. Rather they work to assist students to connect with their own sources of strength, to realize their personal capacity to solve their cases, help others and even join together to influence . . . just programs and policy. [\[FN118\]](#) *202 In the process, WRI reports, "[s]tudents are together realizing the political nature of problems they once perceived as uniquely personal." [\[FN119\]](#)

Both the resource mobilization and the new social movement's approaches ignore the cognitive contribution that WRI's mobilizing activities make to law reform efforts. The legislative agenda WRI developed did not proceed as a

menu of options, preordained and designated by the lawyers, but rather emerged from the actual, experiential concerns of the individuals affected by the offending policies. The resource mobilization approach assumes that social movements draw resources from exogenous sources--from legislatures, lawyers, and labor markets; the cognitive approach recognizes that social movements provide resources from endogenous sources, adding to intellectual capital and changing existing discourses. WRI puts it nicely in one of its public fliers: "WRI is tapping the resource represented by 10,000 CUNY students who are themselves claimants of public assistance." [\[FN120\]](#) This resource, the experiential base of those affected by regulation, is otherwise too often ignored, silenced, and rendered illegitimate.

Do these theories, together, contribute to the understanding of how social movements contribute to, or facilitate, law reform? What lessons might one draw from the collaborative partnership that the case study describes? WRI's work with the clinic does not suggest easy generalization, in part because of its idiosyncratic nature. The collaboration involves activists and lawyers working within a progressive university community, [\[FN121\]](#) the fact that CUNY students occupy both [*203](#) places in the lawyer-client relationship contributes to feelings of trust, [\[FN122\]](#) and the clinic has more flexibility than the traditional legal services office to redeploy resources and to alter structures in order to adapt to the constituencies' perceived sense of need and strategy. These factors help produce complex synergies between activists working for social change and lawyers seeking law reform, confirming that law reform--even in the narrow sense--serves both as goal and as means for further social movement and, conversely, that grassroots mobilization likewise has value as both an end in itself and as a means for achieving immediate issue-specific reforms.

The clinic could not have operated very successfully (and may not have come into existence at all) but for the emergence of a grassroots welfare rights organization. The alliance we formed in turn assisted WRI's organizing and mobilization efforts and helped WRI establish itself--in the eyes of recipients, the advocacy community, other institutions and public officials--as credible experts and the legitimate voice for this population and this issue. That standing, coupled with access to legal expertise and the ability to mobilize large numbers of people, figured heavily in WRI's ability to secure legal reforms through amendments to state law. The legislative victory has, in turn, given rise to new opportunities for rights education and enforcement, provided a new focus for organizing, enhanced the standing of WRI even further, and positioned it to expand its base of support to pursue new reforms. [\[FN123\]](#) If these experiences teach any lesson, that lesson emphasizes [*204](#) the need to be sensitive to localized contexts and the details of everyday relations.

Conclusion

This Article joins a broader conversation that seeks, in part, to surface questions about the interaction between social activism and law reform. Although there may be no body of literature that fully explores the connection between social mobilization and the process of legal change, at least some scholars and some activists have been attentive to this relationship. Ed Sparer, in whose memory this Symposium convenes, was one such scholar-activist. Unconsciously we may think of social movements only as grand and visible--as powerful surges of creative energy aimed at fundamental social change and legal reform. But we should not lose sight of the smaller, less visible struggles that contribute in unexplained ways to a more humane society. As Sparer reminds us, "[t]oo many persons, including a large percentage of welfare lawyers, do not understand that large forward movements are possible only as the expectations of people increase as a result of numerous small struggles, reforms, and increased understanding." [\[FN124\]](#)

[\[FNd1\]](#). Associate Professor of Law, City University of New York School of Law. A draft of this paper was deliv-

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[FN1]. See Larry R. Jackson & William A. Johnson, *Protest by the Poor: The Welfare Rights Movement in New York City* 53-60 (1974) (charting the progression of Mobilization for Youth from an organization dedicated to combating juvenile delinquency to an activist organization involved in a broad array of social movements); Frances Fox Piven & Richard A. Cloward, *Regulating the Poor: The Functions of Public Welfare* 290-95 (2d ed. 1993) (discussing the establishment and subsequent activities of Mobilization for Youth).

[FN2]. For a history of the period, see Martha F. Davis, *Brutal Need: Lawyers and the Welfare Rights Movement, 1960-1973*, at 81-95 (1993), describing the litigation campaign that established due process rights for welfare recipients whose assistance grants were terminated by the government; and Aryeh Neier, *Only Judgment: The Limits of Litigation in Social Change* 127-40 (1982), describing the law reform campaign to secure adequate welfare assistance. See also Rand E. Rosenblatt, *Legal Entitlements and Welfare Benefits*, in *The Politics of Law* 262, 262 (David Kairys ed., 1982) (noting that in the 1960s there was a “belief that law could and should play a major role in changing relationships of highly unequal power”); Jonathan Zasloff, [Children, Families, and Bureaucrats: A Prehistory of Welfare Reform](#), 14 *J.L. & Pol.* 225, 268-69 (1998) (describing the Office of Economic Opportunity and its establishment of local community action boards with the requirement of “‘maximum feasible participation’ of low-income people themselves,” and the parallel creation of “the legal services agencies that quickly became adept at bringing class action lawsuits challenging the administration of and eligibility standards for [Aid to Families with Dependent Children]”).

[FN3]. See Joel F. Handler, *Social Movements and the Legal System: A Theory of Law Reform and Social Change* 155-162 (1978) (offering illustrative social welfare case studies that combined litigation with mobilization). Compare Edward V. Sparer, [Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement](#), 36 *Stan. L. Rev.* 509, 561 (1984) (emphasizing the importance of rights-based strategies to broader movements for social change), with William H. Simon, [Rights and Redistribution in the Welfare System](#), 38 *Stan. L. Rev.* 1431, 1432 (1986) (criticizing the reformist emphasis on rights as impeding broader efforts for social change).

[FN4]. See, e.g., [Goldberg v. Kelly](#), 397 U.S. 254, 262 (1970) (holding that due process protections attach to welfare benefits); [Shapiro v. Thompson](#), 394 U.S. 618, 634 (1969) (holding that states may not withhold welfare benefits in ways that “penalize” the exercise of constitutional rights); [King v. Smith](#), 392 U.S. 309, 325-27 (1968) (establishing entitlement status of federal Aid to Families with Dependent Children (AFDC) benefits and limiting state authority to deny assistance).

[FN5]. See, e.g., Matthew Diller, [Poverty Lawyering in the Golden Age](#), 93 *Mich. L. Rev.* 1401, 1432 (1995) (reviewing Martha F. Davis, *Brutal Need: Lawyers and the Welfare Rights Movement* (1993)) (referring to the legal reforms achieved by federal welfare litigators in the 1960s as “no small accomplishment”); cf. R. Shep Melnick, *Between the Lines: Interpreting Welfare Rights* 206-31 (1994) (discussing the impact of later litigation efforts involving the food stamp program).

[FN6]. Compare Robert B. Albritton, *Social Amelioration Through Mass Insurgency? A Reexamination of the Piven and Cloward Thesis*, 73 *Am. Pol. Sci. Rev.* 1003, 1005-10 (1979) (using empirical evidence to question the mobilization theory), with Sanford F. Schram & J. Patrick Turbett, *Civil Disorder and the Welfare Explosion: A Two-Step Process*, 48 *Am. Soc. Rev.* 408, 410-13 (1983) (using empirical evidence to support the mobilization theory).

[FN7]. See Lucie E. White, [Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak](#), 16

[N.Y.U. Rev. L. & Soc. Change 535, 535 \(1987-88\)](#) (observing that “[t]he individuals who served as named plaintiffs in these lawsuits sometimes had little contact with their lawyers or involvement in the lawsuit after the complaint was filed and their depositions recorded”).

[FN8]. See Paul R. Tremblay, [Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy](#), 43 [Hastings L.J.](#) 947, 953 (1992) (enlisting Gerald Lopez’s concept of regnant lawyering to criticize traditional poverty law practice as being “client-centered, but in an instrumental way; it seeks to improve the lot of the disadvantaged by increasing their access to rights and to institutionally defined remedies”); cf. Paul L. Tractenberg, [Using Law to Advance the Public Interest: Rutgers Law School and Me](#), 51 [Rutgers L. Rev.](#) 1001, 1004 (1999) (positing that public interest lawyers, taking an instrumental approach, “typically identify the interest to be advanced before the client appears, and the client becomes the vehicle for advancing that interest”).

[FN9]. See Steve Bachmann, *Lawyers, Law, and Social Change*, 13 [N.Y.U. Rev. L. & Soc. Change](#) 1, 4 (1984-85) (contending that “[o]rganized masses of people, not lawyers, play the critical roles” in movements for social change).

[FN10]. See Legal Servs. Corp., *Twenty-Fifth Anniversary Annual Report* 8 (1998-99) (“Notwithstanding outside funding, by 1990, almost 2,000 fewer legal services attorneys served low-income Americans than in 1981”); Greg Winter, *Legal Firms Cutting Back on Free Services to Poor*, [N.Y. Times](#), Aug. 17, 2000, at A1 (“The roughly 50,000 lawyers at the nation’s 100 highest-grossing firms spent an average of just eight minutes a day on pro bono cases in 1999... [or] about 36 hours a year, down significantly from 56 hours in 1992”). In addition, federal funding for legal services has declined significantly and Congress has imposed sweeping restrictions on the activities of legal services lawyers. See [Legal Servs. Corp. v. Velazquez](#), 121 [S. Ct.](#) 1043, 1046 (2001) (“[The restriction] prohibits legal representation funded by recipients of LSC moneys if the representation involves an effort to amend or otherwise challenge existing welfare law.”); The Comm. on Civil Rights & The Comm. on Prof’l Responsibility of Ass’n of the Bar of the City of N.Y., *A Call for Repeal or Invalidation of Restrictions of Legal Services Lawyers*, 53 [Rec.](#) 15, 16-19 (Jan.-Feb. 1998) (noting a 14.6% reduction in open cases of the Legal Services Corporation nationally from 1995 to 1997).

[FN11]. To take but one highly visible example, Congress has prohibited any political activity, or facilitation of such activity, by lawyers for the poor who work in offices that receive any federal funds. See Omnibus Consolidated Re-scissions and Appropriations Act of 1996, [Pub. L. No. 104-134](#), 110 [Stat.](#) 1321, § 504(a) (1996) (barring attorneys employed by a law office that receives any federal Legal Services Corporation (“LSC”) funds from engaging in legislative advocacy, administrative advocacy or organizing, or facilitating or encouraging client participation in those activities).

[FN12]. See Frances Fox Piven, *Welfare Movement Rises*, [Nation](#), May 8, 2000, at 4, 5 (“Below the radar screen of press and politicians, scores of grassroots groups are waging fights at the local and state level to expose the realities of welfare reform and the low-wage labor market.... There are signs that these local efforts are coalescing into a national movement”).

[FN13]. See, e.g., Howard S. Erlanger & Gabrielle Lessard, [Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress](#), 43 [J. Legal Educ.](#) 199, 201 (1993) (“By challenging the efficacy of social change strategies that separate the assertion of legal rights from inquiries about the role and effect of the legal system, the new poverty law movement is reconceptualizing, rather than abandoning, the project of using law to create social change.”); see also Eric K. Yamamoto, [Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America](#), 95 [Mich. L. Rev.](#) 821, 828 (1997) (discussing how to bridge the gap between progressive race theory and political lawyering practice in order to promote economic justice).

[FN14]. See, e.g., Scott L. Cummings & Ingrid V. Eagly, [A Critical Reflection on Law and Organizing](#), 48 *UCLA L. Rev.* 443, 460 (2001) (discussing “a practical vision of how lawyers could achieve social change through community organizing” that empowers clients and effects systemic reform).

[FN15]. See, e.g., Jennifer Gordon, [We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change](#), 30 *Harv. C.R.-C.L. L. Rev.* 407 (1995) (describing development of an advocacy organization dedicated to securing economic rights for low-wage immigrant workers, and analyzing the conflicts it encountered in trying to shape its legal clinic to serve a grassroots organizing strategy).

[FN16]. Lucie E. White, To [Learn and Teach: Lessons from Driefontein on Lawyering and Power](#), 1988 *Wis. L. Rev.* 699, 746 n.176; see also [id. at 742](#) (“Instead of pushing a community into a lawsuit, the lawyer should help his clients understand the limits of litigation and challenge them to develop creative, rather than reactive, litigation strategies.”).

[FN17]. See, e.g., Michael Diamond, [Community Lawyering: Revisiting the Old Neighborhood](#), 32 *Colum. Hum. Rts. L. Rev.* 67, 68 (2000) (urging poverty lawyers to become “more active in organizing and developing client groups”); Richard D. Marsico, [Working for Social Change & Preserving Client Autonomy: Is There a Role for “Facilitative” Lawyering?](#), 1 *Clinical L. Rev.* 639 (1994); Ann Southworth, [Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice](#), 1996 *Wis. L. Rev.* 1121, 1147 (describing the facilitative role of poverty lawyers with respect to community development); Lucie E. White, [Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice](#), 1 *Clinical L. Rev.* 157 (1994) (addressing how professionally trained lawyers can participate in the new field of collaborative lawyering and work to cause social change at the grassroots level); Symposium, Political Lawyering: Conversations on Progressive Social Change, 31 *Harv. C.R.-C.L. L. Rev.* 285, 285-86 (1996) (describing versions of a concept of political lawyering).

[FN18]. For a collection of “innovative practices,” see Louise G. Trubek & Jennifer J. Farnham, [How To Create and Sustain a Successful Social Justice Collaborative: Innovative Practices To Empower People of Low and Moderate Income--A Guidebook for Lawyers and Nonlawyers](#) (n.d.). See generally Louise G. Trubek & Jennifer J. Farnham, [Social Justice Collaboratives: Multidisciplinary Practices for People](#), 7 *Clinical L. Rev.* 227 (2000) (discussing how multidisciplinary practices can achieve social change).

[FN19]. See Robert L. Bach, [Building Community Among Diversity: Legal Services for Impoverished Immigrants](#), 27 *U. Mich. J.L. Reform* 639, 644 (1994) (observing that in the 1960s “[l]egal services were viewed not only as a social service outreach effort but also as a mobilizing force for social change”); Ruth Margaret Buchanan, [Context, Continuity, and Difference in Poverty Law Scholarship](#), 48 *U. Miami L. Rev.* 999, 1010 (1994) (“While the notion of legal aid for the poor has been around almost as long as the legal profession, the decade of the 1960s marked a period of substantial invigoration and of the flourishing of efforts to use law to transform society on behalf of the disadvantaged.”).

[FN20]. See Davis, *supra* note 2, at 28-32 (describing Ed Sparer's development of a new model of poverty law at the MFY Legal Unit, a model that rejected “piecemeal direct legal services in the Legal Aid tradition” in favor of “targeted study and direct litigation designed to change the institutional structure that created and sustained poverty”); Stephen Wexler, [Practicing Law for Poor People](#), 79 *Yale L.J.* 1049, 1053 (1970) (“The proper job for a poor people's lawyer is helping poor people to organize themselves to change things so that either no one is poor or (less radically) so that poverty does not entail misery.”).

[FN21]. See Edward V. Sparer, [The Right to Welfare](#), in [The Rights of Americans: What They Are--What They](#)

Should Be 65, 65-83 (Norman Dorsen ed., 1971) (discussing the struggle to establish a legal right to an adequate income); see also Helen Hershkoff & David Hollander, *Rights into Action: Public Interest Litigation in the United States*, in *Many Roads to Justice* 89, 91 (Mary McClymont & Stephen Golub eds., 2000) (describing the establishment of the Center on Social Welfare Policy and Law in 1965); Sylvia A. Law, [Some Reflections on Goldberg v. Kelly at Twenty Years](#), 56 *Brook. L. Rev.* 805, 819 (1990) (referring to Sparer as “the intellectual architect of the legal strategy of the welfare rights movement”).

[FN22]. See Diller, *supra* note 5, at 1411 (“By 1971, Sparer was arguing that ‘the first step in a grand strategy for lawyers in advancing welfare rights is to serve, and thereby help build, an independent rights movement.’” (quoting Sparer, *supra* note 21, at 88)); cf. Neier, *supra* note 2, at 140 (“The Supreme Court could take on the enormous task of ending legal segregation But the Court would not and could not establish[] for the poor a right to live... [because] the claim by the poor that they had a right to subsistence seemed to most Americans to lack morality.”).

[FN23]. Sparer, *supra* note 21, at 87.

[FN24]. *Id.*

[FN25]. See, e.g., Martha Minow, [Political Lawyering: An Introduction](#), 31 *Harv. C.R.-C.L. L. Rev.* 287, 290 (1996) (“The present moment is a tough one for political lawyers, whether they have been at work for twenty or thirty years or are recent or prospective law school graduates.”).

[FN26]. Liberal scholars likewise now tend to locate affirmative rights outside the domain of enforceable constitutional rights, even as a normative goal. See Cass R. Sunstein, *The Partial Constitution* 155 (1993) (contending that “the right to welfare, if it exists at all, is a good candidate for membership in the class of judicially underenforced constitutional principles”); Lawrence G. Sager, [Justice in Plain Clothes: Reflections on the Thinness of Constitutional Law](#), 88 *Nw. U. L. Rev.* 410, 420 (1993) (describing the institutional difficulties of having courts enforce welfare rights). But see Helen Hershkoff, [Positive Rights and State Constitutions: The Limits of Federal Rationality Review](#), 112 *Harv. L. Rev.* 1131 (1999) (questioning the view that courts lack capacity to resolve social and economic concerns affecting the poor).

[FN27]. See [Harris v. McRae](#), 448 U.S. 297, 318 & n.20 (1980) (finding no right to government assistance to facilitate the reproductive choices of indigent women); [Lindsey v. Normet](#), 405 U.S. 56, 74 (1972) (rejecting a federal constitutional guarantee of minimum shelter); [Dandridge v. Williams](#), 397 U.S. 471, 485 (1970) (refusing to recognize a right to public welfare assistance under the Fourteenth Amendment).

[FN28]. See William E. Forbath, [Why Is This Rights Talk Different from All Other Rights Talk? Demoting the Court and Reimagining the Constitution](#), 46 *Stan. L. Rev.* 1771, 1773-74 (1994) (reviewing Sunstein, *supra* note 26 (distinguishing between “a court-centered conception of positive rights as being solely for the poor” and “the broader conception of equal citizenship”)); see also Joel F. Handler, [“Constructing the Political Spectacle”: The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History](#), 56 *Brook. L. Rev.* 899, 904 (1990) (“Reconstructing the welfare relationship in terms of entitlements has either undermined citizenship social rights... or affirmed the obligations of citizenship...”); Helen Hershkoff, [Welfare Devolution and State Constitutions](#), 67 *Fordham L. Rev.* 1403, 1428 (1999) (describing state constitutional narratives of social citizenship that contrast with the federal account).

[FN29]. See generally Stephen Loffredo, [Poverty, Democracy and Constitutional Law](#), 141 *U. Pa. L. Rev.* 1277 (1993) (criticizing the Supreme Court’s application of rationality review to sustain legislation disadvantaging poor people and arguing that the political marginalization of the poor requires some form of enhanced judicial protec-

tion).

[FN30]. See Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* 157 (1991) (finding “little evidence that the judicial system, from the Supreme Court down, produced much of the massive change in civil rights that swept the United States in the 1960s”); Mark A. Graber, *The Clintonification of American Law: Abortion, Welfare and Constitutional Theory*, 58 *Ohio St. L.J.* 731, 742-45 (1997) (observing that many liberal constitutional theorists have abandoned arguments for a judicially enforceable constitutional right to subsistence); see also Joel F. Handler, *Dependent People, the State, and the Modern/Postmodern Search for the Dialogic Community*, 35 *UCLA L. Rev.* 999, 1000 (1988) (acknowledging “the realization of the limits of the legal rights revolution in protecting dependent people”); Stuart Scheingold, *Constitutional Rights and Social Change: Civil Rights in Perspective*, in *Judging the Constitution: Critical Essays on Judicial Lawmaking* 73, 80 (Michael W. McCann ed., 1989) (“[C]ourts have sufficient power to politicize--to provoke a crisis--but not to effect social change on their own.”). See generally Lynn Mather, *Theorizing About Trial Courts: Lawyers, Policymaking, and Tobacco Litigation*, 23 *Law & Soc. Inquiry* 897, 899 (1998) (“Rosenberg's (1991) important book reopened and extended an argument begun by Dahl in 1957. Dahl argued that the Supreme Court did not make national politics independently, but, instead, only acted within a shared national alliance of the president and Congress.”).

[FN31]. Allen Redlich, *Who Will Litigate Constitutional Issues for the Poor?*, 19 *Hastings Const. L.Q.* 745, 758 & n.100 (1992) (citing Alan W. Houseman, *Community Group Action: Legal Services, Poor People and Community Groups*, 19 *Clearinghouse Rev.* 392, 396 (1985)).

[FN32]. Davis, *supra* note 2, at 143. Moreover, this model, Davis suggested, “tends... to undermine the often fragile organizing power of the grass-roots movement.” *Id.*

[FN33]. See, e.g., Richard L. Abel, *Lawyers and the Power to Change*, 7 *Law & Pol'y* 5, 9 (1985) (urging that “legal means of resolving problems should be avoided whenever possible, for they tend to reinforce the client's experience of powerlessness”).

[FN34]. Gerald Lopez, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* 70 (1992).

[FN35]. See, e.g., Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 *N.Y.U. Rev. L. & Soc. Change* 659, 695 (1987-1988) (arguing that “[t]he attorney/client relation stands at the epicenter of th[e] marginalization [of the poor]”).

[FN36]. See, e.g., Ann Southworth, *Taking the Lawyer Out of Progressive Lawyering*, 46 *Stan. L. Rev.* 213, 221 (1993) (questioning the view that “lawyers [for the poor] have relatively little that is distinctive to offer clients”).

[FN37]. For helpful, if critical, discussions of the causal approach to law and social movements, see Malcolm M. Feeley, *The Concept of Laws in Social Science: A Critique and Notes on an Expanded View*, 10 *Law & Soc'y Rev.* 497 (1976); and Michael McCann, *Causal Versus Constitutive Explanations (Or, On the Difficulty of Being So Positive...)*, 21 *Law & Soc. Inquiry* 457 (1996).

[FN38]. See generally Austin Sarat, “... The Law Is All Over”: Power, Resistance and the Legal Consciousness of the Welfare Poor, 2 *Yale J.L. & Human.* 343 (1990) (observing the omnipresence of legal rules and practices in the lives of welfare recipients). Paul Kahn further explains, “[t]he rule of law shapes our experience of meaning everywhere and at all times. It is not alone in shaping meaning, but it is rarely absent.” Paul W. Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* 124 (1999).

[FN39]. White, *supra* note 17, at 159.

[FN40]. Lopez, *supra* note 34, at 51.

[FN41]. See, e.g., Richard E. Blum, To [Peter Cicchino, from the Heart](#), 9 *Am. U. J. Gender Soc. Pol'y & L.* 19, 20 (2001) (explaining that the work of lawyers for the homeless “is grounded in simple human decency, in caring for our fellow human beings, and dare I say it, even love”).

[FN42]. See Peter Edelman, [Responding to the Wake-Up Call: A New Agenda for Poverty Lawyers](#), 24 *N.Y.U. Rev. L. & Soc. Change* 547, 547 (1998) (“The legal landscape confronting public interest lawyers for the poor in 1999 is quite different from the landscape of 1969.”).

[FN43]. See Herbert J. Gans, *The War Against the Poor: The Underclass and Antipoverty Policy* 82-85 (1995) (discussing political backlash against the poor in the 1980s and 1990s and the use of myth and stereotype in public and political discourse to scapegoat poor people and justify punitive social welfare policies); see also Martha L. Fineman, [Images of Mothers in Poverty Discourses, 1991 Duke L.J.](#) 274, 284 (“The category of underclass is defined not only by the perception that its designated members are the chronically poor, but also by the belief that their poverty results from their own failings.”).

[FN44]. See Stephen Loffredo, [“If You Ain't Got the Do, Re, Mi”: The Commerce Clause and State Residence Restrictions on Welfare](#), 11 *Yale L. & Pol'y Rev.* 147, 148, 169-73 (1993) (discussing political assaults on welfare programs and recipients, and state imposition of cutbacks and punitive eligibility restrictions in the early 1990s).

[FN45]. See Center on Social Welfare Law and Policy, *Welfare Myths: Fact or Fiction? Exploring the Truth About Welfare* 13 (1996) (documenting the declining real value of AFDC and food stamp benefits between 1975 and 1994).

[FN46]. See Steven A. Holmes, *Income Disparity Between Poorest and Richest Rises*, *N.Y. Times*, June 20, 1996, at A1 (describing a U.S. Census Bureau report indicating “a pronounced increase in the gap between the incomes of the well-to-do and those of the poor and the working class”); see also Nancy A. Wright, [Welfare Reform Under the Personal Responsibility Act: Ending Welfare as We Know It or Governmental Child Abuse?](#), 25 *Hastings Const. L.Q.* 357, 368-71 (1998) (reporting that in 1994, 36.4 million Americans lived in poverty, and that “the percentage of Americans working full time but earning less than the poverty level for a family of four rose by 50% in the thirteen year period between 1981 and 1994”).

[FN47]. Personal Responsibility and Work Opportunity Reconciliation Act, [Pub. L. No. 104-193, 110 Stat. 2105](#) (codified at [42 U.S.C. §§ 601-1788 \(Supp. V 1999\)](#)) (eliminating the federal statutory entitlement to welfare created when the AFDC program was enacted on Aug. 14, 1935). See generally Helen Hershkoff & Stephen Loffredo, *The Rights of the Poor* (1997) (discussing welfare rights and entitlements under the AFDC and after its repeal).

[FN48]. The United States, unlike other advanced industrial nations, has never recognized an unconditional entitlement to basic subsistence benefits as a matter of right or need. See Handler, *supra* note 28, at 967 (“In Europe citizenship included a universal right to a real income not proportionate to the market value of the claimant.... [In the United States, the effort to] creat[e] entitlement-based social rights for the poor in the form of a decent income maintenance system... [has] stalled.”). Instead, a patchwork of categorical welfare programs coexisted uneasily within a framework that based assistance on a number of conditions aimed at identifying the so-called “deserving” poor who for reasons of disability or other “worthy” characteristics, would be excused for their inability to support themselves. See Joel F. Handler, *The Transformation of Aid to Families with Dependent Children: The Family Support Act in*

[Historical Context](#), 16 *N.Y.U. Rev. L. & Soc. Change* 457, 459 (1987-88) (describing segmentation of social welfare programs in the United States).

[FN49]. See generally Lawrence M. Mead, *Beyond Entitlement: The Social Obligations of Citizenship* (1986) (advancing the reciprocity thesis and urging imposition of strict work requirements on public assistance recipients). For critiques of the reciprocal obligations theory embodied in current welfare reform measures, see Kathryn R. Lang, [Fair Work, Not “Workfare”](#): Examining the Role of Subsidized Jobs in Fulfilling States' Work Requirements Under the Personal Responsibility and Work Reconciliation Act of 1996, 25 *Fordham Urb. L.J.* 959 (1998). See also Martha Albertson Fineman, [The Nature of Dependencies and Welfare “Reform,”](#) 36 *Santa Clara L. Rev.* 287, 305 (1996) (“The logic of workfare rests on the premise that the problems of the poor are the product of their own choices and individual weakness and failures.”); Dorothy E. Roberts, [The Value of Black Mothers' Work](#), 26 *Conn. L. Rev.* 871, 878 (1994) (emphasizing workfare's devaluation of the work of Black mothers, which in turn perpetuates the devaluation of Black children and Black mothering).

[FN50]. See Cynthia A. Bailey, [Workfare and Involuntary Servitude--What You Wanted to Know but Were Afraid to Ask](#), 15 *B.C. Third World L.J.* 285, 286 (1995) (“Workfare specifically refers to the idea that welfare recipients should be required to work for their benefits.”); Elspeth K. Deily, [Working with Welfare: Can Single Mothers Manage?](#), 12 *Berkeley Women's L.J.* 132, 132 (1997) (“Marking a fundamental shift from the former system, the Welfare Act provides each state with a block grant and wide latitude in determining to whom and how to provide welfare.... The linchpin to the new legislation is encouraging self-sufficiency through work requirements.”).

[FN51]. See Matthew Diller, [Working Without a Job: The Social Messages of the New Workfare](#), 9 *Stan. L. & Pol'y Rev.* 19, 27 (1998) (describing inferior legal protections and social status accorded welfare workers).

[FN52]. See Vadim Mahmoudov, [Are Workfare Participants “Employees?”: Legal Issues Presented by a Two-Tiered Labor Force](#), 1998 *Ann. Surv. Am. L.* 349 (1998) (discussing current legal treatment of workfare participants); Mary J. O'Connell, [Municipal Labor Perspectives on the Public Sector Welfare Workforce in New York City](#), 73 *St. John's L. Rev.* 805, 805 (1999) (noting that “[c]urrently, workfare recipients do not have the rights to organize and bargain collectively, but they may later”). But see Walter M. Luers, Note, [Workfare Wages Under the Fair Labor Standards Act](#), 67 *Fordham L. Rev.* 203, 205 (1998) (contending that “workfare participants are employees who are covered by” the minimum wage provisions of the Fair Labor Standards Act).

[FN53]. See Noelle M. Reese, [Workfare Participants Deserve Employment Protections Under the Fair Labor Standards Act and Workers' Compensation Laws](#), 31 *Rutgers L.J.* 873, 878 (2000) (discussing the lack of employee status of workfare participants and recommending change); see also Kevin J. Miller, Comment, [Welfare and the Minimum Wage: Are Workfare Participants “Employees” Under the Fair Labor Standards Act?](#), 66 *U. Chi. L. Rev.* 183 (1999) (arguing that workfare participants should be considered employees and should ordinarily qualify for the minimum wage). In 1997, the United States Department of Labor announced its view that federal employment laws, including the federal Fair Labor Standards Act, apply to welfare recipients. Department of Labor, *How Workplace Laws Apply to Welfare Recipients* (1997) (“Federal employment laws... apply to welfare recipients as they apply to other workers. The new welfare law does not exempt welfare recipients from the law.”), available at <http://www.dol.gov/asp/w2w/welfare.htm>. In practice, however, the Labor Department's policy does not extend equal treatment to workfare workers because it allows states to count food stamp benefits as “wages” that can satisfy minimum wage requirements. *Id.* Moreover, even this halfhearted attempt to afford a modicum of protection to workfare workers drew intense criticism from many state governors and members of Congress, Diller, *supra* note 51, at 9, and is unlikely to find support in the Bush administration.

[FN54]. See *Modern Workers Compensation* § 106:64 (2000) (WESTLAW, MWC Library) (noting that workfare

recipients “have been held not covered by workers' compensation, and sometimes are specifically excluded by statute”). But see [Kemp v. City of Hornell, 672 N.Y.S.2d 537 \(App. Div. 1988\)](#) (affirming a Workers' Compensation Board decision that a county was a workfare recipient's general employer and the city was his special employer, with liability for claims to be apportioned between the two entities). See generally Joel M. Poch, *Workfare--An Analysis of a Doomed Elixir*, N.Y. St. B.J., Mar./Apr. 1997 at 42, 43-44 (collecting cases on the status of workfare recipients under employment law).

[FN55]. See Gail Aska, *Is Workfare Working? A Panel Discussion Sponsored by the Association of the Bar of the City of New York*, [8 J.L. & Pol'y 149, 149 \(1999\)](#) (describing workfare experiences of members of Community Voices Heard, an organization of workfare participants, who were “forced to work with the remains of dead animals with no proper covering on their hands or bodies”); see also [Capers v. Giuliani, 677 N.Y.S.2d 353 \(App. Div. 1998\)](#) (dismissing state court complaint challenging denial of protective clothing and equipment to workfare recipients for failure to exhaust administrative remedies), appeal denied, [711 N.E.2d 199 \(N.Y. 1999\)](#).

[FN56]. See Diller, *supra* note 51, at 20 (arguing that workfare participants “receive none of the benefits and potentially only a few of the legal protections of employment”); Brendan P. Lynch, [Welfare Reform, Unemployment Compensation, and the Social Wager: Dismantling Family Support Under Wisconsin's W-2 Workfare Plan](#), [33 Harv. C.R.-C.L. L. Rev. 593, 612 \(1998\)](#) (arguing that workfare recipients should be eligible for Wisconsin unemployment compensation benefits if they “earn enough wages to qualify for coverage under the requirements of previous employment applied to all [unemployment compensation claimants]”).

[FN57]. Peter B. Edelman, [Promoting Family by Promoting Work: The Hole in Martha Fineman's Doughnut](#), [8 Am. U. J. Gender Soc. Pol'y & L. 85, 95 \(2000\)](#).

[FN58]. See Terence O'Neil, [Workfare from a Management Perspective](#), [73 St. John's L. Rev. 813, 819 \(1999\)](#) (discussing arguments in favor of workfare); Lauri Cohen, Comment, [Free Labor in the Name of Workfare: New York's Reaction to the Brukman v. Giuliani Decision](#), [64 Brook. L. Rev. 711, 723 \(1998\)](#) (quoting a New York City welfare administrator who stated that workfare will “enable an increasingly large population of participants to achieve economic independence through permanent full-time employment”).

[FN59]. Diller, *supra* note 51, at 27-28.

[FN60]. See Marta Russell, [Backlash, the Political Economy, and Structural Exclusion](#), [21 Berkeley J. Emp. & Lab. L. 335, 360-363 \(2000\)](#) (“Two years after the enactment of welfare reform, both worker displacement and increased worker exploitation are already having an impact.”).

[FN61]. See Mark Hoover, *Is Workfare Working? A Panel Discussion Sponsored by the Association of the Bar of the City of New York*, [8 J.L. & Pol'y 129, 131 \(1999\)](#) (the author, First Deputy Commissioner of the New York City Human Resources Administration, declaring that welfare as an “entitlement” has ended and praising the city's workfare program as implementing a “mandatory reciprocal agreement... in which a beneficiary receives benefits in return for work”); see also Nancy E. Hoffman, [Workfare Implications for the Public Sector](#), [73 St. John's L. Rev. 769, 769 \(1999\)](#) (“New York State is a relative pioneer in the implementation of workfare and [has] one of the largest welfare work forces in the country.”).

[FN62]. See, e.g., Dixie R. Switzer, [Welfare Reform: Oregon's Response to the Personal Responsibility and Work Opportunity Reconciliation Act](#), [77 Or. L. Rev. 759, 774-75 \(1998\)](#) (discussing Oregon's workfare program as it existed prior to the repeal of the AFDC); Joanna K. Weinberg, [The Dilemma of Welfare Reform: “Workfare” Programs and Poor Women](#), [26 New Eng. L. Rev. 415, 442-45 \(1991\)](#) (describing California as a leader in work and

training programs through its GAIN Act of 1985).

[FN63]. See Craig L. Briskin & Kimberly A. Thomas, The [Waging of Welfare: All Work and No Pay?](#), 33 *Hary. C.R.-C.L. L. Rev.* 559, 564 & n.25 (1998) (describing the process by which states obtain waivers); Joel F. Handler, “Ending Welfare As We Know It”--Wrong for Welfare, Wrong for Poverty, 2 *Geo. J. Fighting Poverty* 3, 3 (1994) (“Many states under waivers from the Reagan, Bush, and now the Clinton administrations, have instituted work requirements (workfare) that an individual must satisfy in order to qualify for welfare benefits.”); see also Anthony Bertelli, [Impoverished Liberalism: Does the New York Workfare Program Violate Human Rights?](#), 5 *Buff. Hum. Rts. L. Rev.* 175 (1999) (examining the New York Work Experience Program established in anticipation of the 1996 welfare act). See generally Patricia A. Quigley, [Protection of Existing Workers and the Implementation of “Workfare”](#), 14 *Hofstra Lab. L.J.* 625 (1997) (analyzing the New York Work Experience program).

[FN64]. Following the federal government's enactment of the Personal Responsibility Act in 1996, New York State passed the Welfare Reform Act of 1997, 1997 N.Y. Session Laws ch. 436, pt. B, § 148, which accords broad discretion to localities to administer work and welfare programs. In 1995, New York City had already established the Work Experience Program, described as “one of the toughest welfare-to-work programs in the country.” Catherine Ciarletta, Note, [Choosing Between an Education and a Welfare Check: An Examination of the New York City Workfare System](#), 44 *N.Y.L. Sch. L. Rev.* 153, 154 (2000). The Mayor's goal was to zero-out welfare by the year 2000; cf. Neil Gilbert, [Welfare Reform: Implications and Alternatives](#), 7 *Hastings Women's L.J.* 323, 327 (1996) (observing that in anticipation of welfare block granting, New York Governor George Pataki proposed “to reduce New York's AFDC grants by 26%”).

[FN65]. In the late 1990s, Mayor Rudolph Giuliani went so far as to promise an absolute end to all welfare receipt in New York City by the year 2000. The Mayor frequently refers to the dramatic reduction in welfare caseloads as one of the signal achievements of his administration. See, e.g., Hoover, *supra* note 61, at 192 n.2 (quoting a 1998 speech in which Mayor Giuliani extols the city's removal of “more than 400,000 from our welfare rolls,” and repeats his pledge to “take the unprecedented step of ending welfare by the year 2000”).

[FN66]. See NYC Coalition Against Hunger, *Poor in the Land of Dollars: Hunger Rises amid Prosperity* 6-7 (2000) (documenting the dramatic increase in hunger in New York City despite sustained economic growth); James Traub, *Giuliani Internalized*, *N.Y. Times*, Feb. 11, 2001, § 6 (Magazine), at 62 (“[T]he City's poverty rate of 22 percent is just as bad as it was during the recession of the early 90's [sic].”).

[FN67]. See [Reynolds v. Giuliani](#), 35 *F. Supp. 2d* 331, 348 (S.D.N.Y. 1999) (ordering a halt to the City's conversion of income support centers pending development of a corrective plan to retrain staff). See generally [Revamped Job Centers Questioned](#), 5 *City L.* 37 (Mar./Apr. 1999) (describing alleged problems with the new system of converting intake centers in response to the change in welfare rules).

[FN68]. For example, state and federal law require single parents of children under six to participate in work activities for twenty hours per week, see [N.Y. Soc. Serv. Law § 335-b\(3\) \(McKinney 2001\)](#), but New York City requires such individuals--together with all other public assistance recipients--to perform thirty-five hours per week of work. Hoover, *supra* note 61, at 132 n.6.

[FN69]. The 1996 Act requires states to ensure that a certain percentage of the adults receiving federally supported assistance are “engaged in work.” For these purposes, “engaged in work” means participation in any of a number of activities, including certain educational and training activities, job search, community service and subsidized employment. [42 U.S.C § 607\(c\)--\(d\) \(Supp. IV 1998\)](#).

[FN70]. Compare, e.g., N.Y.S. Department of Labor, Welfare to Work Employment Policy Manual, § 1300.9, at 9-21 (authorizing counties to include two-year college programs as countable work activities), available at <http://www.labor.state.ny.us/html/wtw/emintro.htm>, with N.Y.C. Human Res. Admin., Family Indep. Admin., Policy Directive No. 99-35RR (Mar. 22, 2000), at 17-18 (imposing “12-month lifetime limit” on education and training).

[FN71]. See City of N.Y. Indep. Budget Office, Inside the Budget, No. 72, at 4, fig.2-1 (Nov. 1, 2000) (reporting that as of June 2000, only 1.8% of adult welfare recipients in New York City engaged in education or training as their work activity). See generally, Ciarletta, *supra* note 64; David L. Gregory, [Br\(e\)aking the Exploitation of Labor?: Tension Regarding the Welfare Workforce](#), 25 *Fordham Urb. L.J.* 1, 16-17 (1997) (“Mayor Giuliani advocates putting welfare recipients to work, even at the expense of education, because working would restore a sense of dignity to those receiving public assistance.”).

[FN72]. See David L. Gregory, [Introduction to the Colloquium on the Welfare Workforce](#), 73 *St. John's L. Rev.* 747, 748 (1999) (“New York City has more welfare recipients engaged in its workfare programs than any other city in the country.”); Lawrence M. Mead, Is Workfare Working? A Panel Discussion Sponsored by the Association of the Bar of the City of New York, 8 *J.L. & Pol'y* 155, 156 (1999) (“The WEP Program with over 30,000 slots is much larger than a public employment program that you might find in any other city in the country. There is simply nothing like WEP anywhere in America.”).

[FN73]. See Ronald J. Tabak, Is Workfare Working? A Panel Discussion Sponsored by the Association of the Bar of the City of New York, 8 *J.L. & Pol'y* 117, 118 (1999) (noting “questions as to who is participating in workfare and the reasons why people have been removed from welfare for not complying with welfare regulations”).

[FN74]. For a partial description of the injuries inflicted by the City's policies, see Fed'n of Protestant Welfare Agencies, Inc., *Downside: The Human Consequences of the Giuliani Administration's Welfare Caseload Cuts* 4 (2000), available at <http://www.fpwa.org/publications/pov-welf.html>.

[FN75]. See Shruti Rana, [Restricting the Rights of Poor Mothers: An International Human Rights Critique of “Workfare”](#), 33 *Colum. J.L. & Soc. Probs.* 393, 435 (2000) (“While Workfare programs are supposed to grant exemptions for education and promote training, in practice the requirements are so harsh that many people are forced to leave school.”).

[FN76]. See Karen W. Arenson, Workfare Rules Cause Enrollment To Fall, CUNY Says, *N.Y. Times*, June 1, 1996, at A1 (“At CUNY, which has more students on welfare than any other college or university in the state, the number of those students has already dropped 17 percent from 27,000 a year ago. About 22,000 of CUNY's 206,500 students--more than 11 percent--are on welfare.”); Wayne Barrett, Rudy's Milky Way, *Village Voice* (New York), Jan. 26, 1999, at 41, 45 (reporting that since 1995, “the number of CUNY students on home relief has plummeted 86 percent, from 10,512 to 1459,” and that since 1996, “CUNY ranks dropped 46.3 percent, from 17,108 to 8836”).

[FN77]. See Urban Justice Ctr., Org. Project, *Welfare, Workfare, and Jobs: An Educator's Guidebook* 1 (1997) (estimating that workfare requirements had already caused 9,000 students to leave CUNY).

[FN78]. See Marilyn Gittell et al., *Building Human Capital: The Impact of Post-Secondary Education on AFDC Recipients in Five States* 1 (1993) (report to the Ford Foundation, on file with the University of Pennsylvania Law Review) (finding that “[a]s with other college graduates, education enabled... [AFDC recipients in New York, Tennessee, Washington, Wyoming, Illinois, and Pennsylvania] to find employment in the primary labor market and become financially independent and secure”).

[FN79]. See Jeffrey B. Fannell, The [National Labor Perspective of the AFL-CIO](#), 73 *St. John's L. Rev.* 761, 764 (1999) (citing statistics that more poor people leave the welfare rolls because of sanctions than because they have obtained employment); see also Liz Krueger et al., *Workfare: The Real Deal II*, at 6-17 (rev. ed. 1997) (noting that fewer than five percent of workfare participants in New York City obtained regular employment and the majority of those positions were low-skill jobs paying sub-poverty wages).

[FN80]. See Alfreda Lane et al., *Working the Quadruple Day*, 14 *Womens' Rev. Books* 19-21 (1997) (interviewing four women who combined studying, working, or raising their children with organizing and helping their fellow students to assert their rights). A typical story was described in a recent WRI publication:

Lisa Cora enrolled in Bronx Community College the same week the welfare department deemed her eligible for \$147 every two weeks. Two years later, Lisa is halfway to earning a Bachelor's degree at Hunter College, to be a teacher, the goal she's had for nearly twenty years.

But recently Lisa has been under intense pressure from the Human Resources Administration to quit school and return to low-paying employment. "Unfortunately, each day in college could be my last," Lisa shrugs. She has been ordered to add ten hours of workfare to her schedule.

The first page of Lisa's planner is a multi-color, coded week at a glance with school photos pasted opposite the calendar page, of her 10 year old son smiling shyly, and 7 year old daughter, all brown pensive eyes. Her days start at 6 AM. Blue slots indicate time to fix the kids three meals and green is time to help each with their homework. These are interspersed with five college classes, a 20-hour per week work-study job, and a day's worth of internship hours. She allots less than 6 hours nightly for sleep, that's purple, and three hours for homework, red.

Lisa is just managing. If not for the book bag on her stooped, shawl-clad shoulders, this tiny, pale, twenty-six year old could be mistaken at first glance for a woman twice her age.

Melinda K. Lackey, *Welfare Rights Initiative: Promoting College Access 1* (Nov. 2000) (unpublished manuscript, on file with the University of Pennsylvania Law Review).

[FN81]. On methods of case selection and deployment of legal services resources, see generally Paul R. Tremblay, [Acting "A Very Moral Type of God": Triage Among Poor Clients](#), 67 *Fordham L. Rev.* 2475 (1999), in which the author argues that in a legal services practice, "choosing among persons other than in a random way is a justified and necessary endeavor." [Id. at 2476](#).

[FN82]. Mimi Abramowitz, Professor of Social Work and Social Welfare Policy, and Janet Poppendieck, Director of the Center for the Study of Family Policy, both noted experts in the field of social welfare policy, see generally Mimi Abramowitz, *Regulating The Lives of Women: Social Welfare Policy From Colonial Times to the Present* (1996) (updating the story of women and social welfare to reflect current data, recent trends, and the intensified assault on programs such as Social Security, unemployment insurance, and AFDC); Mimi Abramowitz, *Under Attack and Fighting Back: Women and Welfare In the United States* (2000) (documenting the impact of recent welfare reform policies on the lives of poor women and their children, and arguing that welfare reform penalizes single motherhood and exposes poor women to the risks of hunger, homelessness, and male violence), collaborated with Melinda Lackey in the design and initial implementation of the WRI. Ms. Lackey serves as the organization's director. Cf. Aldon D. Morris, *The Origins of the Civil Rights Movement* 138 (1984) (observing that subordinated groups--even those with "indigenous resources"--are often catalyzed into a movement or mobilized into action with the assistance of exogenous activists, elites and institutions); Frances Fox Piven & Richard Cloward, *Poor Peoples' Movements: Why They Succeed, How They Fail* 265 (Vintage Books 1979) (discussing the role of external intellectual resources in the welfare rights movement of the 1960s and concluding that the movement arose "spontaneously" in most respects).

[FN83]. See, e.g., Gans, *supra* note 43, at 11-26 (discussing the pejorative myths and stereotypes that academics and policymakers invented in the late 1960s to characterize the poor).

[FN84]. The notion that poverty lawyers should strive to support and empower poor peoples' organizations is, of

course, not new, see, e.g., Wexler, *supra* note 20, at 1053, and occupied a central place in Ed Sparer's thinking, see Sparer, *supra* note 21, at 86-88 (“[T]he first step in a grand strategy for lawyers in advancing welfare rights is to serve, and thereby help build, an independent rights movement.”).

[FN85]. See CUNY Law School Makes a Difference, WRI Update, Winter 2000-01, at 2, 2 (reporting that “[t]o date, 1,123 students have been able to stay in college, thanks to the WRI/CUNY Law School collaborative that provides free legal services to students on welfare. The law school reports a 100 percent success rate on decisions by administrative law judges at fair hearings.”).

[FN86]. Dillonna Lewis, Supportive Service for Social Change, WRI Update, *supra* note 85, at 1, 1-2.

[FN87]. *Id.* at 2.

[FN88]. WRI's use of legal representation as an organizing tool echoes a similar strategy employed by welfare rights organizers three decades ago, and it raises some of the same issues. In the 1960s, welfare rights organizations built membership by offering legal assistance or other advocacy resources to poor families who became dues-paying members. See Piven & Cloward, *supra* note 82, at 286-97 (discussing how welfare rights organizations throughout the country relied primarily on solving the grievances of existing recipients as an organizing strategy). The strategy proved to be quite effective, if only transitory, in expanding the ranks of these organizations and enhancing their influence. *Id.* at 299. Some commentators have argued, however, that such “conditional benefit” organizing strategies may be unduly coercive or inimical to individual autonomy, at least in the context of welfare organizing. See, e.g., William H. Simon, [The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era](#), 48 U. Miami L. Rev. 1099, 1109-10 (1994) (criticizing the conditional benefit strategy as contrary to the “mainstream conception of advocacy and that of the new poverty law scholarship”). WRI's organizing and mobilization techniques, however, differ meaningfully from these earlier strategies. Unlike welfare rights organizations of the 1960s, WRI offers its services without condition, and refers cases to the clinic based solely on need. Admittedly, most students must interact with WRI in order to access the clinic's legal resources, but WRI does not seek memberships or pressure students to become activists. Whereas welfare rights organizations in the 1960s frequently relied on membership dues as a significant resource, the availability of foundation funds and university resources mitigates this need for WRI. Once WRI refers a student, the clinic establishes a wholly independent relationship with that individual and provides representation without direction or interference from any third party, and in accordance with the Code. See New York Code of Prof'l Responsibility, Canon 5 (2001) (“A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client.”).

[FN89]. See Gary Bellow, Turning Solutions into Problems: The Legal Aid Experience, 34 NLADA Briefcase 106, 118-19 (1977).

[FN90]. See Welfare Rights Initiative Report to the New York Community Trust 2 (Jan. 18, 2001) (“Key endorsements WRI secured included the New York Business Council, The New York City Partnership, Calvin Butts and the Catholic Conference.”).

[FN91]. See, e.g., Binny Miller, [Give Them Back Their Lives: Recognizing Client Narrative in Case Theory](#), 93 Mich. L. Rev. 485, 506-11 (1994) (criticizing the prevalence of a lawyer-dominated approach to strategy and decision making that marginalizes and disempowers clients); Simon, *supra* note 89, at 1109-10 (arguing that the provision of any professional advice-- especially to perennially marginalized or subordinated groups--constitutes an exercise of power).

[FN92]. Cf. Piven & Cloward, *supra* note 82, at 285 (discussing efforts of organizers and lawyers to limit their roles

within welfare rights organizations by “subordinating themselves” to policy decisions made by organization members).

[FN93]. The Work-Study and Internship Bill, 2000 N.Y. Laws 534.

[FN94]. *Id.*

[FN95]. See Workfare for Work-Study, *Newsday* (Melville, N.Y.), Oct. 7, 2000, at A14 (reporting that Mayor Giuliani opposed the work-study legislation on the ground that it would hamstring the city's efforts to pursue its welfare policy).

[FN96]. See Hunter Students Celebrate Legislative Success, *N.Y. Times*, Oct. 11, 2000, at B10 (noting that Governor Pataki signed legislation allowing work-study programs and internships to count as work activity for college students on workfare).

[FN97]. See Success and More Success, *WRI Update*, *supra* note 85, at 2 (reporting that WRI alumni are currently engaged in a broad range of activities, including: teaching kindergarten; serving as a Public Service Scholar at the New York City Council; earning a Masters in Divinity at the Union Theological Seminary; working as a journalist for the *New York Times*, having earned a master's degree at the Columbia School of Journalism; running a construction company; and serving as coordinator of a food pantry).

[FN98]. See Hunter Students Celebrate Legislative Success, *supra* note 96, at B10, and accompanying text (describing the passage of reform legislation).

[FN99]. Edward L. Rubin, [Passing Through the Door: Social Movements Literature and Legal Scholarship](#), 150 *U. Pa. L. Rev.* 1, 1 (2001).

[FN100]. Ed Rubin does not define such concepts as law reform, social movement, or mobilization. *Id.* at 3. In a similar spirit, I assume that the WRI collaboration with the CUNY Law School clinic is part of a process of social mobilization and social change, however defined. Cf. Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics* 2 (2d ed. 1998) (stating that a social movement refers to “those sequences of contentious politics that are based on underlying social networks and resonant collective action frames, and which develop the capacity to maintain sustained challenges against powerful opponents”); Alain Touraine, *An Introduction to the Study of Social Movements*, 52 *Soc. Res.* 749, 750, 760 (1985) (stating that “[t]here is an almost general agreement that social movements should be conceived as a special type of social conflict,” but reserving “the concept ‘social movements’ only to refer to conflicts around the social control of the main cultural patterns”).

[FN101]. Rubin, *supra* note 99.

[FN102]. Alberto Melucci, *Nomads of the Present: Social Movements and Individual Needs in Contemporary Society* 193-94 (John Keane & Paul Mier eds., 1989) (“Resource mobilization is... an American phenomenon....”); Bert Klandermans & Sidney Tarrow, *Mobilization into Social Movements: Synthesizing European and American Approaches*, in 1 *Int'l Soc. Movement Res.* 1, 2-3 (1988) (discussing resource mobilization theory and explaining that by contrast to Continental theorists, “Americans developed their research mainly at the group and individual level, looking systematically at the groups that organized mass protest, at their forms of action, and at the motivations of individuals who joined them”).

[FN103]. See William A. Gamson, *The Strategy of Social Protest* 148 (2d ed. 1990) (explaining that the resource mobilization theory emerged around 1975). Early leading texts discussing the resource mobilization approach include: Charles Tilly, *From Mobilization to Revolution* (1978); and John D. McCarthy & Mayer N. Zald, *Resource Mobilization and Social Movements: A Partial Theory*, 82 *Am. J. Soc.* 1212 (1977).

[FN104]. Anthony Oberschall, *Social Conflicts and Social Movements* 28 (1973).

[FN105]. Thomas R. Rochon, *Mobilizing for Peace: The Antinuclear Movements in Western Europe* 18 (1988).

[FN106]. Klandermans & Tarrow, *supra* note 102, at 4 (citations omitted).

[FN107]. Mancur Olson, *The Logic of Collective Action* (1971); see Gamson, *supra* note 103, at 151-54 (defining a selective incentive as “some tangible good or service that an organization provides its members as an inducement to participate”); Handler, *supra* note 3, at 7 (discussing social reform groups in terms of overcoming free rider problems and the provision of selective incentives); Gerald Marwell & Pamela Oliver, *The Critical Mass in Collective Action: A Micro-Social Theory* 3-9 (1993) (discussing Olson's treatise and its impact on collective action theories).

[FN108]. See Rochon, *supra* note 105, at 19 & n.26 (providing examples). Responding to Continental trends, resource mobilization theorists have more recently begun to focus on “how issues are framed and how challengers can reframe them.” Gamson, *supra* note 103, at 149 (citations omitted). Nevertheless, they tend to ignore “the way in which collective identity is created and transformed” in the process of resource mobilization. *Id.* at 148.

[FN109]. Claus Offe, *New Social Movements: Challenging the Boundaries of Institutional Politics*, 52 *Soc. Res.* 817, 820 (1985).

[FN110]. *Id.*

[FN111]. Alain Touraine, *The Voice and the Eye: An Analysis of Social Movements* 94-95 (Alan Duff trans., 1981).

[FN112]. Rochon, *supra* note 105, at 16-17.

[FN113]. Ron Eyerman & Andrew Jamison, *Social Movements: A Cognitive Approach* 4 (1991).

[FN114]. *Id.* at 57-59.

[FN115]. John Keane & Paul Mier, *Preface to Nomads of the Present: Social Movements and Individual Needs in Contemporary Society* 4 (John Keane & Paul Mier eds., 1989).

[FN116]. See Susan Harding, *Reconstructing Order Through Action: Jim Crow and the Southern Civil Rights Movement*, in *Statemaking and Social Movements* 378, 379-80 (Charles Bright & Susan Harding eds., 1984) (discussing social movements as modes of challenging “hegemonic world views” and “prevailing understandings that define... social identity”).

[FN117]. See Bert Klandermans, *Social Movement Organizations and the Movement Research*, in 2 *International Social Movement Research* 8 (Bert Klandermans ed., 1989) (describing new social movements as creating “democratic niches in society in which autonomous social action creates new identities” for movement adherents apart from a “general social identity whose interpretation they contest”).

[FN118]. Lewis, *supra* note 86, at 2. In this respect, the theory of the WRI/clinic collaborative resonates with Gary Bellow's "focused case pressure strategy," a technique through which poverty lawyers concentrate representation on a particular landlord, welfare center or other institution, and, in the process, connect clients encountering similar problems and encourage them to view those problems systematically and respond collectively. See Bellow, *supra* note 89, at 119-22. Social movement theorists refer to this sort of intervention as "defining and interpreting grievances" and describe it as a function of social movements. See Klandermans, *supra* note 117, at 9 ("One's interpretations, rather than the reality itself, guide political actions.... According to scholars who emphasize grievance interpretation, the crucial variables in movement mobilization are not anger or frustration, but the belief that one's interests are common interests, as well as the perception of injustice--that is, the belief that these interests are legitimate"); *c.f.* White, *supra* note 7, at 539-40 ("Litigation provides a setting--a set of experiences--which might enable poor people to become more politically effective in their own lives.").

[FN119]. Lewis, *supra* note 86, at 2.

[FN120]. Welfare Rights Initiative (n.d.) (unpublished program literature, on file with the University of Pennsylvania Law Review).

[FN121]. The City University of New York, the largest urban public university in the United States, dates back to the founding of the Free Academy in 1847. From its inception, the University's mission has been to open the halls of higher education to the diverse populations of New York City, including low-income individuals. Founded in 1983, CUNY School of Law defines its mission as "training law students for public service" and advancing social justice. CUNY School of Law Bulletin 6 (2001).

[FN122]. Students at CUNY Law School reflect diversities not typical of the legal profession itself. See *id.* at 26 ("[O]ver 60% of [CUNY] students are women and more than one-third are people of color. They speak more than twenty foreign languages and are members of over forty ethnic groups. The age range of the class of 2002 is from 20 years to 66 years with an average age of 29 years."). Many clinic students have themselves experienced poverty and welfare, creating at least the possibility for unique levels of empathy, trust and understanding with clinic clients.

[FN123]. See Stephanie Flanders, *When a Day's Work Still Doesn't Count: Job Rules for Students on Welfare Continue To Cause Confusion*, N.Y. Times, June 13, 2001, at B3 (discussing effects of legislation that liberalized workfare rules and commenting on possible further reforms). Last year, WRI and the clinic joined with a number of advocacy groups and grassroots organizations to form a new city-wide coalition, the Coalition for Access to Training and Education (CATE). After many months of legal, organizational and political work, CATE recently secured introduction of a bill in the New York City Council that, if adopted, would dramatically expand welfare recipients' access to college and other forms of education and training as paths out of poverty. See N.Y. City Council, Bill Int. No. 959 (2001); Diane Cardwell, *Manhattan: Welfare-Rights Bill*, N.Y. Times, July 27, 2001, at B5 (describing the purpose of the proposed legislation).

[FN124]. Sparer, *supra* note 21, at 91.

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