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ARTICLE

Movement Law

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Abstract. In this Article we make the case for *movement law*, an approach to legal scholarship grounded in solidarity, accountability, and engagement with grassroots organizing and left social movements. In contrast to law and social movements—a field that studies the relationship between lawyers, legal process, and social change—movement law offers a methodology to scholars across substantive areas of expertise to work alongside social movements. We argue that it is essential in this moment of crisis to cogenerate ideas alongside grassroots organizing that aims to transform our political, economic, and social landscape.

We identify four methodological moves in the work of a growing number of scholars organically developing methods for movement law. First, movement law scholars attend to modes of resistance by social movements and local organizing. Attending to resistance is in itself significant, for it meaningfully diversifies the voices and sources within legal scholarship. Second, movement law scholars work to understand the strategies, tactics, and experiments of resistance and contestation. By studying the range of these approaches—including but not limited to law-reform campaigns—movement law scholars engage with new pathways to and possibilities for justice. Third, movement law scholars shift their epistemes away from courts and siloed legal expertise and toward the stories, strategies, and histories of social movements. Taking social movement horizons as a

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starting point denaturalizes the status quo and allows more radical possibilities to emerge. Fourth, movement law scholars embody an ethos of solidarity, collectivity, and accountability with left social movements rather than a hierarchical or oppositional relationship. Writing in solidarity with the grassroots displaces the legal scholar as an individual expert and centers collective processes of ideation and struggles for social change.

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Introduction

It has never been clearer how ideas birthed in and by social movements are fundamental forces in law and politics in the United States.[1] On the left[2] in the last decade, Occupy Wall Street coined "the 99%," mobilized people against growing economic inequality and corporate power, and laid a foundation for the deepening of anticapitalist critique and socialist politics.[3] The Ferguson and Baltimore rebellions, combined with organizing by the Movement for Black Lives (M4BL) and a growing constellation of abolitionist organizations, have made anti-Blackness, white supremacy, and police violence core issues on the liberal-to-left spectrum and redefined the terms of policy debate.[4] Young people are organizing for a Green New Deal, a response to the environmental crisis that is remaking climate-change politics.[5] Indigenous resistance from Hawaii to the Dakotas is connecting environmental justice to the revival of anticolonial land politics.[6] Through strikes and organizing, nurses, teachers, and "rideshare"

1. In this Article, we define a social movement as "a collective effort to change the social structure that uses extra-institutional methods at least some of the time. Social movement organizations (SMOs) are formal organizations that attempt to implement movement goals." Debra C. Minkoff, *The Sequencing of Social Movements*, 62 AM. SOCIO. REV. 779, 780 n.3 (1997) (citations omitted).
2. This is not to say that social movements are active or successful only on the left. On the right, the Tea Party and more recent right-wing formations have revived nativist politics. *See* DANIEL MARTINEZ HOSANG & JOSEPH E. LOWNDES, PRODUCERS, PARASITES, PATRIOTS: RACE AND THE NEW RIGHT-WING POLITICS OF PRECARITY 3-4 (2019); Ilya Somin, *The Tea Party Movement and Popular Constitutionalism*, 105 NW. U. L. REV. COLLOQUY 300, 301 (2011) (discussing the Tea Party Movement's use of "popular constitutionalism" to advance its cause).
3. *See* Michael Levitin, *The Triumph of Occupy Wall Street*, ATLANTIC (June 10, 2015), https://perma.cc/58LX-RSD8 (describing "how the debate over inequality sparked by Occupy has radically remade the Democratic Party").
4. The M4BL is a coalition of over fifty organizations representing thousands of Black people that came together to author *A Vision for Black Lives*. *See* THE MOVEMENT FOR BLACK LIVES, A VISION FOR BLACK LIVES: POLICY DEMANDS FOR BLACK POWER, FREEDOM & JUSTICE (2016), https://perma.cc/3LSQ-HS4E; Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 407-10, 412-13, 415-16 (2018) (describing the M4BL, its vision, and its impact). On the vision for transformative reforms emerging from the M4BL, see generally Marbre Stahly-Butts & Amna A. Akbar, *Abolitionist Demands*, 68 UCLA L. REV. (forthcoming 2021) (on file with authors).
5. The Green New Deal is a wide-ranging set of proposals aimed at transforming our social, economic, and political order through programs that touch on health, labor, race, and economic inequality. *See* RHIANA GUNN-WRIGHT & ROBERT HOCKETT, NEW CONSENSUS, THE GREEN NEW DEAL 1, 5-10 (2019), https://perma.cc/MZ4V-2YHC; KATE ARONOFF, ALYSSA BATTISTONI, DANIEL ALDANA COHEN & THEA RIOFRANCOS, A PLANET TO WIN: WHY WE NEED A GREEN NEW DEAL 3-7 (2019); Emily Witt, *The Optimistic Activists for a Green New Deal: Inside the Youth-Led Singing Sunrise Movement*, NEW YORKER (Dec. 23, 2018), https://perma.cc/W2Y7-XFWW; H.R. Res. 109, 116th Cong. (1st Sess. 2019).
6. *See, e.g.*, Red Nation, *Principles of Unity*, RED NATION (Aug. 11, 2018), https://perma.cc/7LV8-XZAG (announcing principles of an anticapitalist, anticolonialist

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drivers are reasserting the centrality of worker power to social movements and economic, racial, and gender justice.[7] This scale and volume of left social movement activity—our focus—marks a resurgence of contestation after decades of relative quiet.[8] Today's social movements are meeting the existential crises of our time with vision, scale, and infrastructure. They reflect the growing sense that neoliberal law and politics has failed the majority of people in the United States. And they point the way toward transformation.

This particular moment of political, economic, and social crisis demands that more of us consider how to work alongside such efforts. In this Article, we identity a methodology for working alongside social movements within scholarly work. We argue that legal scholars should take seriously the epistemological universe of today's left social movements, their imaginations, experiments, tactics, and strategies for legal and social change. We call this methodology *movement law*.

Movement law is not the study *of* social movements; rather, it is investigation and analysis *with* social movements. Social movements are the partners of movement law scholars rather than their subject. For at least three decades, legal scholars have studied social movements, creating a "law and social movements" subdiscipline.[9] We are inspired by this work, and we believe it is

political project rooted in the "long traditions of Indigenous resistance"); Michelle Broder Van Dyke, *"A New Hawaiian Resistance": How a Telescope Protest Became a Movement*, GUARDIAN (Aug. 17, 2019, 1:30 AM EDT), https://perma.cc/R8AA-WBJE. *See generally* NICK ESTES, OUR HISTORY IS THE FUTURE: STANDING ROCK VERSUS THE DAKOTA ACCESS PIPELINE, AND THE LONG TRADITION OF INDIGENOUS RESISTANCE 169-99 (2019) (connecting the movement at Standing Rock to the long arc of Indigenous resistance in the Americas).

7. *See* ERIC BLANC, RED STATE REVOLT: THE TEACHERS' STRIKE WAVE AND WORKING-CLASS POLITICS 1-14, 18-19 (2019); Jane McAlevey, *Teachers Are Leading the Revolt Against Austerity*, NATION (May 9, 2018), https://perma.cc/ZDP5-DB72 (to locate, click "View the live page"); Veena Dubal, *Why the Uber Strike Was a Triumph*, SLATE (May 10, 2019, 1:33 PM), https://perma.cc/QS42-WYXX; Sarah Jaffe, *First, Nurses Saved Our Lives—Now They're Saving Our Health Care*, NATION (Feb. 8, 2021), https://perma.cc/4K38-FMCL (to locate, click "View the live page").

8. Although our focus in this Article is on social movements in the United States. Of course, there was greater mobilization globally in the early 2010s. *See* Kevin Gillan, *2010+: The Rejuvenation of New Social Movement Theory*, 24 ORG. 271, 271 (2017) (book review) ("The first half of this decade has seen a tremendous wave of protest. The universally recognized spark of the Arab Spring was the self-immolation of Mohamed Bouazizi in December 2010. Since then we've seen the Tunisian and Egyptian revolutions, protests turn to civil wars in Syria and Libya, the uprisings of the *indignadas* of Spain and the Occupiers of Wall Street (and *passim*), the Umbrella Movement of Hong Kong, a range of new movements in Brazil, Chile and Mexico and much else besides.").

9. *See, e.g.*, Scott L. Cummings, *The Puzzle of Social Movements in American Legal Theory*, 64 UCLA L. REV. 1554, 1556 (2017) [hereinafter Cummings, *The Puzzle of Social Movements*]; Scott L. Cummings, *The Social Movement Turn in Law*, 43 LAW & SOC. INQUIRY 360, 360-63 (2018) [hereinafter Cummings, *The Social Movement Turn in Law*]. *But see* Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV.

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essential for scholars to write about movements to understand the theories of social change that they embody. We aim to articulate something distinct: a methodology for legal scholars across areas of law.

Movement law is also distinct from movement lawyering, an approach to lawyering in solidarity with social movements.[10] Movement lawyering aims to create space within public-interest practice to work with movements to build grassroots power.[11] In contrast, our focus is on creating space within legal scholarship to think alongside social movements. To be sure, these are related endeavors, and many movement law scholars engage in movement lawyering. But in this Article we give sustained attention to scholarly method.

Movement law approaches scholarly thinking and writing about law, justice, and social change as work done in solidarity with social movements, local organizing, and other forms of collective struggle. As it begins in solidarity and with commitments to justice and freedom, it often begins outside of the law as traditionally conceived. In this way, movement law builds on the work of jurisprudential schools of thought such as critical legal studies (CLS), critical race theory (CRT), Latina/o critical theory (LatCrit), feminist legal theory, critical lawyering, and democratic constitutionalism. By looking to lived experience and

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1, 48 (2001) (arguing that in legal scholarship, "[v]ery little is said about the existence of social movements; their formation, operation, continuation, and decline" and that "there is virtually no discussion of their internal management, their use of protest, or even the development of their litigation and law reform efforts"). The cross-disciplinary law-and-social-movements literature theorizes about both the evocation and the actual role of movements in the construction of law and legal process. Our aim is to widen the integration of social movement ideation across fields of legal research in the current political moment.

10. For works on law-and-organizing principles and movement lawyering, see, for example, Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546, 578-86 (2021); Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 447-50 (2001); 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, 446 (1995); Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 161-66 (2016); Michael Grinthal, *Power with: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 26-28, 33-59 (2011); Betty Hung, Essay, *Law and Organizing from the Perspective of Organizers: Finding a Shared Theory of Social Change*, 1 L.A. PUB. INT. L.J. 4, 7-23 (2009); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 464-79 (1994); and Joseph Phelan, *Purvi & Chuck: Community Lawyering*, CMTY. JUST. PROJECT (June 15, 2010), https://perma.cc/827W-4FRK.

11. *See* Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645, 1689-716 ("[M]ovement lawyering is the mobilization of law through deliberately planned and interconnected advocacy strategies, inside and outside of formal law-making spaces, by lawyers who are accountable to politically marginalized constituencies to build the power of those constituencies to produce and sustain democratic social change goals that they define." (emphasis omitted)).

structures of inequality, scholars in these critical traditions have long complicated conventional accounts of law—what it does and for whom and how it can and should change—with an eye toward collective struggle and ideation.[12] As Chuck Lawrence has recently underscored, CRT teaches us that "[a]ll race reform, all racial justice, is achieved through the work of people who join together in justice movements to disrupt systems and institutions of plunder and to contest the racialized narratives that justify that plunder."[13] Movement law centers itself within this history of critical thought.

We are interested in social movements for their potential to democratize our politics and embolden our visions for change. Social movements exist on all sides of the political spectrum. Indeed, scholars across the ideological spectrum might claim movement law. But for us, because our own solidarity is born out of commitments to a certain understanding of social, political, and economic justice, our focus is on left movements today: those that aim to redistribute life chances and resources; those that aim to end our reliance on prisons and police to solve political, economic, and social problems; those that confront systems of white supremacy, anti-Blackness, capitalism, ableism, cisnormativity, and heteropatriarchy; and those that struggle to fundamentally transform state and society. In this Article we focus on movements that posit wholesale transformation rather than reform as their end goal; that challenge elite rule and aim to build democracy from the ground up; and that focus on collective rather than individual well-being.[14] Collectivity—across race, class, gender, sexuality, disability, and social location—leads to solidarity with the potential to profoundly shift our modes of living into ones that are more sustainable and more equitable.

Social movements have marshaled some of the most profound changes in how we relate to one another and what we can expect of the state.[15] Social movements break the molds of political discourse, project new possible futures, and create terrains of engagement for more people. They galvanize hope and collective action rather than cynicism and alienation in a way that can guide

12. *See infra* Part I.

13. Charles R. Lawrence III, *The Fire This Time: Black Lives Matter, Abolitionist Pedagogy and the Law*, 65 J. LEGAL EDUC. 381, 387 (2015).

14. *Cf.* Daniel Farbman, *Resistance Lawyering*, 107 CALIF. L. REV. 1877, 1937-39 (2019) (defending a focus on left practices of legal resistance by connecting larger critical viewpoints born on the left to the political power of resistance lawyering itself).

15. *See* TOMIKO BROWN-NAGIN, COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT 1-5 (2011); MANISHA SINHA, THE SLAVE'S CAUSE: A HISTORY OF ABOLITION 1-5 (2016). *See generally* CHARLES M. PAYNE, I'VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE 1-4 (2d ed. 2007) (documenting the power of on-the-ground organizing in Mississippi during the Civil Rights Movement).

people to face the historically rooted material crises of our time.[16] Radical visions—where the scale of the vision matches the scale of the problems we face—can change what we think is possible both within and outside of the law. The visions of movement actors and organizations point us toward forms of reconstruction that call us to participate in remaking the world in more just ways.

Social movements are central to left intellectual traditions.[17] Scholars across disciplines are studying with renewed curiosity the histories of movements and enslavement and colonialism; capitalism and white supremacy; and race, class, and political economy.[18] More than ever, this is a time for legal scholars to focus on social movements.

16. For exploration of the democratic deficit from the Founding until today, see, for example, Michael J. Klarman, *The Supreme Court, 2019 Term—Foreword: The Degradation of American Democracy—and the Court*, 134 HARV. L. REV. 1, 9-10, 135-46 (2020); and AZIZ RANA, THE TWO FACES OF AMERICAN FREEDOM 189-93 (2010). There is a growing body of work in legal scholarship exploring histories of colonialism, enslavement, and racialization in the law. *See, e.g.*, K-Sue Park, *Self-Deportation Nation*, 132 HARV. L. REV. 1878, 1880-87 (2019) (explaining the concept of self-deportation as a state tool for subjugation); Maggie Blackhawk, *Federal Indian Law as Paradigm Within Public Law*, 132 HARV. L. REV. 1787, 1791-800 (2019) (arguing for the centrality of federal Indian law in the shaping of U.S. public law more broadly); Dorothy E. Roberts, *The Supreme Court, 2018 Term—Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 5-9 (2019) (describing continuities between historical abolition movements and the prison-abolition movement of today); *see also* Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 655 (2020) (describing the relationship between policing and the reproduction of residential segregation).

17. *See, e.g.*, W.E.B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA, 1860-1880, at 128-36, 159-80, 182-86 (The Free Press 1998) (1935); ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 22-30, 37-39 (2003); CIVIL RIGHTS CONGRESS, WE CHARGE GENOCIDE: THE HISTORIC PETITION TO THE UNITED NATIONS FOR RELIEF FROM A CRIME OF THE UNITED STATES GOVERNMENT AGAINST THE NEGRO PEOPLE 25-28 (William L. Patterson ed., 4th ed. 1952); Homi Bhabha, *Foreword* to FRANTZ FANON, BLACK SKIN, WHITE MASKS, at vii, vii-ix (Charles Lam Markmann trans., Pluto Press 1986) (1952); FANON, *supra*, at 110-11; IDA WELLS-BARNETT, LYNCH LAW IN AMERICA (1900), *reprinted in* WORDS OF FIRE: AN ANTHOLOGY OF AFRICAN-AMERICAN FEMINIST THOUGHT 70, 70-76 (Beverly Guy-Sheftall ed., 1995).

18. *See, e.g.*, Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784, 1786-94 (2020) (arguing that political economy should be central to legal scholarship); Park, *supra* note 16, at 1880-97 (bringing histories of settler colonialism to bear on the current concept of "self-deportation"); Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 131-32, 138-39, 158, 163-64 (2017) (describing Fourth Amendment jurisprudence's evolving role in facilitating police violence against Black people and people of color); Jennifer M. Chacón, *Unsettling History*, 131 HARV. L. REV. 1078, 1078-84 (2018) (reviewing KELLY LYTLE HERNÁNDEZ, CITY OF INMATES: CONQUEST, REBELLION, AND THE RISE OF HUMAN CAGING IN LOS ANGELES, 1771-1995 (2017)) (arguing that attending to the narratives of those directly affected by the system—the "rebel archive"—can help uncover "the interconnected nature of governmental oppression"); Katie R. Eyer, *The New Jim Crow Is the Old Jim Crow*, 128 YALE L.J. 1002, 1005-06 (2019)
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When we produce legal scholarship, we propagate ideas. Typically, we tell stories about what is wrong with our systems and institutions of law, and we advocate for solutions. Legal scholarship—adjacent to the coercive power of the state—is inherently normative then.[19] Movements, like scholars, are fundamentally invested in the realm of ideas. But unlike most legal scholarship, left movements are invested in disrupting the status quo and transforming political, economic, and social relations. Movements often start with disrupting ideas and telling new stories about what is possible. Movement law attempts to engage, celebrate, and participate in disruption from the grassroots. When this effort arises from within the university, it is necessarily contradictory given the university's central role in reproducing elite rule and the myth of meritocracy. Nonetheless, we believe it is important and possible for legal scholars to support efforts at radical and popular ideation toward transformation. Otherwise, we acquiesce to a much narrower and more elite discourse.

When we speak of producing scholarship in conversation with movements, we do not mean to limit our solidarity to currently existing social movements. Instead, we focus more broadly on collectives of people struggling together to generate new ideas and ways of living together, whether they are current or historical, and whether they are full-fledged social organizations, fledgling formations of community members in struggle, local organizing groups, unions, or worker centers.[20] We use the term "movement" because of the collective strength and potential for transformative change that it implies.

This Article proceeds as follows. In Part I, we ground the methodology of movement law in both the urgency of our current moment and past innovations in legal scholarship. In Part II, we turn to the question of methodology. We sketch out four moves that together form what we see as a distinct and emergent

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(reviewing ELIZABETH GILLESPIE MCRAE, MOTHERS OF MASSIVE RESISTANCE: WHITE WOMEN AND THE POLITICS OF WHITE SUPREMACY (2018); and JEANNE THEOHARIS, A MORE BEAUTIFUL AND TERRIBLE HISTORY: THE USES AND MISUSES OF CIVIL RIGHTS HISTORY (2018)) (citing a "growing body of work by historians of the South and of the civil rights movement" that "demonstrates that there is far less discontinuity between the past and the present than we might like to believe" (footnote omitted)).

19. On normativity in legal scholarship, see notes 207-09 and accompanying text below.

20. Although these formations may not yet meet Charles Tilly's definition of a social movement that provides a "sustained challenge to power holders," they possess the promise to get there. *Compare* Charles Tilly, *Conclusion: From Interactions to Outcomes in Social Movements*, *in* 10 SOCIAL MOVEMENTS, PROTEST, AND CONTENTION: HOW SOCIAL MOVEMENTS MATTER 253, 257 (Marco Giugni, Doug McAdam & Charles Tilly eds., 1999) (defining a social movement as "a sustained challenge to power holders in the name of a population living under the jurisdiction of those power holders by means of repeated public displays of that population's worthiness, unity, numbers, and commitment" (emphasis omitted)), *with* Minkoff, *supra* note 1, at 780 n.3 (defining a social movement as simply "a collective effort to change the social structure that uses extra-institutional methods at least some of the time").

strand of movement law scholarship. The moves are (1) locating resistance; (2) thinking alongside strategies, tactics, and experiments for justice; (3) shifting epistemes; and (4) adopting a solidaristic stance. These four moves may not exist in every piece of movement law scholarship. But the moves build on and deepen one another, resulting in scholarship that we believe has the potential to contribute to political, economic, and social transformation.

In Part III, we examine the place of movement law within conceptions of normative legal scholarship, recognizing that movement law may challenge assumptions within the academy about objectivity and rigor. We also take up the risks of fetishizing or feeling beholden to particular social movements. While these risks are real, we believe scholars can overcome them with vigilance and reflexivity, and that movement law is a necessary form of legal epistemology in our current crisis. We conclude in Part IV by identifying movement law as a potential bulwark against the traditionally conservative pull of elite discourse, a means of incrementally advancing legal thought toward the support of radical alternatives.

I. Responding to the Crises of Our Times

We are living in a moment of possibility—where the failures of the state to provide for people are plain and grassroots contestation of the status quo is stronger than it has been in decades. As scholars, we have an opportunity to respond to today's crises in ways that move us toward more justice and liberation for more people. In this Part, we identify ours as an important moment of opportunity, name earlier currents in legal scholarship that worked alongside movements, and make a normative case for such work.

We write in 2021, when the global COVID-19 pandemic has underlined the failures of the neoliberal social contract, particularly its emphases on the individual, property, profit, and the market economy. While these failures have resonated in different ways around the globe, they have reverberated in a particular way in the United States. Tens of millions of Americans have been without work during the crisis—and as a result many lack health care, experience food insecurity, and face eviction.[21] Nearly 1.3 million people are behind bars, where the virus spreads even more quickly.[22] Local, state, and

21. *See* Yun Li, *Nearly Half the U.S. Population Is Without a Job, Showing How Far the Labor Recovery Has to Go*, CNBC (updated June 30, 2020, 9:48 AM EDT), https://perma.cc/GR53-YJBL; Chris McGreal, *The Inequality Virus: How the Pandemic Hit America's Poorest*, GUARDIAN (Apr. 9, 2020, 2:09 PM EDT), https://perma.cc/R5WJ-LRJ4; Grace Segers, *"Staggering" Need: COVID-19 Has Led to Rising Levels in Food Insecurity Across the U.S.*, CBS NEWS (Oct. 14, 2020, 10:36 AM), https://perma.cc/JXA5-BJH9.

22. *See* Emily Widra & Dylan Hayre, *Failing Grades: States' Responses to COVID-19 in Jails & Prisons*, PRISON POL'Y INITIATIVE (June 25, 2020), https://perma.cc/DK75-8H62.

federal governments have failed to respond to a crisis that requires coordination, collaboration, and an orientation toward meeting human needs. All of this disproportionately devastates Black and brown communities, as well as poor white people.[23]

In April 2020, writer Arundhati Roy described the COVID-19 pandemic as "a portal, a gateway between one world and the next."[24] Through the portal, Roy evoked the possibility of meeting the various crises exacerbated by the pandemic by building new modes of response. In fact, the pandemic has heightened people's collective resistance and practices of survival. Uprisings, organizing, protests, campaigns, policy platforms, bail funds, and mutual-aid networks have taken hold all over the country—speaking directly to the failures of prevailing political, economic, legal, and social arrangements, and offering alternative imaginations of what the world might look like and the strategies, tactics, and prefigurations that might get us there.[25]

Just weeks after Roy invoked the concept of the portal in relation to the pandemic, uprisings in response to the police killing of George Floyd expanded that portal and its possibilities: People on the streets brought attention to the structural dimension of police violence and linked the state's failures to provide health care for all to the state's investments in policing.[26] Social movement organizations called to defund the police and invest in Black communities.[27] And

23. *See, e.g.*, Keeanga-Yamahtta Taylor, *The Black Plague*, NEW YORKER (Apr. 16, 2020), https://perma.cc/4GWJ-BD3F; Audrey Kearney & Cailey Muñana, *Taking Stock of Essential Workers*, KAISER FAM. FOUND. (May 1, 2020), https://perma.cc/FNT6-7LLK; Hye Jin Rho, Hayley Brown & Shawn Fremstad, *A Basic Demographic Profile of Workers in Frontline Industries*, CTR. FOR ECON. & POL'Y RSCH. (Apr. 7, 2020), https://perma.cc/G8PT-M535.

24. Arundhati Roy, *Arunhati Roy: "The Pandemic Is a Portal,"* FIN. TIMES (Apr. 3, 2020), https://perma.cc/R9PD-85NU ("We can choose to walk through it, dragging the carcasses of our prejudice and hatred, our avarice, our data banks and dead ideas, our dead rivers and smoky skies behind us. Or we can walk through lightly, with little luggage, ready to imagine another world. And ready to fight for it.").

25. *See, e.g.*, Jia Tolentino, *What Mutual Aid Can Do During a Pandemic*, NEW YORKER (May 11, 2020), https://perma.cc/R82S-BQFW.

26. *See* Intercepted with Jeremy Scahill, *The Rebellion Against Racial Capitalism*, INTERCEPT (June 24, 2020, 3:01 AM), https://perma.cc/D8CR-6MPQ (interviewing Robin D.G. Kelley, who underscores that the "portal" emerged from a growing realization that the violence of racialized policing is intertwined with structural neglect and racialized capitalism).

27. *See* Amna A. Akbar, *How Defund and Disband Became the Demands*, N.Y. REV. BOOKS (June 15, 2020, 7:00 AM), https://perma.cc/HN8H-RB46 (to locate, click "View the live page"); Mariame Kaba, Opinion, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), https://perma.cc/VLC9-VRNP.

the public responded, with unprecedented numbers of people taking to the streets, and a massive spike in contributions to community bail funds.[28]

We are in a moment, then, of great suffering and great possibility—what comes next is uncertain.[29] Vaccines are mitigating the spread of COVID-19. But the devastation wrought by the pandemic will stay with us, as will the movement energy and, we hope, the public receptiveness to structural understandings of the collective problems we face. To the extent that we are writing and producing scholarship, we should speak to the crises of our time with boldness and honesty, and in solidarity with poor and working-class people and grassroots movements. There is some tradition of such scholarship in law, to which we turn next.

A. Critical Race Theory

We are not the first to try to respond to the demands of contemporary crises through legal scholarship. We are inspired by scholars who have cogenerated ideas with social movements in the past, germinating the methodology that we call movement law. Here, we name some of those scholars, with a focus on an oft-unrecognized connection between CRT and social movements.[30] This is not a comprehensive account of the scholarly roots of movement law—naming antecedents that go back at least a century would be its own project.[31]

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28. Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), https://perma.cc/RH8Y-YUNF; Jia Tolentino, *Where Bail Funds Go from Here*, NEW YORKER (June 23, 2020), https://perma.cc/TT4P-MWF4; Nicholas Kulish, *Bail Funds, Flush with Cash, Learn to "Grind Through This Horrible Process,"* N.Y. TIMES (updated June 26, 2020), https://perma.cc/7NGF-992H; Mary Hooks & Jocelyn Simonson, Opinion, *The Power of Community Bail Funds*, N.Y. TIMES (Aug. 23, 2020), https://perma.cc/H25F-HN6X.

29. *Cf.* Stuart Hall, *Gramsci and Us*, VERSO BLOG (Feb. 10, 2017), https://perma.cc/E4N9-G35S ("When a conjuncture unrolls, there is no 'going back'. History shifts gears. The terrain changes. You are in a new moment. You have to attend, 'violently', with all the 'pessimism of the intellect' at your command, to the 'discipline of the conjuncture.'" (discussing the Left in Britain and *Selections from the Prison Notebooks of Antonio Gramsci* (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1971))).

30. Over twenty years ago, Sumi Cho and Robert Westley contested the prevailing mode of locating CRT primarily within debates of the legal academy, and located additional origins in "actual resistance movements." *See* Sumi Cho & Robert Westley, *Critical Race Coalitions: Key Movements That Performed the Theory*, 33 U.C. DAVIS L. REV. 1377, 1378-80, 1408-13 (2000) (grounding "CRT in actual resistance movements" and arguing that CRT's core commitments include "community formation and social transformation"); *see also* Sumi K. Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433, 434-36 (1997).

31. Scott Cummings has charted an original and interdisciplinary intellectual history of the role of social movements in legal theory in two articles that gravitate around the law/politics divide in progressive legal thought and the rise and fall of legal liberalism over the course of the twentieth century. *See* Cummings, *The Puzzle of Social Movements*, *supra* note 9; Cummings, *The Social Movement Turn in Law*, *supra* note 9.

We would include legal realism;[32] CLS;[33] the formations of "outsider jurisprudence,"[34] including LatCrit[35] and feminist legal theory;[36] popular and

32. Although the story of legal realism is contested and complex, *see* Brian Z. Tamanaha, *Understanding Legal Realism*, 87 TEX. L. REV. 731, 733-35 (2009), at base it was an intellectual movement that sought to make adjudication and legal scholarship less rule bound and more permeable to the influence of evolving social facts and norms. *See generally* AMERICAN LEGAL REALISM (William W. Fisher III, Morton J. Horwitz & Thomas A. Reed eds., 1993).

33. CLS theorists, such as Duncan Kennedy, Roberto Unger, and Karl Klare, advanced a sharp critique of doctrine and adjudication as a particularly constraining exercise of politics that ultimately defeated and demoralized movements for change. *See, e.g.*, Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1775 (1976) ("[L]itigants who have mastered the language of form can dominate and oppress others, or perhaps simply prosper because of it; academics without number hitch their wagonloads of words to the star of technicality."); Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561, 579 (1983) ("Modern legal doctrine . . . exists in a cultural context in which . . . society is understood to be made and imagined rather than merely given. To incorporate the final level of legal analysis in this new setting would be to transform legal doctrine into one more arena for continuing the fight over the right and possible forms of social life."); Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265, 266-67, 270-85 (1978) (using the Wagner Act to describe how law ultimately preserved hierarchies and distributions of power); *see also* David Kairys, *Introduction* to THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 1, 3-4 (David Kairys ed., 1982).

34. *See generally* Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2322 (1989) ("[O]utsider jurisprudence—jurisprudence derived from considering stories from the bottom—will help resolve the seemingly irresolvable conflicts of value and doctrine that characterize liberal thought."); Francisco Valdes, Commentary, *Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy*, 71 UMKC L. REV. 377, 382 (2002) (describing the "continuing evolution of outsider jurisprudence").

35. For examples of foundational works in the LatCrit tradition, see generally Margaret E. Montoya, Introduction, *LatCrit Theory: Mapping Its Intellectual and Political Foundations and Future Self-Critical Directions*, 53 U. MIA. L. REV. 1119 (1999); Francisco Valdes, Foreword, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997); Kevin R. Johnson & George A. Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies Activism and Scholarship*, 53 U. MIA. L. REV. 1143 (1999); Keith Aoki & Kevin R. Johnson, *An Assessment of LatCrit Theory Ten Years After*, 83 IND. L.J. 1151 (2008); Ediberto Roman, *Reparations and the Colonial Dilemma: The Insurmountable Hurdles and Yet Transformative Benefits*, 13 BERKELEY LA RAZA L.J. 369 (2002); Pedro A. Malavet, *Reparations Theory and Postcolonial Puerto Rico: Some Preliminary Thoughts*, 13 BERKELEY LA RAZA L.J. 387 (2002); Robert S. Chang, *"Forget the Alamo": Race Courses as a Struggle over History and Collective Memory*, 13 BERKELEY LA RAZA L.J. 113 (2002); Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. & 19 B.C. THIRD WORLD L.J. 477 (1998); and John Hayakawa Török, *The Story of "Towards Asian American Jurisprudence" and Its Implications for Latinas/os in American Law Schools*, 13 BERKELEY LA RAZA L.J. 271 (2002).

36. For examples of foundational works in feminist legal theory, see generally CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE (1989); and MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY (1999). Of course, questions of race and gender are interrelated, and there are many works exploring how race and

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democratic constitutionalism;[37] law and society scholarship;[38] critical legal

gender function and are contested intersectionally. *See, e.g.*, Richard Delgado, *Foreword to the Second Edition* of CRITICAL RACE FEMINISM: A READER, at xiii, xiv (Adrien Katherine Wing ed., 2d ed. 2003); Kristin Kalsem & Verna L. Williams, *Social Justice Feminism*, 18 UCLA WOMEN'S L.J. 131, 139 (2010) (theorizing that "social justice feminism" draws from feminist legal theory and critical race feminism, but "emerges from practice"); Martha Chamallas, *Social Justice Feminism: A New Take on Intersectionality*, FREEDOM CTR. J., Fall 2014, at 11, 11 (identifying "social justice feminism" as a "'new take' on intersectionality theory and intersectional feminism"); Sumi Cho, *Intersectionality and the Third Reconstruction*, FREEDOM CTR. J., Fall 2014, at 21, 21 (locating "the origins of both the early and modern women's movements in Black freedom struggles").

37. One premise of democratic constitutionalism is that social movement contestation over legal meaning is not simply integral to stories of constitutional change, but also essential to the legitimacy of the Constitution itself. *See* Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the De Facto ERA*, 94 CALIF. L. REV. 1323, 1418 (2006). Reva Siegel made the connection clear when she wrote that "[s]ocial movement conflict, enabled and constrained by constitutional culture, can create new forms of constitutional understanding." *Id.* at 1323. For examples of foundational works in popular and democratic constitutionalism, see generally 1 BRUCE ACKERMAN, WE THE PEOPLE: FOUNDATIONS (1991); Jack M. Balkin & Reva B. Siegel, Essay, *Principles, Practices, and Social Movements*, 154 U. PA. L. REV. 927 (2006); William N. Eskridge, Jr., *Channeling: Identity-Based Social Movements and Public Law*, 150 U. PA. L. REV. 419 (2001); William N. Eskridge, Jr., *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062 (2002); LARRY D. KRAMER, THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW (2004); Douglas NeJaime, *Constitutional Change, Courts, and Social Movements*, 111 MICH. L. REV. 877 (2013); Reva B. Siegel, *Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles over* Brown, 117 HARV. L. REV. 1470 (2004); MARK TUSHNET, TAKING THE CONSTITUTION AWAY FROM THE COURTS (1999); and Rebecca E. Zietlow, *Democratic Constitutionalism and the Affordable Care Act*, 72 OHIO ST. L.J. 1367 (2011).

38. The law and society tradition accentuates the importance of law in action (rather than simply the law on the books). *See* Brian Z. Tamanaha, *Sociological Jurisprudence Past and Present*, 45 LAW & SOC. INQUIRY 493, 505-11 (2020) (tracing research on "law in action" from sociological jurisprudence at the turn of the twentieth century to legal realism during the New Deal era and law and society in the 1960s). It also highlights everyday legalism (rather than court-centered litigation). *See* Patricia Ewick & Susan S. Silbey, *Conformity, Contestation, and Resistance: An Account of Legal Consciousness*, 26 NEW ENG. L. REV. 731, 736-43 (1992) (describing the law as it shapes and appears in the daily lives of ordinary citizens including interactions with family and neighbors); Patricia Ewick & Susan Silbey, *Narrating Social Structure: Stories of Resistance to Legal Authority*, 108 AM. J. SOCIO. 1328, 1339-40, 1355-58 (2003) (finding that people rarely seek remedies for their legal problems through the formal legal system and instead "disrupt[]" and "resist[]" outside of the legal system in order to resolve their issues); Austin Sarat, *". . . The Law Is All Over": Power, Resistance, and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMANS. 343, 344 (1990) (focusing on people on welfare, for whom the law is "repeatedly encountered in the most ordinary transactions and events"); Susan S. Silbey & Austin Sarat, Commentary, *Critical Traditions in Law and Society Research*, 21 LAW & SOC'Y REV. 165, 165-66, 172-73 (1987) (highlighting the lack of distinction between "law" and "society" in daily life, especially for those in rural or working-class communities who "construct their own local universe of legal values and behavior").

Law and society scholars such as Stuart Scheingold, Joel Handler, and Michael McCann have more directly wrestled with the relationship between law and social movements. *See* STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL

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history;[39] labor scholarship;[40] as well as other areas of scholarship.[41] Instead, our goal here is to identify themes in past works by a small group of critical scholars

CHANGE 13-21 (2d ed. 2004) (arguing that the "myth of rights" legitimated the social arrangements that yielded social and economic inequality); JOEL F. HANDLER, SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE 1-14 (1978) (surveying the influence of social movements on the development of law and legal reform in four areas: environmentalism, consumer protection, civil rights, and social welfare); MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION 12 (1994) (arguing that "the legal mobilization framework . . . encourages us to focus on how, when, and to what degree legal practices tend to be both [a resource and a constraint] at the same time"). *See generally* CAUSE LAWYERS AND SOCIAL MOVEMENTS (Austin Sarat & Stuart A. Scheingold eds., 2006) (considering the co-constitutive nature of collaborative legal practice and social movement activism). Finally, litigation skeptics such as Gerald Rosenberg have provoked responses from, amongst others, law and society scholars regarding the efficacy of legal claims in the advancement of progressive causes. *Compare* GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 1-3, 46-48, 157 (2d ed. 2008) (advancing the backlash thesis in his analysis of the impact of *Brown v. Board of Education* and *Roe v. Wade* on social movements), *with* Scott L. Cummings & Douglas NeJaime, *Lawyering for Marriage Equality*, 57 UCLA L. REV. 1235, 1237-40 (2010) (disputing the backlash thesis in the context of the same-sex-marriage movement in California), Douglas NeJaime, *Winning Through Losing*, 96 IOWA L. REV. 941, 945-47 (2011) (proposing that litigation loss may produce positive change for social movements and "lead to more effective reform strategies"), *and* Laura Beth Nielsen, *Social Movements, Social Process: A Response to Gerald Rosenberg*, 42 J. MARSHALL L. REV. 671, 672 (2009) (arguing that Rosenberg "overstates the limits of litigation strategies for social change").

39. Legal historian Tomiko Brown-Nagin has documented how National Lawyers Guild attorney Len Holt and others worked with grassroots social movement organizations over the course of the long civil rights struggle, beyond the high-profile NAACP Legal Defense Fund (LDF) school-desegregation campaign, with mixed success. *See* BROWN-NAGIN, *supra* note 15, at 175-211; *see also* KENNETH W. MACK, REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER 1-11 (2012) (documenting, though explicitly not a work about movements, "a multiple biography of a group of African American lawyers" in order to "illustrate[] a larger narrative arc of American race relations"); SUSAN D. CARLE, DEFINING THE STRUGGLE: NATIONAL ORGANIZING FOR RACIAL JUSTICE, 1880-1915, at 1-12 (2013) (recounting a history of legal civil rights activism and "situat[ing] this story within the broader scope of social movement theory and legal civil rights history").

40. Key works at the juncture of labor law and law and social movements include, for example, Marion Crain & Ken Matheny, *Beyond Unions, Notwithstanding Labor Law*, 4 U.C. IRVINE L. REV. 561 (2014); Catherine L. Fisk & Diane S. Reddy, *Protection by Law, Repression by Law: Bringing Labor Back into the Study of Law and Social Movements*, 70 EMORY L.J. 63 (2020); Catherine L. Fisk & Michael M. Oswalt, *Preemption and Civic Democracy in the Battle over Wal-Mart*, 92 MINN. L. REV. 1502 (2008); WILLIAM E. FORBATH, LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT (1991); Karl Klare, *Countervailing Workers' Power as a Regulatory Strategy*, *in* LEGAL REGULATION OF THE EMPLOYMENT RELATION 63 (Hugh Collins, Paul Davies & Roger Rideout eds., 2000); James Gray Pope, *Labor-Community Coalitions and Boycotts: The Old Labor Law, the New Unionism, and the Living Constitution*, 69 TEX. L. REV. 889 (1991); and Benjamin I. Sachs, *Employment Law as Labor Law*, 29 CARDOZO L. REV. 2685 (2008).

41. For example, our understanding of cogenerated legal meaning draws on the work of Robert Cover. Cover set the juris-generative potential of interpretive communities against the juris-pathic nature of courts. *See* Robert M. Cover, *The Supreme Court, 1982*

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who have emphasized collective struggle, organizing, movements, or the experiences of marginalized people in their work. In many ways, these are our forebears. The work of these critical race theorists demonstrates the power of scholarship that shifts epistemologies through solidarity with the experiences of outsiders. That the scholars we highlight center race, racialization, and racial justice is crucial to those scholars' importance for thinking alongside today's social movements—where questions of race are central.

CRT scholars emerged from within the Civil Rights Movement and the Black Power era.[42] These scholars advanced the idea that the experiences of Black, brown, and Indigenous people would transform, in Charles Lawrence's words, "the nomos of the larger social world in which we live."[43] Major early works were inspired by or in conversation with popular struggles.[44] In the last few decades, CRT's connection to social movements has receded as scholars

Term—Foreword: Nomos *and Narrative*, 97 HARV. L. REV. 4, 40 (1983). In addition, Ed Sparer offered an early analysis of the type of work we seek to do in this Article: "[T]he practical relationship of Critical legal theory to social movement and struggle in the United States today is, at best, very limited. . . . [T]he absence of *praxis* in current Critical legal work seems to be one of its most marked features." Ed Sparer, *Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement*, 36 STAN. L. REV. 509, 553 (1984). Sparer goes on to argue that "[a]cting means struggling for and living a different way, even if only 'experimentally,' and this requires praxis, theory which guides and is in turn influenced by action." *Id.* at 558.

42. For various accounts of the origins, see, for example, Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1262-64 (2011); Richard Delgado, *Liberal McCarthyism and the Origins of Critical Race Theory*, 94 IOWA L. REV. 1505, 1510-14 (2009); Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. U. L. REV. 329, 333-34 (2006); Cheryl I. Harris, *Critical Race Studies: An Introduction*, 49 UCLA L. REV. 1215, 1220-21 (2002); and *Introduction* to CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, at xiii, xiv (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995). CRT is more commonly remembered as a response to the lack of attention to race by CLS and the larger legal academy. *See Introduction* to CRITICAL RACE THEORY, *supra*, at xvi-xix.

43. Charles Lawrence III, Commentary, *Listening for Stories in All the Right Places: Narrative and Racial Formation Theory*, 46 LAW & SOC'Y REV. 247, 252 (2012) ("When outsider racial groups tell stories, when we engage in the project of racial reconstruction, we seek not only to change the pejorative meanings assigned to our races, but also to transform the communal narrative that defines the nomos of the larger social world in which we live.").

44. *E.g.*, Richard Delgado, Essay, *Two Ways to Think About Race: Reflections on the Id, the Ego, and Other Reformist Theories of Equal Protection*, 89 GEO. L.J. 2279, 2282-83, 2291, 2296 (2001) (contrasting "idealist" and "materialist" takes on race, reflecting briefly on the long Civil Rights Movement, and describing the 1999 World Trade Organization protests in Seattle). Scholars of color also drew on their own experiences. *See, e.g.*, Harlon L. Dalton, *The Clouded Prism*, 22 HARV. C.R.-C.L. L. REV. 435, 439-40 (1987) ("We learned from life as well as from books. We learned about injustice, social cruelty, political hypocrisy and sanctioned terrorism from the mouths of our mothers and fathers and from our very own experiences.").

have emphasized CRT's central insights as being about the co-constitutive relationship between race, law, and inequality.[45] While many founding scholars frame CRT as a product of the Civil Rights Movement, they are less likely to frame CRT as an exercise of movement praxis beyond institutional fights within law schools.[46] But it is this connection between CRT and movement imagining that inspires us now.

We begin with Derrick Bell. Much of his work was animated by a commitment to social struggle and a sense of accountability to Black communities, even as he grappled with what he surmised was the permanence of anti-Black racism.[47] In *Serving Two Masters*, Bell critiqued the decades-long desegregation strategy of the NAACP Legal Defense Fund (LDF) for being out of sync with African American community groups and their parent-leaders.[48]

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45. *See, e.g.*, Devon W. Carbado & Daria Roithmayr, *Critical Race Theory Meets Social Science*, 10 ANN. REV. L. & SOC. SCI. 149, 151 (2014) (articulating the "key modernist claims" of CRT, with none focused on organizing, protest, or social movements); Devon W. Carbado, Afterword, *Critical What What?*, 43 CONN. L. REV. 1593, 1606-15 (2011) (discussing CRT as engaging in "'organizational learning'" demonstrated by Civil Rights Movement organizations and describing CRT's core focus as "how the law constructs whiteness" specifically and race and racism generally, without further reference to social movements (quoting George Lipsitz, *"Constituted by a Series of Contestations": Critical Race Theory as a Social Movement*, 43 CONN. L. REV. 1459, 1464 (2011))). *But cf.* Lawrence, *supra* note 13, at 387 (articulating three lessons of CRT, of which two are focused on movements, including "[a]ll race reform, all racial justice, is achieved through the work of people who join together in justice movements to disrupt systems and institutions of plunder and to contest the racialized narratives that justify that plunder").

46. Cho & Westley, *supra* note 30, at 1378-80. Feminist legal theorists and critical race theorists faced off with both CLS scholars (often white men) as well as with the larger institutional forces of the mainstream legal academy. *See, e.g.*, Robin West, Commentary, *Deconstructing the CLS-FEM Split*, 2 WIS. WOMEN'S L.J. 85, 85-86 (1986); Crenshaw, *supra* note 42, at 1288-1300.

47. *See, e.g.*, DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM, at ix-xi (1992); Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 373 (1992) ("What was it about our reliance on racial remedies that may have prevented us from recognizing that abstract legal rights, such as equality, could do little more than bring about the cessation of one form of discriminatory conduct that soon appeared in a more subtle though no less discriminatory form?"); Derrick A. Bell, Jr., Comment, Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 533 (1980) ("Criticism, as we in the movement for minority rights have every reason to learn, is a synonym for neither cowardice nor capitulation. It may instead bring awareness, always the first step toward overcoming still another barrier in the struggle for racial equality.").

48. For instance, Bell begins the article with a quotation from a coalition of community groups articulating their own, contrasting version of equity. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 470-71, 477-78 (1976) (contrasting Black parents' critiques of the failures of the litigation strategy to materially improve the "quality of the education available"

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The parents took issue with LDF's focus on the ideal of desegregation over the material quality of education available to their children.[49] Bell attributed the litigators' unwillingness to recognize Black parents' concerns about "the increasing futility of 'total desegregation'" in the face of massive resistance by whites to the litigators' embrace of "racial balance" as a central "symbol of the nation's commitment to equal opportunity."[50] In contrasting the parents' commitments to their children's education with lawyers' focus on the symbolic domain—a focus shared by middle-class Black people and whites—Bell critiqued one of the most venerated litigation strategies in U.S. history.[51] He showed that elite conceptions of justice are often contested by those who live the injustice most intensely every day.

In turn, Mari Matsuda encouraged law scholars to look to "the actual experience, history, culture, and intellectual tradition of people of color in America" as "a new epistemological source."[52] "Looking to the bottom"—to "those who have seen and felt the falsity of the liberal promise"—would help scholars in "fathoming the phenomenology of law and defining the elements of justice."[53] For Matsuda, studying and supporting the organized struggles of people of color opened up possibilities of moving beyond critique to conceive of legal strategies that challenge the status quo.[54] Matsuda studied campaigns

with the LDF's focus on the separate prong of separate but equal (quoting a coalition of Black community groups in Boston)).

49. *Id.* at 483, 486-87.

50. *Id.* at 488-89.

51. *See id.* at 516 (describing how lawyers "sacrificed opportunities to negotiate with school boards and petition courts for the judicially enforceable educational improvements which all parents seek").

52. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 325 (1987). Matsuda explicitly issued her call in response to the CLS movement. *Id.* at 323. For a more recent example of work examining the co-constitutive nature of legal repression, organizing, and race, see IAN F. HANEY LÓPEZ, RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE 228 (2003) (examining the Chicano movement in Los Angeles during the late 1960s, and the emergence of new self-conceptions among young Chicanos of their racial identities as nonwhite).

53. Matsuda, *supra* note 52, at 323-24 (referring to oppressed people as having "special voice[s] to which we should listen"). *But see* Devon W. Carbado, *Race to the Bottom*, 49 UCLA L. REV. 1283, 1285 (2002) (contesting as insufficient CRT's theorization of people at "the bottom"). For nuanced further discussion of "looking to the bottom," see MARI J. MATSUDA, CHARLES R. LAWRENCE III, RICHARD DELGADO & KIMBERLÉ WILLIAMS CRENSHAW, WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 9 (1993) (noting that it is not enough "simply to tell the victim's story"; we ought to "listen first to the voices of the victims of hate speech" because "[t]heir liberation must be the bottom line of any first amendment analysis").

54. Matsuda, *supra* note 52, at 324, 349; Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1398-99 (1991) (arguing that "unmasking hidden centers and false objectivity is an

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for reparations by Japanese Americans for internment policies during World War II, and by Native Hawaiians for the overthrow of Hawaiian rule and expropriation of Indigenous land.[55] The struggle for reparations was a quintessential "critical legalism" from the bottom designed to "achieve and maintain the utopian vision."[56] For decades now, Matsuda has distilled brilliance born within collective struggle.[57]

In a parallel vein, Kimberlé Crenshaw's work on intersectionality deepens our understanding of the law's mechanics and develops a broader normative vision of what the law can be.[58] Using intersectionality, legal scholars might attend to overlapping forms of oppression and "map[] the margins,"[59] looking, for example, to how courts render invisible the experiences of Black women,[60] or to how antiracist and feminist struggles fail to attend to the multiple marginalization of women of color.[61] While organizing and social movements are points of departure for Crenshaw, rather than her primary focus, to this day she grounds many of her interventions in social movements and

important first step in producing a counter-ideology of antisubordination" and identifying "strategies [such] as affirmative action, reparations, and restriction of hate speech" (footnotes omitted)).

55. Matsuda, *supra* note 52, at 363-73 (concluding that "[t]he Native Hawaiian and Japanese-American claims for reparations each represent emerging norms and social movements generated from the bottom").

56. *Id.* at 362 (capitalization altered).

57. For recent work building out these themes, see generally Mari Matsuda, *The Next Dada Utopian Visioning Peace Orchestra: Constitutional Theory and the Aspirational*, 62 MCGILL L.J. 1203, 1245-46 (2017) [hereinafter Matsuda, *The Next Dada*]; and Mari J. Matsuda, Essay, *This Is (Not) Who We Are:* Korematsu*, Constitutional Interpretation, and National Identity*, 128 YALE L.J. F. 657, 683 (2019).

58. *See* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 145 [hereinafter Crenshaw, *Demarginalizing*] (describing the expansion of a "normative vision" through intersectional analysis of antidiscrimination statutes); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1243-44 (1991) [hereinafter Crenshaw, *Mapping the Margins*] (exploring "the various ways in which race and gender intersect in shaping structural, political, and representational aspects of violence against women of color").

59. Crenshaw, *Mapping the Margins*, *supra* note 58, at 1243-44 (capitalization altered) ("[T]he experiences of women of color are frequently the product of intersecting patterns of racism and sexism, and . . . these experiences tend not to be represented within the discourses of either feminism or antiracism." (footnote omitted)).

60. Crenshaw, *Demarginalizing*, *supra* note 58, at 148-50; *see also* Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539, 542.

61. Crenshaw, *Mapping the Margins*, *supra* note 58, at 1264-82.

organizing—for example, through her launching of the #SayHerName campaign that we discuss in Part II.[62]

Lani Guinier and Gerald Torres's work demonstrates how new legal and political understandings emerge from collective imagining.[63] Guinier and Torres focus on how multiracial groups led by people of color critique the legal, social, and political structures around them, and "enlarge the idea of what is possible."[64] They illuminate how social movements can generate and shift ideas about constitutional and legal interpretation from the ground up, which they term "demosprudence."[65] Although theirs is a theory of legal and social change rooted in historical examples and focused on democracy, the implication is that scholars must be part of "a commitment not only to struggle but also to struggle toward a larger vision."[66] They encourage us that "[j]ust outcomes will emerge . . . from experiments in democratic process."[67]

Scholarship beyond CRT engages with collective ideation and grassroots contestation as well.[68] Consider some examples. Catharine MacKinnon

62. *Id.* at 1299 ("[R]ecognizing [how] . . . the intersectional experiences of women of color are marginalized in prevailing conceptions of identity politics does not require that we give up attempts to organize as communities of color. Rather, intersectionality provides a basis for reconceptualizing race as a coalition between men and women of color."); *see also infra* Part II.D.

63. *See* LANI GUINIER & GERALD TORRES, THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY 11-22 (Harvard Univ. Press 2003) (2002).

64. *Id.* at 37.

65. *See* Lani Guinier & Gerald Torres, Essay, *Changing the Wind: Notes Towards a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2749-50 (2014) ("[D]emosprudence focuses on the ways that ongoing collective action by ordinary people can permanently . . . chang[e] the people who make the law and the landscape in which that law is made.").

66. GUINIER & TORRES, *supra* note 63, at 159.

67. *Id.* at 158.

68. Early critical-lawyering theorists drew on the disillusion with legal liberalism to push public-interest lawyers to think in more complex ways about power. We use the term critical lawyering to encompass a broad range of practices described and advanced in legal scholarship, including rebellious lawyering, political lawyering, collaborative lawyering, and community lawyering. *See* Eduardo R.C. Capulong, *Client Activism in Progressive Lawyering Theory*, 16 CLINICAL L. REV. 109, 119 (2009) (arguing that progressive lawyers "measure success by how practice raises political consciousness, motivates and strengthens client activity and supports effective grassroots activism generally"). Scott Cummings has empirically substantiated the content of critical lawyering across sectors in closely observed case studies of legal-mobilization campaigns in Los Angeles in the 2000s. *See generally* SCOTT L. CUMMINGS, AN EQUAL PLACE: LAWYERS IN THE STRUGGLE FOR LOS ANGELES (2020). For another key resource on critical lawyering across subject areas, see MARTHA R. MAHONEY, JOHN O. CALMORE & STEPHANIE M. WILDMAN, CASES AND MATERIALS ON SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW 1-2, 5 (2d ed. 2013). Especially generative work on critical lawyering can be found in scholarship on the struggle for environmental justice. *See,*

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participated in feminist organizing and consciousness-raising as she produced her most significant works in feminist theory.[69] Lucie White engaged in a dialectic between critical theory and lawyering narratives, illuminating how law can both facilitate and repress the power of those who are most marginalized.[70] Gerald López called for lawyers to accompany rather than to lead communities and to define success through collaborative work rather than litigation wins.[71] LatCrit scholars emphasized the importance of the

e.g., LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 1 (2001).

69. MACKINNON, *supra* note 36, at ix-xvii; CATHARINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION, at xii (1979); *see also* Robin L. West, *Law's Nobility*, 17 YALE J.L. & FEMINISM 385, 389-90 (2005) (laying out MacKinnon's legal theory and describing her "ethical imperative" to stay grounded in the actual experiences of women); *cf.* Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585-86 (1990) (engaging feminist movements and Black women's organizing as points of departure in her engagement with feminist legal theory, and in particular arguing against gender essentialism within MacKinnon's and West's works).

70. *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, 538 (1987-1988) (theorizing the potential of social-welfare litigation to serve as a space in which those who have been aggrieved by actions of the state might educate themselves and engage in participatory activities that defy their powerlessness); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 700-01 [hereinafter White, *To Learn and Teach*] (drawing from a South African case study to describe coordinated law and organizing that leads to the politicization of problems in the community and subsequent concerted social action); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 5 (1990) (examining how race, gender, and class operate to construct norms that render speech in procedural settings as deviant, with a now-canonical focus on Mrs. G, a poor, Black, woman client who defied those norms to speak truth to power); Lucie E. White & Jeremy Perelman, *Introduction* to STONES OF HOPE: HOW AFRICAN ACTIVISTS RECLAIM HUMAN RIGHTS TO CHALLENGE GLOBAL POVERTY 1, 4 (2011) (Lucie E. White & Jeremy Perelman eds., 2011) (discussing case studies that illuminate "activists' consciousness about their tactics, calculations, expectations, theories of change, and motivating values" (emphasis omitted)).

71. *See* GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 7-8 (1992); Gerald P. López, *Transform—Don't Just Tinker With—Legal Education* (pt. 1), 24 CLINICAL L. REV. 247, 285 (2018) ("The problem solving at the heart of all lawyering inevitably responds to and deploys power."); *see also* Bill Ong Hing, *Coolies, James Yen, and Rebellious Advocacy*, 14 ASIAN AM. L.J. 1, 1 (2007) ("We should be collaborators: working *with* rather than simply *on behalf of* clients and allies from whom we have much to learn."); Ascanio Piomelli, *Rebellious Heroes*, 23 CLINICAL L. REV. 283, 291 (2016) ("Rather than presuming they are smarter or more knowledgeable than subordinated people, [rebellious lawyers] appreciate the intelligence, insights, and skills of all those with whom they work."); Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5, 13 (2016) ("López's vision focuses on enhancing the community-informed, collaborative problem-solving capacity of lawyers across a wide range of practice settings . . . ."). New generations continue to find inspiration in López's work. *See, e.g.*, Brenda Montes, *A For-Profit Rebellious Immigration Practice in East Los*

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collective and of solidarity from within legal education.[72] Robert Cover provided an indispensable analysis of legal interpretation as a communal act.[73] These scholars, and many more, have charted how legal scholarship can build a more just, equal, and democratic world, through a grounded understanding of power and through solidarity with those closest to the problems of our world. Many of these scholars wrote about movements and organizing in which they participated, within communities from which they came.

The critical scholars that we name each operated within their own historical crises.[74] Today, we write in a different era. While we make this call

Angeles, 23 CLINICAL L. REV. 707, 707-09 (2017); Veryl Pow, Comment, *Rebellious Social Movement Lawyering Against Traffic Court Debt*, 64 UCLA L. REV. 1770, 1773-74, 174 n.6 (2017).

72. *See, e.g.*, Francisco Valdes, *Legal Reform and Social Justice: An Introduction to LatCrit Theory, Praxis and Community*, 14 GRIFFITH L. REV. 148, 161-63 (2005).

73. *See, e.g.*, Cover, *supra* note 41, at 68 (describing how we should "look to the law evolved by social movements and communities"); *see also infra* notes 87-88 (using Cover's idea of "nomos" to explain the potential relationship between legal scholarship and the law).

74. CRT, for example, took form in the 1980s and 1990s at a nadir in social movement activity in the United States, with a notable exception being the anti-AIDS activism of ACT UP. *See* Delgado, *supra* note 42, at 1510-11 (discussing how CRT arose in a moment when "lawyers and legal scholars across the country realized that the impressive gains of the 1960s civil-rights era had halted and were, in many cases, being rolled back"). For an account of the important social movement organizing on AIDS in the 1980s and 1990s, see generally DAVID FRANCE, HOW TO SURVIVE A PLAGUE: THE INSIDE STORY OF HOW CITIZENS AND SCIENCE TAMED AIDS 355, 433-35 (2016). The mass movements of the 1960s and 1970s had been whittled down to formations at the edges of civil society (for example, MOVE in Philadelphia) or to bureaucratized and deradicalized nongovernmental organizations vying for power as interest groups (for example, the Leadership Conference on Civil Rights). There are multiple explanations for the defusing of social movement power, though the most direct is related to the work of the FBI through its COINTELPRO program to infiltrate and decapitate radical-movement formations, such as the Black Panther Party. *See* WARD CHURCHILL & JIM VANDER WALL, THE COINTELPRO PAPERS: DOCUMENTS FROM THE FBI'S SECRET WARS AGAINST DISSENT 8 (1990). The original CRT scholars both harkened back to the struggle for civil rights, particularly in their defense of rights against the CLS attack, and spoke with and for activists who continued to agitate against growing economic and social inequality, often through narrowing legal channels. *See, e.g.*, Matsuda, *supra* note 54, at 1400, 1402 (describing immigrant antidiscrimination activism). Patricia Williams wrote a classic text responding to CLS critics and engaging questions of race and rights. PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 5-6 (1991). But CRT scholars did not take root at a time of flourishing mass movements. They wrote in a time of racial retrenchment and in the first part of the neoliberal era of social and economic stratification fueled by color-blind ideologies. *See* Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1336-37 (1988). David Singh Grewal and Jedediah Purdy connect the civil rights and civil liberties advances of the time with a rare historical period of receding economic inequality between 1945 and 1973, later reversed by neoliberal attacks on the state. *See* David Singh Grewal & Jedediah Purdy, *Inequality Rediscovered*, 18 THEORETICAL INQUIRIES L. 61, 70 (2017).

for movement law within a moment of renewed vitality of social movements and particular crises, movement law can play an important role even in times of depressed social movement activity. As Cornel West noted in his 1990 essay *The Role of Law in Progressive Politics*, radical lawyers—including, we would argue, movement law scholars—can do important "defensive work . . . [to] keep alive memory traces left by past progressive movements of resistance—memory traces requisite for future movements."[75]

B. Movement Law Today

This moment calls on us to contest the dominant ideologies and institutions that undergird our legal and political configurations. Contemporary legal scholarship by and large fails to grapple with the material reality of people's lives.[76] This can be partially explained by the hold of what law and political economy (LPE) scholars have called "the Twentieth-Century Synthesis"—the separation of the study of economic and political forms of law and lawmaking that "has muted problems of distribution and power throughout public and private law."[77]

Movement law gives scholars permission to ground their work in movement organizing and ideation as an initial matter, rather than beginning within our siloed legal understandings. Movement law engages in what Aziz Rana has described as "a genuinely sympathetic hermeneutic," in contrast to traditional scholarship that "often fails to make sense of the actual nature . . . of legal struggle and conflict."[78] Movement law begins with a commitment to grassroots contestation, and aims to emerge with new understandings of legal and economic structures and how they can shift as part of, rather than separate from, political struggle.

Our scholarship must shift to meet this particular moment—in support of the rising social movements of our time. To be sure, many legal scholars tacitly write in support of movement efforts—for example, when they write sharp doctrinal pieces to be used in court by movement allies, or when they excavate histories of resistance that help illuminate the present. We have also written

75. Cornel West, *The Role of Law in Progressive Politics*, 43 VAND. L. REV. 1797, 1799 (1990).

76. For a powerful argument about the gutting of our formal democratic institutions, see Klarman, *supra* note 16, at 45-66.

77. Britton-Purdy et al., *supra* note 18, at 1791.

78. Email from Aziz Rana, Richard & Lois Cole Professor of L., Cornell L. Sch., to authors (July 24, 2020, 3:16 PM) (on file with authors).

scholarship in this vein.[79] We celebrate this work even as we call for modes of scholarship that more explicitly align with left social movements.[80]

We are not the only legal scholars calling for a shift in scholarly approaches. Many of the scholars we discussed above continue to write in response to our crises today in alignment with today's social movements.[81] The LPE "Manifesto" demands that we dismantle artificial distinctions between law, politics, and economics.[82] Bernard Harcourt argues that what is required is "a renewed embrace of praxis" alongside critique.[83] We feel this urgency along with so many in the legal academy and our broader communities.[84]

By cogenerating ideas with social movements seeking to transform the political, economic, and social status quo, movement law scholars adopt a countercultural posture within the legal academy and profession. Movement law aims to disrupt the processes of social reproduction within law and legal education that foreclose alternatives to elite rule.[85] Precisely because law often

79. *See, e.g.*, Jocelyn Simonson, *Beyond Body Cameras: Defending a Robust Right to Record the Police*, 104 GEO. L.J. 1559, 1560 (2015) (advancing an understanding of the First Amendment that sees the act of recording the police as protected speech).

80. *See* Gerald Torres, *Legal Change*, 55 CLEV. ST. L. REV. 135, 146 (2007) ("It is the theory and philosophy of legal meaning making through popular mobilization that engages a 'thick' form of participation by people who are pushing for change by resisting manifestations of either public or private power."); Cover, *supra* note 41, at 11 ("Although the state is not necessarily the creator of legal meaning, the creative process is collective or social.").

81. *See, e.g.*, Lawrence, *supra* note 13, at 386-88 (describing the lessons of CRT for the M4BL); KIMBERLÉ WILLIAMS CRENSHAW, ANDREA J. RITCHIE, RACHEL ANSPACH, RACHEL GILMER & LUKE HARRIS, AFR. AM. POL'Y F., SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN 2 (2015), https://perma.cc/8KZ8-WR77; Matsuda, *The Next Dada*, *supra* note 57, at 1216-17.

82. *See* Jedediah Britton-Purdy, Amy Kapczynski & David Singh Grewal, *Law and Political Economy: Toward a Manifesto*, LAW & POL. ECON. PROJECT: LPE BLOG (Nov. 6, 2017), https://perma.cc/WQ3R-JEZX.

83. Bernard E. Harcourt, *Introduction to 1/13: On Theory and Praxis, and Truth, Politics, and Power*, COLUM. CTR. FOR CONTEMP. CRITICAL THOUGHT: CRITIQUE & PRAXIS 13/13 (Sept. 8, 2018), https://perma.cc/SU4Y-XSXL (emphasis omitted). For a full articulation of this form of critique and praxis, see generally BERNARD E. HARCOURT, CRITIQUE & PRAXIS: A CRITICAL PHILOSOPHY OF ILLUSIONS, VALUES, AND ACTION (2020) [hereinafter HARCOURT, CRITIQUE & PRAXIS]. *See also* Aziz Rana & Jedediah Britton-Purdy, *We Need an Insurgent Mass Movement*, DISSENT MAG. (Winter 2020), https://perma.cc/CE3S-9L3H (calling us to look to mass movements as a way to understand our current situation).

84. *Cf.* Christopher Tomlins & John Comaroff, *"Law As . . .": Theory and Practice in Legal History*, 1 U.C. IRVINE L. REV. 1039, 1044 (2011) ("'Law as . . .' dwells instead on the conditions of possibility for a critical knowledge of the here-and-now . . . .").

85. *See* Heidi Boghosian, The Amorality of Legal Andragogy 1 (n.d.) (unpublished manuscript), https://perma.cc/LVZ2-J2UG (archived Oct. 15, 2015) ("Legal andragogy is devoid of any critical analysis of the social policies that inhere in law or meaningful discussion of the role of lawyers in society." (footnote omitted)); Duncan Kennedy,

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reproduces hierarchal power relations, it is essential that we pay attention to grassroots struggles for transformation.

Now is the time for more scholars to engage in movement law. John Whitlow underscores that our current political moment is particularly open to bottom-up calls for change: "[I]n the midst of a societal pendulum swing, we become increasingly aware that historical time is open and contingent, rather than flattened and fixed: There *is* an alternative to the status quo, and it is acceptable, in fact necessary, to talk about it openly."[86] Scholars have a role to play in understanding the nature of the moment—one of contingency and uncertainty—describing the stakes and co-constituting the terrain of the struggle. Through thick collaborations with social movements, scholars can help defend against the inevitable revanchism from political and economic elites in reaction to grassroots movements.

It doesn't escape us that movement law gives importance to legal scholars in the midst of grassroots revolts led by activists and organizers who are largely outside of the academy. We do not wish to exaggerate the importance of academics in political struggle. We share the concern that the neoliberal university is central to the myth of meritocracy on which capitalism, white supremacy, and heteropatriarchy depend. And that faculty often work to depoliticize students and demobilize movements. But we believe that if we are going to generate scholarly work, it is possible to do so responsibly, with attention to political dynamics and groups of people habitually ignored in the extant literatures. We should bring to bear our elite positions and the tools we've been privileged to acquire—whether they are social-scientific methods, traditional legal analysis, or historical archives—to advance organizing and challenge entrenched social relations of hyper-inequality. Law review articles, as long and cumbersome as they may be, do powerful work. They can legitimize the existing architecture of the law and legal interpretation by confining arguments within existing understandings of the world,[87] or they can help articulate a contrasting "nomos" that cannot be reconciled with our current arrangements, a different understanding of our ethical commitments

Legal Education and the Reproduction of Hierarchy, 32 J. LEGAL EDUC. 591, 592, 600-02 (1982) (arguing that legal education trains students to reproduce social hierarchy).

86. *See* John Whitlow, *Coming of Age at the End of History*, LAW & POL. ECON. PROJECT: LPE BLOG (Apr. 23, 2019), https://perma.cc/923E-YBYN ("This means acknowledging . . . [how] the market economy has ravaged society, and focusing our political energies on the formation of a countermovement for redistributive equality and social justice."); *see also* Rune Møller Stahl, *Ruling the Interregnum: Politics and Ideology in Nonhegemonic Times*, 47 POL. & SOC'Y 333, 335, 349 (2019) (drawing from Antonio Gramsci to describe the post-2008 crisis).

87. *See* Cover, *supra* note 41, at 47 ("The community that writes law review articles has created a law—a law under which officialdom may maintain its interpretation merely by suffering the protest of the articles.").

to each other with which the academy and the law must then contend.[88] As legal scholars, it is through thinking and acting in solidarity with social movements that we can most effectively move toward a more liberatory understanding of how we can relate to each other and to legal institutions and contribute to the building of a more just world. It is in this spirit that we work.

Movement law is rooted in solidarity with those who are transforming their own political and legal consciousness through participation in grassroots social movement organizations across issue areas.[89] These movement actors engage in a dialectic between praxis, critique, and ideation within various collective formations. In Antonio Gramsci's terminology, they are "organic intellectuals"—people who understand and represent the collective realities of social groups, in particular within the context of mass struggle.[90] Barbara Ransby has pointed to the civil rights organizer Ella Baker as an organic intellectual who centered the agency of oppressed communities in understanding their conditions and waging their own struggles for change.[91] This respect for on-the-ground thinking is blossoming in our current movement moment, opening up ways of thinking and acting collectively that have not been possible in the past.[92]

88. *Id.* at 4, 47-48 (describing how protesting the law creates an alternative nomos that a judge must confront in their interpretation).

89. Indeed, there are other scholars in law and related disciplines that continue to think about engagement and participation as part of their methodology, for example through "engaged" scholarship and "participatory action research." *See, e.g.*, Emily M.S. Houh & Kristin Kalsem, *It's Critical: Legal Participatory Action Research*, 19 MICH. J. RACE & L. 287, 294 (2014) ("'[L]egal participatory action research' . . . makes its most significant and original contribution to legal scholarship . . . by treating those 'at the bottom' as equal research partners who are presumptively best situated to identify, analyze, and solve the problems that directly affect them."); Setha M. Low & Sally Engle Merry, *Engaged Anthropology: Diversity and Dilemmas*, 51 CURRENT ANTHROPOLOGY S203, S203 (2010) (describing "[t]he importance of developing an engaged anthropology that addresses public issues").

90. *See* The Intellectuals, *in* SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI, *supra* note 29, at 3-6; *see also* Matsuda, *supra* note 52, at 325-26 (describing her method of "looking to the bottom" as that of looking to Gramsci's idea of "'organic intellectuals'" (quoting The Intellectuals, *in* SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI, *supra* note 29, at 5)).

91. BARBARA RANSBY, ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION 362 (2003) ("Baker's political philosophy emphasized the importance of tapping oppressed communities for their own knowledge, strength, and leadership in constructing models for social change. She took seriously and tried to understand seriously the ways in which poor black people saw and analyzed the world.").

92. *See* Barbara Ransby, *The White Left Needs to Embrace Black Leadership*, NATION (July 2, 2020), https://perma.cc/98KU-B7TF (to locate, click "View the live page") ("This is not like the 1960s. White people marched in civil rights demonstrations, formed

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Our openness to the alchemy of developing new political and legal consciousness in struggle deepens our understanding of the stakes, the strategies, and the emerging imaginaries of today's social movements.[93] Our posture should not be to dismiss and relegitimate, but to listen and consider, learn, participate, and cogenerate. By standing in solidarity, we contribute to the larger effort to keep the portal open. In the next Part, we outline the contours of movement law in the work of contemporary legal scholars, charting what we hope can be a roadmap for all scholars within the orbit of this project.

II. Toward Movement Law

A small but growing number of law scholars are looking to organizing and social movements as sources of learning, inspiration, and ideation.[94] In this Part, we theorize what it looks like for legal scholars to work in sustained ways alongside and in conversation with social movements fighting for transformation. We use examples of scholars engaging in movement law to illustrate the four main moves of movement law, but we do not provide an exhaustive list of such scholars.

We surface movement law as a methodology or mode of legal scholarship. By so doing, we hope to integrate more movement ideas and experiments into legal scholarship.[95] We hope to contribute to the growth and power of today's social movements and to their ideas, experiments, and campaigns.

Movement law is made possible by methodological pathways that came before us.[96] But its necessity is situated within twin aspects of our current moment: the increasingly clear failures of neoliberal law and politics and the

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committees on interracial cooperation, and joined with the Black freedom movement, but the fire this time is hotter.").

93. *Cf.* HARCOURT, CRITIQUE & PRAXIS, *supra* note 83, at 17 ("The solution to the problem of speaking for others is not to silence anyone, but the opposite: to collaborate and cultivate spaces where all can be heard, especially those who are most affected by our crises today.").

94. Lani Guinier and Gerald Torres's concept of demosprudence captures the idea that social movements and mobilized citizenry not only "change the fundamental normative understandings of our Constitution" but also "are critical . . . to the cultural shifts that make durable legal change possible." Guinier & Torres, *supra* note 65, at 2743; *see also id.* at 2750 ("[D]emosprudence focuses on the ways that ongoing collective action by ordinary people can permanently alter the practice of democracy by changing the people who make the law and the landscape in which that law is made.").

95. Legal scholarship's implicit acquiescence in "neoliberal' political projects" has facilitated the many interlinked crises to which today's movements are responding. Britton-Purdy et al., *supra* note 18, at, 1789, 1794-818 (footnote omitted). We seek to unwind that acquiescence and allow for new sources and methods of social production.

96. *See supra* Part I.

surge of social movement activity and grassroots organizing. At a moment when the right and left are rushing to fill a crisis of legitimacy of the status quo, scholars of law can play an important role. We seek to think and write in solidarity with movements because such work has the potential to shift actual power in the process. While social movements are not a perfect proxy for the demos at large—nothing is—they provide an important means by which to challenge elite rule and deepen democracy.

Movement law involves four interrelated moves. While these four moves are not always made, it is fair to think of each move as deepening the practice of the prior. First, movement law scholars pay close attention to modes of resistance by social movements and everyday people. Paying attention to social movements and everyday resistance is in itself significant, for it meaningfully diversifies the sources and horizons of legal scholarship. Second, movement law scholars work to understand the strategies, tactics, and experiments of resistance and contestation. By studying these strategies, tactics, and experiments—including but not limited to law reform campaigns—scholars engage pathways and possibilities for justice often obscured within legal scholarship. Third, movement law scholars take seriously the epistemologies and histories of the social movements they study. Fourth, movement law scholars move with a sense of solidarity and accountability to the social movements they study. They see themselves not as individual experts with opinions from above or apart from the movements they study, but as part of a collective process.

A. Locating Resistance

To start, movement law scholars pay attention to organizing, social movements, and collective resistance by everyday people. Movement law scholars are attuned to actually existing modes of resistance as a source for new insights about the nature and lived realities of law, as well as about what struggle for alternatives might look like. They start not from a discrete legal issue or doctrinal dispute, but from movements, their strategies, and their tactics. They spend time understanding the social movement ecosystem—including the range of people, organizations, and ideation embedded within it—about which they write. They recognize that social movements are engaging in deep ideation around questions of legal meaning and entitlement, citizenship and democracy.[97] Social movements bring to the fore critiques of the status quo in the margins of law and legal scholarship.[98] Simultaneously, social movements advance radical reimaginations of law, legal institutions, and

97. *See* Guinier & Torres, *supra* note 65, at 2756-62.

98. *See* Jocelyn Simonson, Essay, *The Place of "the People" in Criminal Procedure*, 119 COLUM. L. REV. 249, 252-55 (2019).

society more broadly.[99] In the course of locating resistance, then, scholars expand the terrain of critique and imagination within legal scholarship and legal institutions.[100] This expansion has profound potential to remake the project of law and legal scholarship: beyond elite technocracy, legitimation, law and order, or even radical critique, and toward a transformative project of remaking ourselves and the world around us.[101]

Locating resistance can begin by looking around one's own local and virtual worlds. We are living in an era of intensified contestation of and rebellion against the status quo.[102] Because of its utility in organizing campaigns, social media surfaces the work of social movements to a greater degree than ever before.[103] Moreover, in an era of heightened social movement activity and a broader popular turn to the left, mainstream news outlets cover protests and resistance more frequently, and feature op-eds by movement intellectuals.[104] As a result, local and national news, Twitter, Instagram, and

99. *See* Akbar, *supra* note 4, at 412.

100. For example, there are now multiple accounts of how undocumented youth changed the terrain for immigration law and policy, and directly challenged notions of citizenship, through their direct action and organizing. *See* Kathryn Abrams, *Contentious Citizenship: Undocumented Activism in the Not1More Deportation Campaign*, 26 BERKELEY LA RAZA L.J. 46, 47-50 (2016); Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. REV. 1464, 1466-68 (2017); Christine Cimini & Doug Smith, *An Innovative Approach to Movement Lawyering: The Immigrant Rights Case Study*, 35 GEO. IMMIGR. L.J. (forthcoming 2021) (manuscript at 37-39), https://perma.cc/7F4J-MLAX. Marisol Orihuela has shown how positive emotions like love play a role in the forms of resistance employed by the sanctuary and Dreamer movements. Marisol Orihuela, *Positive Emotions and Immigrant Rights: Love as Resistance*, 14 STAN. J. C.R. & C.L. 19, 28-32 (2018).

101. For example, Maxine Burkett has critically examined the climate movement's turn to civil disobedience and its invocation of past struggles against enslavement and for civil rights. Maxine Burkett, *Climate Disobedience*, 27 DUKE ENV'T L. & POL'Y F. 1, 1-6 (2016). Movement law also has the power to transform our teaching. *See, e.g.*, Amna A. Akbar, *Law's Exposure: The Movement and the Legal Academy*, 65 J. LEGAL EDUC. 352, 366-73 (2015).

102. *See, e.g.*, Keeanga-Yamahtta Taylor, Opinion, *Of Course There Are Protests. The State Is Failing Black People.*, N.Y. TIMES (May 29, 2020), https://perma.cc/CDS8-R2TS.

103. Consider, for example, Mariame Kaba's Twitter following of almost 150,000. #VelvetRopeEnforcer (@prisonculture), TWITTER, https://perma.cc/3MXR-4CGM (archived Feb. 4, 2021). Or consider the number of social movement campaigns and organizations that have Instagram accounts. *See, e.g.*, JusticeLA (@justicelanow), INSTAGRAM, https://perma.cc/ES5Q-UADE (archived Feb. 4, 2021); *see also* MONICA ANDERSON, SKYE TOOR, LEE RAINIE & AARON SMITH, PEW RSCH. CTR., ACTIVISM IN THE SOCIAL MEDIA AGE 13-19 (2018), https://perma.cc/KA2A-TABZ.

104. *See, e.g.*, Robin D.G. Kelley, Opinion, *What Kind of Society Values Property over Black Lives*, N.Y. TIMES (June 18, 2020), https://perma.cc/LC6A-7E7Q; Kaba, *supra* note 27; Tolentino, *supra* note 25; Tolentino, *supra* note 28; Derecka Purnell, Opinion, *George Floyd Could Not Breathe. We Must Fight Police Violence Until Our Last Breath*, GUARDIAN (May 27, 2020, 2:12 PM EDT), https://perma.cc/K2ZN-89WZ.

Facebook—not to a mention a whole panoply of left media outlets—are all popular primary and secondary source materials to identify left social movement campaigns, toolkits, experiments, and ideation of all sorts.[105]

We do not mean to suggest that movement law is limited to observation from above or afar. Relationships and relationship building is central to organizing, and organizing is central to movement building. Indeed, many scholars are already part of social movements or come from communities that are sites of ongoing radical organizing.[106] As we explain through the proceeding moves, movement law scholarship can also draw from engagement with movement sources and ideas through text and observation, attendance at organizing meetings and events, participation in campaigns, and engagement in participatory action research with movement leaders. Social media and conventional media can be an entry point to finding local grassroots campaigns and organizations for deeper engagement. On its own, it is not enough.

Scholars will undoubtedly develop distinct accounts of the types of resistance that merit study. For our part, we pay attention to the strategies, tactics, experiments, and narratives of left movements, organizations, and organizers committed to political, economic, and social transformation—not simple issue-specific reform or singular campaigns. We are interested in social movements, social movement organizations, unions and worker organizing, and other more fledgling formations of poor people, working-class people, and people of color that (1) challenge law and politics as usual as they frame issues, deploy tools, tactics, and storytelling, and advance theories of change and transformative visions;[107] and (2) make use of strikes, protests, and direct action, build alternative institutions like bail funds, cooperative land trusts, and mutual-aid networks, and run campaigns for deep and widespread

105. *See, e.g.*, MARIAME KABA & SHIRA HASSAN, FUMBLING TOWARDS REPAIR: A WORKBOOK FOR COMMUNITY ACCOUNTABILITY FACILITATORS (2019) (published by AK Press, an anarchist press); ALEX S. VITALE, THE END OF POLICING (2017) (published by Verso, a radical press); Meagan Day, *The Coming Pandemic-Induced Eviction Crisis*, JACOBIN MAG. (June 30, 2020), https://perma.cc/3WN4-V6NZ; Daniel Denvir, *Defund Police Organizers Forum*, DIG RADIO (June 20, 2020), https://perma.cc/2WFZ-2GWX; *The Great May Day Rent Strike*, COMMUNE (Apr. 28, 2020), https://perma.cc/DTQ9-AF8G.

106. *See generally* Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999) (describing the challenges faced by lawyers who return to their communities through social-justice work).

107. *See, e.g.*, BLACK YOUTH PROJECT 100 ET AL., REIMAGINING SAFETY & SECURITY: BUDGET TOOLKIT & RESOURCE GUIDE, https://perma.cc/MM2X-H767 (archived Feb. 4, 2021); THE MOVEMENT FOR BLACK LIVES, REPARATIONS NOW TOOLKIT, https://perma.cc/ECE6-VTZN (archived Feb. 4, 2021); NATIONAL BAIL OUT, UNTIL FREEDOM COMES: A COMPREHENSIVE BAILOUT TOOLKIT (2017), https://perma.cc/HX7J-3VAZ.

transformation.[108] These campaigns and experiments are rooted in a struggle for a radically reconstituted society. The strategies demonstrate commitments to an intersectional politics of antiracism, antipatriarchy, anticapitalism, anticolonialism, anti-imperialism, abolition, redistribution, gender justice, and economic democracy, even socialism.[109] They are rooted in the study of past freedom struggles and the intellectual traditions and debates of those struggles.[110]

We focus on such transformative movements for a number of reasons. These movements contend with the violence and inequality of the law.[111] They represent experiences and histories often erased or flattened by doctrine and scholarship.[112] They represent people locked out of meaningful representation in the formal channels of statecraft.[113] They offer hopeful visions for a more equal world, a theory of change aligned with engaging and enfranchising the grassroots, and a meaningful set of experiments and demands to move us toward

108. *See, e.g.*, Juliana Kim, *How the Floyd Protests Turned into a 24-Hour "Occupy City Hall" in N.Y.*, N.Y. TIMES (updated July 22, 2020), https://perma.cc/8NY3-964G; BROOK. CMTY. BAIL FUND, https://perma.cc/VX6W-AXLX (archived Feb. 4, 2021); CHI. CMTY. BOND FUND, https://perma.cc/6M5B-59AN (archived Feb. 4, 2021); COOP. JACKSON, https://perma.cc/EUP9-8H8R (archived Feb. 4, 2021); *Mutual Aid Resources*, MOVEMENT FOR BLACK LIVES, https://perma.cc/PZ7E-8VQH (archived Feb. 4, 2021); *What Is Mutual Aid?*, BIG DOOR BRIGADE, https://perma.cc/MCA9-AUKA (archived Feb. 4, 2021); PEOPLE'S BUDGET L.A., https://perma.cc/5C4S-2C2R (archived Feb. 4, 2021). For scholarship on some of these experiments, see, for example, James J. Kelly, Jr., *Land Trusts That Conserve Communities*, 59 DEPAUL L. REV. 69, 69-74 (2009); Renee Hatcher & Jaime Lee, *Building Community, Still Thirsty for Justice: Supporting Community Development Efforts in Baltimore*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L. 27, 27-28 (2016); Renee Hatcher, *Solidarity Economy Lawyering*, 8 TENN. J. RACE GENDER & SOC. JUST. 23, 25-26 (2019); and Sheila R. Foster & Christian Iaione, *The City as a Commons*, 34 YALE L. & POL'Y REV. 281, 282-91 (2016).

109. *See, e.g.*, THE MOVEMENT FOR BLACK LIVES, *supra* note 4; MIJENTE, FREE OUR FUTURE: AN IMMIGRATION POLICY PLATFORM FOR BEYOND THE TRUMP ERA (2018), https://perma.cc/FX2Z-GBSQ; RED NATION, THE RED DEAL: INDIGENOUS ACTION TO SAVE OUR EARTH; PART ONE: END THE OCCUPATION (2020), https://perma.cc/WQJ3-GWKL.

110. *See, e.g.*, ESTES, *supra* note 6, at 169-99.

111. For example, the Malcolm X Grassroots Movement brought attention to the routineness of lethal police and vigilante violence through its hashtag #Every28Hours in 2014. *See* ARLENE EISEN, OPERATION GHETTO STORM: 2012 ANNUAL REPORT ON THE EXTRAJUDICIAL KILLINGS OF 313 BLACK PEOPLE BY POLICE, SECURITY GUARDS AND VIGILANTES (updated 2014), https://perma.cc/XN4E-742Z; *see also* Akbar, *supra* note 101, at 354-55.

112. For example, the Mijente *Free Our Future* report makes its demands in the context of the history of colonialism, western expansion, and anti-Mexican policy and sentiment. MIJENTE, *supra* note 109, at 9.

113. For example, Black & Pink is an abolitionist organization rooted in working with queer and trans people who are incarcerated. BLACK & PINK, https://perma.cc/5J5C-TLAD (archived Feb. 4, 2021).

those visions.[114] In short, identifying and examining these movements and what they do makes legal scholarship better, more hopeful, more grounded, and more accountable to the world we want to build.

We do not mean to suggest that social movements are perfect or divorced from the limits of any other form of political action.[115] Social movements are not always democratic or accountable to the grassroots.[116] Organizations receive funding and support from the elite political and philanthropic strata in which the horizons of political change are negotiated and limited.[117] Factions are often jockeying for position and power in ways that are difficult to assess from the outside.[118] Recognizing this, movement law also requires self-reflexivity, recognizing that the act of locating resistance may itself elevate particular social movement actors over others. In Part III, we address some of these concerns. But, now more than ever, the impact of organizing strategies and tactics on institutions of law and the shape of our imaginations could not be clearer. So despite these limits, we believe that it is imperative to engage. When we ignore social movement visions and organizing, we tacitly give weight to conventional policy approaches and actors, and we ignore transformative possibilities.

B. Thinking Alongside Strategies and Pathways for Justice

Movement law requires studying how movements build and shift power—beyond courts and the Constitution—and prefigure the economic, social, and political relationships of the world they are working to build. As a result,

114. For example, *A Vision for Black Lives* includes six major demands, with a whole range of local, state, and federal possibilities for action. THE MOVEMENT FOR BLACK LIVES, *supra* note 4.

115. For a related argument that it is impossible to operate outside of the law, see, for example, Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 940 (2007).

116. *See* ROBERT MICHELS, POLITICAL PARTIES: A SOCIOLOGICAL STUDY OF THE OLIGARCHICAL TENDENCIES OF MODERN DEMOCRACY 224-35 (Eden Paul & Cedar Paul trans., Batoche Books 2001) (1911) (describing an "iron law of oligarchy" in civil society organizations (capitalization altered)); SEYMOUR MARTIN LIPSET, MARTIN A. TROW & JAMES S. COLEMAN, UNION DEMOCRACY: THE INTERNAL POLITICS OF THE INTERNATIONAL TYPOGRAPHICAL UNION 8-9 (1956) (testing the oligarchy thesis in the context of labor unions in the mid-twentieth century).

117. *See* Andrea Smith, *Introduction* to THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 1, 1-18 (INCITE! ed., Duke Univ. Press 2017) (2007); Megan Ming Francis, *The Price of Civil Rights: Black Lives, White Funding, and Movement Capture*, 53 LAW & SOC'Y REV. 275, 277-79 (2019); Suzanne Staggenborg, *The Consequences of Professionalization and Formalization in the Pro-choice Movement*, 53 AM. SOCIO. REV. 585, 597 (1988).

118. *See, e.g.*, WALTER J. NICHOLLS, THE DREAMERS: HOW THE UNDOCUMENTED YOUTH MOVEMENT TRANSFORMED THE IMMIGRANT RIGHTS DEBATE 82-83 (2013).

movement law scholars study actually existing forms of social movement resistance: campaigns for legal and political change as well as prefigurative arrangements or experiments. The work shows a care and a concern for the unique contributions of social movements not simply in representing subordinated peoples, but as a locus for experiments, processes, and imaginations for transformational change.

Studying existing forms of social movement resistance includes studying the demands and campaigns of social movement organizations. Kate Andrias, for example, looks to "Fight for $15" campaigns by low-wage workers fighting for higher wages and a union for all workers.[119] Through a close study of these campaigns, Andrias demonstrates how contemporary workers' movements are reconceiving relationships between workers, employers, and the state and running campaigns in service of that vision.[120] The campaigns call for more than wages. They reject the private ordering of New Deal unionism and the employer–employee dyad as ushered in by the National Labor Relations Act.[121] Instead, they imagine public "social bargaining" on a sectoral and regional basis with an active role for the state, and reject a sharp divide between employment and labor law, empowering more workers to engage in some form of social bargaining.[122]

In taking movement strategies seriously, then, scholars learn from movement actors how to refuse categories in twentieth-century law and social organizations—like the fixation on the employer–employee dyad—and can engage with grassroots ideation on alternative modes of legal and social organization—like social bargaining. Fight for $15 is a productive site for diversifying our understanding of strategies to reshape the terrain of labor law toward power for the working class and to win concrete changes for low-wage workers.[123] The campaign points to pathways for changing the entitlements

119. Kate Andrias, *The New Labor Law*, 126 YALE L.J. 2, 8, 46-47 (2016) ("[F]rom the social movements' efforts one can derive a path toward a new labor law regime that is distinct from, even oppositional to, the legal regime that has governed since the New Deal."). For an example focused on intellectual property, see Amy Kapczynski, *The Access to Knowledge Mobilization and the New Politics of Intellectual Property*, 117 YALE L.J. 804, 806-10 (2008).

120. A core way to imagine ways to move toward an "egalitarian distribution of power," she argues, is to look "to historical and contemporary social movements that have opposed, and are opposing, hierarchies of power." Kate Andrias, Response, *Confronting Power in Public Law*, 130 HARV. L. REV. F. 1, 7 (2016).

121. Andrias, *supra* note 119, at 58-63.

122. *Id.* at 63-68.

123. *E.g.*, Peter Dreier, *How the Fight for 15 Won: A Timeline of the Events That Led to California's Progressive Victory*, AM. PROSPECT (Apr. 4, 2016), https://perma.cc/3Q4S-YJHL; Jeff Schuhrke, *We've Been Fighting for $15 for 7 Years. Today I'm Celebrating a Historic Victory.*, SALON (Feb. 23, 2019, 12:29 PM UTC), https://perma.cc/A8NB-QRTH. The campaign has been criticized for not being sufficiently grassroots, and for using
footnote continued on next page

and power of low-wage workers that do not rely centrally on courts or litigation.

Producing scholarship in conversation with such campaigns makes clear how grassroots contestation at the local level is central to the shape of law and legal entitlements. It brings attention to the limits of formal political and legal processes to represent the needs and preferences of working-class people, and the power of elites and corporations in defining the terrain.[124] It demonstrates how movements enact change as they build grassroots power and imagine new possibilities, challenging the normative legal frameworks with which most scholarship is engaged and building new horizons for social-change projects.

Thinking with movements allows us to see that even legal rights can politicize, contest, and expand the power of working people. Paying attention to actual struggles opens up questions about how rights operate in particular contexts—whether and how they legitimate or shift relations of power—rather than what they are in the abstract. John Whitlow's examination of the new right to counsel in eviction proceedings in New York City is illustrative.[125] On the surface, the right to counsel in housing court should trigger the concerns articulated by CLS and CRT scholars about the limits of rights discourse to transform the prevailing order. But because Whitlow investigates the housing-justice movement behind the establishment of the right, he is able to identify the right as part of a broader strategy "to increase the power of the tenant movement."[126] His deep study of the campaign allows him to appreciate how the right to counsel is functioning in complex and potentially transformative ways. He shows how organizers are deploying what could otherwise be a depoliticizing tactic as part of a larger movement "to intervene substantively in the affordable housing crisis and to contend with the private power of the real estate industry."[127]

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top down "mobilizing" rather than "organizing," including by labor organizer and intellectual Jane McAlevey. *See* Michal Rozworski, *Having the Hard Conversations: An Interview with Jane McAlevey*, JACOBIN MAG. (Oct. 4, 2015), https://perma.cc/WK4D-72P6; Micah Uetricht, *Is Fight for 15 for Real?*, THESE TIMES (Sept. 19, 2013) https://perma.cc/ZP68-PJXA. For a powerful description of the distinctions between advocacy, mobilizing, and organizing, see JANE F. MCALEVEY, NO SHORTCUTS: ORGANIZING FOR POWER IN THE NEW GUILDED AGE 9-12 (2016).

124. *See* Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 PERSPS. ON POL. 564, 564-65 (2014).

125. John Whitlow, *Gentrification and Countermovement: The Right to Counsel and New York City's Affordable Housing Crisis*, 46 FORDHAM URB. L.J. 1081, 1082-87 (2019).

126. *Id.* at 1082, 1128-32.

127. *Id.* at 1123; *see also* SAMUEL STEIN, CAPITAL CITY: GENTRIFICATION AND THE REAL ESTATE STATE 12-13 (2019).

The right to counsel is an aspect of rather than the totality of a struggle to decommodify housing and a strategy to undercut landlord power in courts.[128] In revisiting the critique of rights through a deep study of a social movement campaign, Whitlow contributes to our understanding of the dynamism of rights. For example, he describes how a right to counsel in eviction proceedings is meaningfully distinct from the right to counsel in criminal cases because it is a right against the landlord rather than the state itself.[129] It is a rejoinder to private power in a system of property and contract that largely defers to private power. Moreover, the work of rights, like the work of any law, is not simply about what it does on paper, but what it does in practice, and how people deploy it with ongoing contests over the shape of the world. Understanding the organizing context of this struggle, past and current, is essential to efforts like this to situate seemingly traditional legal change within broader possibilities for transformation.[130]

Studying actually existing forms of social movement resistance also helps unearth new possibilities for how to replace and restructure legal arrangements and institutions. Movement law scholars study the modes of organization and work that movement organizations take on to prefigure the worlds that they seek.[131] This includes institutional prefiguration: for example, the creation of a workers' center;[132] the development of mutual-aid networks to provide food and medical equipment to protesters on the streets;[133] or the design of dispute-resolution practices within anarchist collectives.[134]

Campaigns and prefigurative experiments are in a dialectical relationship—articulating in different ways, through storytelling and

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128. Whitlow, *supra* note 125, at 1129-30.

129. *Id.* at 1117-18.

130. On law as practice, see generally Inés Valdez, Mat Coleman & Amna Akbar, *Missing in Action: Practice, Paralegality, and the Nature of Immigration Enforcement*, 21 CITIZENSHIP STUD. 547 (2017); Inés Valdez, Mat Coleman & Amna Akbar, *Law, Police Violence, and Race: Grounding and Embodying the State of Exception*, 23 THEORY & EVENT 902, 902-03 (2020) (arguing that racialized police violence is constitutive of law); and MCCANN, *supra* note 38 (noting that legal practices tend to be both resources for and constraints on defiant political action).

131. Examples in past works include Guinier and Torres's depiction of Fannie Lou Hamer and the Mississippi Freedom Democratic Party's integration of the Democratic Party, and Lucie White and Jeremy Perelman's study of the collective prefiguration of social human rights in Africa. Guinier & Torres, *supra* note 65, at 2762-77; White & Perelman, *supra* note 70, at 3-5.

132. *See* Gordon, *supra* note 10, at 428-30, 437.

133. *See* Monica Chin, *How to Feed a Protest*, VERGE (Aug. 31, 2020, 9:10 AM EDT), https://perma.cc/RDK2-GKZ7.

134. Amy J. Cohen, *On Being Anti-imperial: Consensus Building, Anarchism, and ADR*, 9 LAW CULTURE & HUMANS. 243, 244-46 (2011).

relationship building, new modes of relating.[135] One of us, Sameer Ashar, has written with Catherine Fisk about worker centers as an innovation within low-wage worker organizing outside traditional unions.[136] Worker centers experiment with different forms of worker representation on boards and campaign committees.[137] Organizers emphasize democratic governance and autonomy within their organizations so as to prepare workers to assert political agency in their places of work, in defiance of increasingly autocratic modes of economic organization.[138]

Ashar and Fisk show that organizers are keenly aware that the lives of workers—as women, people of color, differently abled, and queer and trans—are intersectional and that understanding their intersectional identities grounds organizing strategies.[139] In the last two decades, for example, the National Domestic Workers Alliance has successfully pushed multiple states to adopt domestic-worker bills of rights.[140] These victories speak to the power built by domestic-worker organizing around the country. The focus on personal transformation in domestic-worker organizing is a product of the identities of organizers and their close understanding of the standpoint of immigrant women in isolated work environments.[141] To build power, workers need to be reached where they exist and to be engaged in organizational and campaign activities that are both personally and politically transformative. Young Black and brown organizers are called to address sources of trauma in the lives of their largely immigrant-women worker base—of forced migration, of the abandonment of their children and families and their feelings of isolation in the United States, and of their vulnerability to

135. Relationships prefiguring in the transformational arrangements within social movements can then make their way into formal institutional arrangements. *See, e.g.*, K. Sabeel Rahman, *Policymaking as Power-Building*, 27 S. CAL. INTERDISC. L.J. 315, 328-33 (2018) (describing how social movements attempt to build power within the administrative state, through new institutional and policymaking arrangements); K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 681-89 (2020) (describing social movement pushes for community control of local resources across areas of law and policy, including policing and economic development).

136. Sameer M. Ashar & Catherine L. Fisk, *Democratic Norms and Governance Experimentalism in Worker Centers*, 82 LAW & CONTEMP. PROBS., no. 3, 2019, at 141, 168-76.

137. *Id.* at 168-72.

138. One organizer portrayed the mission of his worker center as filling the "need to figure out how to make people feel bigger" in relation to their employers. *Id.* at 163; *see also* Stephen Macedo, *Introduction* to ELIZABETH ANDERSON, PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON'T TALK ABOUT IT), at vii, vii-xii (2017).

139. *See* Ashar & Fisk, *supra* note 136, at 167-68.

140. Lauren Hilgers, *Out of the Shadows*, N.Y. TIMES MAG. (Feb. 21, 2019), https://perma.cc/XAM7-ET7U.

141. *See* Ashar & Fisk, *supra* note 136, at 167-68, 173.

bullying and abuse by their employers.[142] Movement organizations teach us that because the personal, the economic, and the social are inextricably intertwined, we must begin to understand law and legal change in terms outside of and beyond conventional law-reform campaigns.

Grassroots campaigns for change exist across expert siloes and beyond the realm of worker and housing movements. One of us, Jocelyn Simonson, has written about proliferating experiments in collective action against the carceral state: cop- and court-watching, participatory defense, community bail funds, and campaigns for people's budgets and community control of the police.[143] In studying grassroots contestation, Simonson moves the common points of reference within criminal law scholarship, from within the institutions of policing and prosecution to that of directly impacted communities. Organizers use strategies—bail funds, cop watching, and court watching—that destabilize the normative footing of the carceral state. They redefine concepts of harm, community, and public safety, as they directly contest the racialized logic of criminal law enforcement.[144] Institutional experimentalism born of social movement activism challenges approaches to law that are individualized and embedded in carceral logics.

For example, as Simonson shows, in posting bail for community members who cannot otherwise make bail, bail funds founded by social movement organizations problematize the system actors' deployment of the terms "community" and "public safety."[145] "Community" is a kind of dog whistle—

142. *See id.* at 172-74; *see also* JENNIFER ITO, RACHEL ROSNER, VANESSA CARTER & MANUEL PASTOR, USC DORNSIFE PROGRAM FOR ENV'T & REG'L EQUITY, TRANSFORMING LIVES, TRANSFORMING MOVEMENT BUILDING: LESSONS FROM THE NATIONAL DOMESTIC WORKERS ALLIANCE STRATEGY—ORGANIZING—LEADERSHIP (SOL) INITIATIVE 31-59 (2014), https://perma.cc/M6S4-MJHF.

143. *See* Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 810-13 (2021); Simonson, *supra* note 98, at 251-52, 256 (examining "bottom-up practices of marginalized groups intervening on behalf of defendants to show the possibility of a different way of thinking about the place of the people in the criminal process" where "members of the public are allowed to voice their support or opposition through procedural channels other than elections, juries, or community justice fora"); Jocelyn Simonson, *Democratizing Criminal Justice Through Contestation and Resistance*, 111 NW. U. L. REV. 1609, 1610-13 (2017) (discussing communal contestatory tactics within the criminal legal system); Jocelyn Simonson, *The Criminal Court Audience in a Post-trial World*, 127 HARV. L. REV. 2173, 2183-85, 2231-32 (2014); Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. 391, 392-98 (2016).

144. For another example, Allegra McLeod recently examined an abolitionist view of justice emerging out of organizing in Chicago and contrasted it with legal concepts of justice. Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1637-49 (2019).

145. Jocelyn Simonson, *Bail Nullification*, 115 MICH. L. REV. 585, 586-93 (2017) (describing how community bail funds contest larger ideas about the meaning of public safety and community).

evoking a collective but speaking to white, wealthy, and upper-middle-class people to whom the police tend to be accountable.[146] When bail funds post bail, they challenge notions of community and public safety by performing alternative visions of community and safety that include those targeted by the carceral state.[147] At the same time, these projects provide modes of contestation and participation in a system that attempts to silence, shame, and exclude poor, Black, and brown communities. They create space for movements and communities to build bonds of solidarity and safety as they grow their power and their political analysis.[148]

Thinking with social movements allows us to see how communities organize to survive increasingly perilous conditions. It teaches us how legal process is central to the precarity of everyday life for so many poor and working-class people. Recently, Dean Spade has written on mutual-aid networks, which have proliferated in the wake of COVID-19.[149] The turn toward mutual aid is an essential alternative and complement to law-reform strategies, Spade argues, in part because of how law reform often fails to offer material relief to the most vulnerable people.[150] Mutual aid is an essential mode of "building new social relations that are more survivable."[151] Spade speaks to mutual aid as an abolitionist strategy rooted in practices of collective

146. *Cf.* IAN HANEY LÓPEZ, DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS 4-5 (2014); IAN HANEY LÓPEZ, MERGE LEFT: FUSING RACE AND CLASS, WINNING ELECTIONS, AND SAVING AMERICA 16-17 (2019).

147. CHI. CMTY. BOND FUND, YEAR-END REPORT 2019, at 12 (2019), https://perma.cc/4RFN-26NW.

148. *E.g.*, Jocelyn Simonson, *The Bail Fund Moment: Reclaim the Neighborhood, Reclaim Community, Reclaim Public Safety*, N+1 (June 22, 2020), https://perma.cc/44BM-EYLV (describing the relationship between the long-term organizing of bail funds and the surge of bail-fund donations and activities during the uprisings of 2020).

149. *See* Dean Spade, *Solidarity Not Charity: Mutual Aid for Mobilization and Survival*, SOC. TEXT, Mar. 2020, at 131, 131 [hereinafter Spade, *Solidarity Not Charity*]; DEAN SPADE, MUTUAL AID: BUILDING SOLIDARITY DURING THIS CRISIS (AND THE NEXT) 1-5 (2020); *see also supra* notes 25, 108. For two decades, Dean Spade has been writing with social movement organizations against the grain of legal scholarship and offering insights from social movement strategies. *See* Dean Spade, *Intersectional Resistance and Law Reform*, 38 SIGNS J. WOMEN CULTURE & SOC'Y 1031, 1046-47 (2013); DEAN SPADE, NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF LAW, at xv-xvi (Duke Univ. Press rev. ed. 2015) (2009).

150. Spade, *Solidarity Not Charity*, *supra* note 149, at 131-33 (discussing how mutual aid "is an often devalued iteration of radical collective care that provides a transformative alternative to the demobilizing frameworks for understanding social change and expressing dissent").

151. *Id.* at 136, 147.

care and self-determination.[152] Mutual-aid strategies, like the survival programs of the Black Panther Party (BPP), illustrate the failures of the state to provide for the basic needs of everyday people.[153] Through mutual aid, he explains, people do more than facilitate collective survival, they learn how to work together, collaborate, and learn from each other. For example, by "help[ing] one another through housing court proceedings [participants] will learn the details of how the system does its harm and how to fight it, but they will also learn about meeting facilitation, working across difference, retaining volunteers, addressing conflict, giving and receiving feedback, following through, and coordinating schedules and transportation."[154] Participants learn how to make change together.

Whether it is Fight for $15 or bail funds, mutual-aid projects, or worker centers, these prefigurative social-change projects directly challenge prevailing legal and institutional arrangements and the ideas that hold them in place.[155] They point to the problems with status quo political, economic, and social arrangements. They create new pathways for justice and fight for horizons otherwise invisible within legal scholarship.[156] They point to the broad array of strategies and tactics central to justice projects focused on transformation. Scholars miss much when they ignore social movement experimentation and prefiguration.

C. Shifting the Episteme

Movement law shifts the focal point of legal studies by centering the epistemes and histories of social movements—their worldviews, source material, and intellectual traditions. This is especially important given law's entanglement with exclusion and domination in the United States. Movement law unearths alternative arcs of history, often ignored in legal discourse, of people collectively generating ideas and struggling to build and practice alternative possibilities: from the bottom up, often at great risk to their own

152. *Id.* at 131, 137-38; *see also* Angela P. Harris, *Compassion and Critique*, 1 COLUM. J. RACE & L. 326, 350-51 (2012) (connecting how the capacity to care is central to advancing CRT and coalescing movements).

153. Spade, *Solidarity Not Charity*, *supra* note 149, at 136.

154. *Id.* at 137-38.

155. For another example, see Angélica Cházaro, *The End of Deportation*, 68 UCLA L. REV. (forthcoming 2021) (manuscript at 67-74), https://perma.cc/MZB8-XYKC (examining Chicago's Erase the Database campaign—"a collaboration between immigrant-led and Black-led grassroots organizations"—that has worked to eliminate the Chicago gang database).

156. For a discussion of the contemporary turn among left social movements to "non-reformist reforms," see Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 97-106 (2020).

safety, rather than top down. How can we create structures of living that allow us to thrive together on shared land and with multiple forms of life? How have people lived and struggled in these ways in the past? What past struggles over land, resources, and labor shape our current norms and laws? These questions are deeper than what constitutional discourse and traditional adjudicatory forums allow. And when put next to conventional legal structures they allow for new, often revelatory, ways of thinking about law, the state, and justice.[157]

Social movements draw on lines of thought and material struggles across time to arrive at their collective analyses of the present. The M4BL situates its critiques and paths forward in historical Black struggles and Black intellectual traditions.[158] The Red Nation grounds itself in centuries of Native resistance.[159] Grounded in not just their own histories, but also the histories of other movements, contemporary movement actors build broader solidarity. When Mijente discusses its movement's "DNA," for example, there is an insistence: "We see our liberation as bound to Black Liberation, Indigenous sovereignty, economic and climate justice and other liberation movements."[160] These are histories of intellectual thought born in struggle, always dynamic and relational, and full of wisdom for our times.

Movement law scholars point to the contingency of social-political-economic relations and point to the status quo itself as a product of ongoing struggle. They do this by turning to the history of people's movements. Aziz Rana, for example, critiques the rise of constitutional veneration as a way of overshadowing our colonial slave-holding past and deep social movement contestation.[161] To recover alternate histories and possibilities, Rana tells the

157. These questions echo those long asked in Black-feminist scholarship. *See generally* Patricia Hill Collins, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT 266, 270-71 (2d ed. 2000) (describing how Black-feminist epistemology can destabilize established understandings of the world).

158. Akbar, *supra* note 4, at 408.

159. Red Nation, *supra* note 6.

160. *Our Principles of Unity*, MIJENTE, https://perma.cc/MH6M-RQ7S (archived Feb. 5, 2021).

161. *See, e.g.*, RANA, *supra* note 16, at 5-7; Aziz Rana, *Colonialism and Constitutional Memory*, 5 U.C. IRVINE L. REV. 263, 269 (2015) [hereinafter Rana, *Colonialism*] ("[P]art of the discursive power of civic national identity continues to come from its disavowal of any need for . . . structural transformation, precisely since it reads a liberal and egalitarian identity into the country's very genesis."). For other work denaturalizing our current understanding of constitutional arrangements and historicizing shifting understandings through time and political contestation, see Joseph Fishkin & William E. Forbath, *The Anti-oligarchy Constitution*, 94 B.U. L. REV. 669, 672 (2014) (looking to political movements of the Gilded Age to generate ideas about how political economy is a *constitutional* problem); LAURA WEINRIB, THE TAMING OF FREE SPEECH: AMERICA'S CIVIL LIBERTIES COMPROMISE 1-13 (2016) (telling the history of the right to free speech as rooted in labor struggles to strike and organize before it shifted to being understood as an individual right to be effectuated in court); and Amy Kapczynski, *Historicism,*
footnote continued on next page

story of the BPP's own 1970 constitutional convention, estimated to have been attended by at least 12,000 people, including members of the American Indian Movement, the Young Lords, Students for a Democratic Society, and more.[162] For the BPP, the convention was a rejection of the U.S. Constitution and how it naturalized Black people's "economic and political subordination" within the United States and severed the Black freedom struggle from anticolonial struggles around the world.[163] During breakout sessions at the convention, participants generated "a new alternative text framed around a variety of basic demands" that drew from global decolonization efforts.[164] The resulting proposals included reparations, the transfer of wealth, truth commissions, and expanded socioeconomic rights.[165] The convention marked the United States as a colonial project and conjured the possibility of a radical and reconstituted alternative, even if the ratification of the document was stymied by internal discord.[166] Rana's work, then, reminds us of the contingency of our legal order. In his charting of the rise of constitutional veneration, he denaturalizes our almost religious preoccupation with the Constitution. In documenting the BPP's convention, he centers long histories of contestation, in particular within the Black freedom struggle.

Movement law scholars take cues from social movement epistemes as a way to denaturalize the status quo, refuse the abstraction of the violence of everyday law, make clear the contingency of our political, economic, and social relationships, and gesture at new possibilities.[167] Movement law scholars take seriously the horizons of social movement imaginations—even if they reject outright the Constitution or prevailing legal norms and arrangements—to

Progress, and the Redemptive Constitution, 26 CARDOZO L. REV. 1041, 1041-47 (2005) (exploring constitutional historiography, that is, "how theorists, lawyers, and judges elaborate the past in constitutional context").

162. Rana, *Colonialism*, *supra* note 161, at 285.

163. *Id.* at 282-85.

164. *Id.* at 285.

165. *Id.* at 285-86.

166. The ratification of the constitution was stymied by internal discord within BPP leadership, and the second ratifying convention was never held. *Id.*

167. *See* DAVINA COOPER, EVERYDAY UTOPIAS: THE CONCEPTUAL LIFE OF PROMISING SPACES 32 (2014) ("Epistemologies of the margins are not simply intended as perspectives from which to critique mainstream, hegemonic forms; they also open up possibilities for exploring what other kinds of forms could be like."). *See generally* Julia Hernandez, *Lawyering Close to Home*, 27 CLINICAL L. REV. 131 (2020) (using personal narrative to describe the epistemic injustice that accommodates the incorporation of law students traumatized by racialized state violence into a profession that upholds and extends white supremacy); Yxta Maya Murray, *The Takings Clause of Boyle Heights*, 43 N.Y.U. REV. L. & SOC. CHANGE 109 (2019) (drawing on interviews with residents in the gentrifying Los Angeles neighborhood of Boyle Heights to propose a new Takings Clause).

make new demands.[168] In so doing they point to new possibilities that legal scholarship might otherwise ignore.

One of us—Amna Akbar—has recently written scholarship that focuses on the radical imagination of the M4BL and abolitionist organizing.[169] Akbar draws on traditions of Black radical thought to contextualize movement demands within longstanding critiques of race and capitalism. She puts this intellectual history in dialogue with contemporary criminal law debates to question liberal legalism and our traditional approaches to reform.[170] Like Rana's turn to the BPP, Akbar's scholarship features left intellectuals and organizers not commonly featured in legal academic work, such as those of abolitionist, intellectual-organizers Rachel Herzing and Mariame Kaba.[171] At the same time, Akbar requires us to take seriously the long historical arc invoked by today's left movements in understanding the United States today. For example, abolitionist organizers invoke the history of enslavement, slave patrols, and border patrols to understand contemporary policing—redefining policing as central to racialized violence past and present.[172] Akbar shows us how our thinking expands when we encounter this long history of struggle. Taken together, after reading Akbar's work we emerge with not just deeper critique, but larger possibilities—a "radical imagination," an "abolitionist horizon"—through which movements seek to de- and reconstruct law and the state.[173]

Movement law inquiries that shift epistemes can range from close, critical analysis of movement texts, to immersion in social movement spaces, to even coauthoring or engaging in participatory action research with movement leaders. Janet Moore, for example, has coauthored with movement leaders in

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168. For example, in a recent work Matsuda thinks alongside left intellectuals and social movements to imagine a utopian constitution as a basis for imagining the right to art. Matsuda, *The Next Dada*, *supra* note 57, at 1211, 1217-30 (arguing that "Frederick Douglass believed that the preamble [to the U.S. Constitution] was ground enough to demand the end of slavery" and so the preamble "is ground enough to say there is a right to art").

169. *See* Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1782-86 (2020); Akbar, *supra* note 101, at 353, 366-73; Akbar, *supra* note 4, at 406-10.

170. *See* Akbar, *supra* note 169, at 1786-88; Akbar, *supra* note 101, at 352, 355; Akbar, *supra* note 4, at 407-09; *see also* Sean Flores, *"You Write in Cursive, I Write in Graffiti": How #BlackLivesMatter Reorients Social Movement Legal Theory*, 67 UCLA L. Rev. 1022, 1038-54 (2020).

171. Akbar, *supra* note 169, at 1782, 1785, 1832-35, 1845-46; Akbar, *supra* note 4, at 436, 460-61, 466, 468.

172. Akbar, *supra* note 169, at 1817-19.

173. *See id.* at 1782-88; Akbar, *supra* note 4, at 412.

her work examining the power of the practice of participatory defense,[174] and now engages in participatory action research alongside movement activists who are working to redefine public safety in their community.[175] With participatory action research, legal scholars can use tools of social science to treat movement actors and activists as equal research partners in the generation of questions and answers about the world—for example, in seeking to answer the question of what public safety means for their community.[176]

Whatever form the scholarship takes, movement law points to the contingency of the stories we tell about the histories of the United States—of oppression and resistance—as well as the contingency of our contemporary arrangements.[177] It points to the limitations of telling grounded stories about the workings of the law that rely primarily on traditional legal sources, and do not pay heed to people's experiences and movements' struggles and narratives. Even grounded stories told through conventional frames may reify the status quo; movement intermediation and interpretation are therefore essential.

174. *See* Janet Moore, Marla Sandys & Raj Jayadev, *Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform*, 78 ALB. L. REV. 1281, 1285-86 (2015) (describing the participatory defense movement and its power, coauthored with a movement leader who pioneered the practice of participatory defense). For another recent example of coauthoring with movement leaders, see Terrell Carter, Rachel López & Kempis Songster, *Redeeming Justice*, 116 NW. U. L. REV. (forthcoming 2021), https://perma.cc/H8ZQ-LTZW.

175. *See* Lauren Johnson, Cinnamon Pelly, Ebony Ruhland, Simone Bess, Jacinda K. Dariotis & Janet Moore, Reclaiming Safety: Participatory Research, Community Perspectives, and Possibilities for Transformation 3, 8-9 (Nov. 19, 2020) (unpublished manuscript) (on file with authors) (describing participatory action research in which community members in Cincinnati are collectively redefining public safety alongside academic researchers).

176. Johnson and her coauthors have found that some participants in their study—community members in Cincinnati—rejected dominant punitive frameworks of safety as connected to policing, and instead voiced demands for education, housing, and healthcare. *Id.* at 3, 17-18, 22-23, 25. Other legal scholars have written about participatory action research. *See* Houh & Kalsem, *supra* note 89, at 294 ("'[L]egal participatory action research' . . . makes its most significant and original contribution to legal scholarship not only by 'looking to the bottom' in a theoretical sense, but also by treating those 'at the bottom' as equal research partners who are presumptively best situated to identify, analyze, and solve the problems that directly affect them."); Editha Rosario-Moore & Alexios Rosario-Moore, *From the Ground Up: Criminal Law Education for Communities Most Affected by Mass Incarceration*, 23 CLINICAL L. REV. 753, 754-55 (2017) ("In concert with Critical Legal Theory, [participatory action research] challenges both the objective neutrality of the law and claims of empirical objectivity made by social researchers.").

177. *See, e.g.*, RANA, *supra* note 16, at 336 (arguing that imagining big change first requires "linking the concrete material interests of specific groups to the larger common good and thus showing how experiences of inequality or subordination illuminate a more pervasive social predicament").

Movement law reveals the limits of liberal legalism and its histories of linear progress. And yet, it gives us hope for future possibilities and openings too.

D. Adopting a Solidaristic Stance

Movement law asks scholars to engage in the scholarly project in solidarity and in conversation with social movements.[178] This solidaristic stance requires commitment to experimentation, transformation, and collectivity. It displaces the legal scholar as an individual expert with just the right technocratic fix, taking a stance both more humble and more bold. Movement law does not require a particular kind of relationship (for example, as a legal advocate or advisor), but does require writing in conversation rather than from above in critique: participating in a collective process for generating and testing ideas and strategies for transformative change.

Solidarity is essential because meaningful ideas for transformative change develop and gain traction through collective struggle and political praxis.[179] Solidarity can be built in a variety of ways—but as social movements and organizing teach us, relationship is central to solidarity. It is challenging to avoid extractive dynamics between academics and communities in the absence of actual relationships with the people about whom one is writing and who are engaged directly in struggle.[180] Veena Dubal and Angélica Cházaro are scholars with deep relationships to grassroots organizing. Their movement work informs their scholarly work in ways that inspire us.

As a legal scholar and anthropologist who started her legal career as an Asian Law Caucus staff attorney, Dubal has complicated accounts of the "gig economy" and liberal legalist approaches to reform.[181] She uses scholarly method—ethnographic interviews with drivers and organizers in the gig

178. *See* COOPER, *supra* note 167, at 20 (exploring "the oscillating movement between imagining and actualization").

179. For another example of a legal scholar whose work has been impacted by engagement with social movements, consider Justin Hansford. *See, e.g.*, Justin Hansford, Essay, *The First Amendment Freedom of Assembly as a Racial Project*, 127 YALE L.J. F. 685, 685-91 (2018); Justin Hansford & Meena Jagannath, *Ferguson to Geneva: Using the Human Rights Framework to Push Forward a Vision for Racial Justice in the United States After Ferguson*, 12 HASTINGS RACE & POVERTY L.J. 121, 123 (2015); Justin Hansford, *Demosprudence on Trial: Ethics for Movement Lawyers, in Ferguson and Beyond*, 85 FORDHAM L. REV. 2057, 2057-60 (2017).

180. *See* Between the Covers, *Natalie Diaz Interview*, TIN HOUSE, https://perma.cc/K5PF-HVCN (archived Apr. 1, 2021) ("The fact that there is no count for murdered missing black women in the United States, there is no count for murdered missing indigenous women in the United States, that is connected. . . . For me, some of why that's disconnected is because American scholarship has to do more.").

181. *See Veena Dubal*, U.C. HASTINGS L. S.F., https://perma.cc/QH8N-25T4 (archived Mar. 31, 2021).

economy—to engage worker organizing in a time of deep economic precarity for workers, when employers have consolidated political power in the industry. Dubal has studied how state and local regulators have been co-opted by the platform companies, showing how the companies initially disrupted regulatory regimes by disregarding them and then consolidated their power by mobilizing dispersed consumers and drivers to alter those regimes in their favor.[182] Dubal has argued that employers maintain an overwhelming advantage over workers through corporate restructuring and their refusal to bargain collectively.[183]

Dubal's scholarly work deepens her advocacy. But perhaps more interestingly, her engagement with worker organizing through social movement groups has defined her scholarly trajectory. Dubal's nuanced understanding of worker identities has informed her involvement with groups like Rideshare Drivers United on legislation codifying employee status for drivers.[184] She intervened directly in Uber and Lyft's class-action litigation against worker organizing by objecting to a class-action settlement on behalf of a group of plaintiffs from a fledgling worker organization called the San Francisco Bay Area Driver Association.[185] Dubal was recently targeted by Uber and Lyft as a consequence of her scholarship and advocacy,[186] as the companies spent $200 million to overturn the state legislative effort in which she was

182. *See* V.B. Dubal, Ruth Berins Collier & Christopher Carter, *Disrupting Regulation, Regulating Disruption: The Politics of Uber in the United States*, 16 PERSPS. ON POL. 919, 919-21 (2018).

183. V.B. Dubal, *Winning the Battle, Losing the War?: Assessing the Impact of Misclassification Litigation on Workers in the Gig Economy*, 2017 WIS. L. REV. 739, 747, 794, 800 fig.1.

184. *See* Veena Dubal, *Rule-Making as Structural Violence: From a Taxi to Uber Economy in San Francisco*, LAW & POL. ECON. PROJECT: LPE BLOG (June 28, 2018), https://perma.cc/F7L6-5RHZ; V.B. Dubal, *An Uber Ambivalence: Employee Status, Worker Perspectives, & Regulation in the Gig Economy* 4-6 (U.C. Hastings L. Legal Stud. Rsch. Paper Series, Rsch. Paper No. 381, 2019), https://perma.cc/SR2B-QVD8. For a discussion of how many workers see themselves as independent contractors rather than "wage-slaves," see V.B. Dubal, *Wage Slave or Entrepreneur?: Contesting the Dualism of Legal Worker Identities*, 105 CALIF. L. REV. 65, 120 (2017).

185. Declaration of Veena Dubal in Support of Objections to Class Action Settlement Filed by Adham Shaheen et al. at 2, 7, O'Connor v. Uber Techs., Inc., 201 F. Supp. 3d 1110 (N.D. Cal. 2016) (Nos. 13-3826 & 15-0262), 2016 WL 9275976, ECF No. 653.

186. *See* Michael Hiltzik, *How Millions from Uber and Lyft Are Funding the Harassment of a Critic*, L.A. TIMES (Sept. 2, 2020, 5:00 AM PT), https://perma.cc/L8CK-KWH9 (to locate, click "View the live page"); Aaron Mak, *Why Is an Advocacy Group Funded by Uber and Lyft Hounding a Law Professor on Twitter*, SLATE (Aug. 11, 2020, 4:54 PM), https://perma.cc/UT8C-H2U6; Dara Kerr, *"A Totally Different Ballgame": Inside Uber and Lyft's Fight Over Gig Worker Status*, CNET (Aug. 28, 2020), https://perma.cc/GE4Y-MNA5.

involved.[187] She has sided with fledgling organizing formations and against the ongoing efforts by established unions to collaborate with the platform companies in creating a new legal status for workers devoid of statutory employee protections.[188] By targeting Dubal, the platform companies have effectively forced her to own her political work as a significant component of her identity as a scholar and teacher. She has not backed down.

Cházaro's work also embodies a commitment to both scholarship and solidarity.[189] In 2014, at the outset of her academic career, Cházaro served as a "chief negotiator" on behalf of immigrants during an almost two-month hunger strike at the Northwest Detention Center (NWDC) in Tacoma, Washington.[190] The hunger strike emerged in response to a one-day shutdown of NWDC by the nascent #Not1More formation—an early abolitionist turn among immigrant organizing.[191] Later, Cházaro helped to start La Resistencia, a grassroots effort to shut down NWDC, which eventually became a hub organization in Mijente[192] and an organization in the Decriminalize Seattle coalition focused on defunding the Seattle Police Department.[193] As she engaged in organizing and produced scholarship, Cházaro coauthored Mijente's abolitionist policy platform *Free Our Future*.[194] In scholarly work on

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187. Wilfred Chan, *Can American Labor Survive Prop 22?*, NATION (Nov. 10, 2020), https://perma.cc/PG5R-R7ZF (to locate, click "View the live page") ("[The revolution] needs to be about ownership, redistribution, collective power. We're not at a place anymore where enough people are getting by, that things are OK. If people feel this anger collectively, they can build something transformative." (quoting Veena Dubal)).

188. *Id.*

189. Cházaro started her legal career at the Northwest Immigrant Rights Project in Seattle. *Angélica Cházaro*, UNIV. WASH. SCH. L., https://perma.cc/CMF8-ULZC (archived Feb. 5, 2021).

190. *Id.*; Liz Jones, *Protestors Try to Block Deportations from Northwest Detention Center*, KUOW (Feb. 25, 2014, 8:45 AM), https://perma.cc/N83F-QWGV.

191. Tania Unzueta, Maru Mora Villalpando & Angélica Cházaro, *We Fell in Love in a Hopeless Place: A Grassroots History from #Not1More to Abolish ICE*, MEDIUM (June 29, 2018), https://perma.cc/GA59-ZFDJ; NWDC RESISTANCE, A HUNGER STRIKERS HANDBOOK 13-16 (2017), https://perma.cc/LV7M-4J4H.

192. *See La Resistencia*, MIJENTE, https://perma.cc/H3LB-WKQ8 (archived Mar. 31, 2021).

193. *See* LA RESISTENCIA, https://perma.cc/BQW4-RNRW (archived Feb. 5, 2021); Daniel Beekman, *Seattle City Council Pressed to Defund Police, Move 911 Response Dispatchers out of Department*, SEATTLE TIMES (updated Aug. 12, 2020, 11:35 AM), https://perma.cc/8TKK-LFQT (to locate, click "View the live page"); *Seattle Urged to See a "World Without Law Enforcement,"* ASSOCIATED PRESS (July 9, 2020), https://perma.cc/E3FG-C2UB.

194. *See* Press Release, Mijente, Leading Latinx Racial Justice Organization Releases "Free Our Future" Policy Platform in Wake of War Waged Against Immigrants (June 28, 2018), https://perma.cc/C8WC-KXQY; Marielena Castellanos, *Demonstrators Call for ICE to Be Abolished and Protest Operation Streamline*, PORTSIDE (July 4, 2018), https://perma.cc/XMY8-NKZH; *Coalition Demands Moratorium on Construction of Youth Jail*, PUB. NEWS SERV. (Mar. 20, 2018), https://perma.cc/68WB-455E.

deportation abolition, Cházaro developed the critiques of deportation and detention that are embedded within that work.[195] Cházaro reframes the scholarly question of how to comport deportation with the rule of law to the question whether deportation is justifiable as a broader matter of politics and ethics.[196] She situates deportation in a historical context, denaturalizing its existence and questioning its ongoing function.[197] In this way, she suggests the fait accompli embedded within the mode of analysis that takes for granted a historically contingent form of enforcement, and gestures at the deeper questions that social movement actors are posing.[198]

Scholars adopt a solidaristic stance in various ways. Dorothy Roberts and Daniel Farbman have each written about the histories of abolitionist struggles against enslavement. In tone and content, these articles are offerings in conversation with lawyers and organizers in movement, rather than criticisms from above.[199] Monica Bell has written "in conversation with movements for racial and economic justice" about entitlements to "[s]afety, friendship, and dreams" for Black people as central to the unfinished work of the Civil Rights Movement.[200] Kimberlé Crenshaw has authored a number of reports in conversation with the M4BL and street mobilizations against police killings of

195. Cházaro, *supra* note 155, at 6-7 ("The [Free Our Future] platform brings together diverse sites of implementation of the deportation machinery, while reorienting allegiance away from an unquestioning attachment to the abstraction of the rule of law and towards the populations such abstraction preserves as deportable.").

196. *See id.* at 23-24, 27-28, 37 (citing Angela Y. Davis, Ruth Wilson Gilmore, Micol Siegel, and Chandan Reddy).

197. *Id.* at 36 ("[F]or much of US immigration history . . . noncitizens were arrested and were *not* deported. As recently as 1984, only 1,000 people were deported on criminal grounds, as compared to 138,669 'criminal aliens' deported in 2016." (footnotes omitted) (quoting *FY 2016 ICE Immigration Removals*, U.S. IMMIGR. & CUSTOMS ENF'T (updated Jan. 7, 2021), https://perma.cc/YEB9-2HR5)).

198. Cházaro draws on Indigenous intellectuals and the history of settler colonialism to reveal the contingency of states and borders more broadly. *Id.* at 49-54. Cházaro also draws on the work of E. Tendayi Achiume, who theorizes migration as a mode of decolonization in ways that disrupt conventional ways of thinking about migration, borders, and immigration law. *Id.* at 51-54, 58 n.265; *see also* E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509, 1519-20 (2019).

199. *See, e.g.*, Farbman, *supra* note 14, at 1953 (using the history of abolitionist lawyers to argue that, in the present, "a clear political analysis and a deep connection with movement activists can transform a triage legal practice into a tool in a broader project of social change"); Roberts, *supra* note 16, at 6-10 (discussing the long arc of the abolitionist movements from slavery to prisons); *see also* Alexandra Natapoff, Atwater *and the Misdemeanor Carceral State*, 133 HARV. L. REV. F. 147, 176-77 (2020) (exploring how movement-based anticarceral commitments can intersect with contemporary constitutional approaches to low-level criminal offenses).

200. Monica C. Bell, Essay, *Safety, Friendship, and Dreams*, 54 HARV. C.R.-C.L. L. REV. 703, 707-08 (2019).

Black people. Most significantly, in 2015, two reports drew attention to Black women's and girls' experiences of police violence: the *Say Her Name* report, published through the African American Policy Forum and coauthored with Andrea Ritchie and others; and the *Black Girls Matter* report, coauthored with Priscilla Ocen and Jyoti Nanda.[201]

Solidarity generates new understandings.[202] We, too, have each learned profound lessons about law, violence, justice, and social change from collaborations with social movement organizers and organizations.[203] We

201. CRENSHAW ET AL., *supra* note 81, at 1; KIMBERLÉ WILLIAMS CRENSHAW, PRISCILLA OCEN & JYOTI NANDA, AFR. AM. POL'Y F., BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED AND UNDERPROTECTED 5 (2015) [hereinafter CRENSHAW ET AL., BLACK GIRLS MATTER], https://perma.cc/Z577-83FN; *see also #SayHerName: Black Women Are Killed by Police Too*, AFR. AM. POL'Y F., https://perma.cc/5KGW-KGYL (archived Feb. 5, 2021); *#SayHerName*, AFR. AM. POL'Y F., https://perma.cc/NR33-ZYCQ (archived Apr. 7, 2019) (describing the #SayHerName campaign); Shatema Threadcraft, *North American Necropolitics and Gender: On #BlackLivesMatter and Black Femicide*, 116 S. ATL. Q. 553, 566, 568-69 (2017). In the same year, Crenshaw coauthored with Priscilla Ocen and Jyoti Nanda a report on the experiences of girls of color with the "school-to-prison pipeline." *See* CRENSHAW ET AL., BLACK GIRLS MATTER, *supra*, at 5. Crenshaw and others have argued that intersectionality strengthens solidaristic practices. *See* Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control*, 59 UCLA L. REV. 1418, 1450 (2012) ("Thinking more critically about the intersectional failures of feminism and antiracism reveals how the political marginality of women of color might be understood as a condition that weakened the capacity of both movements to recognize and resist the ideological foundations upon which these dynamics are grounded."); Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1500 (2012) ("[T]his analysis suggests the need for cross-movement strategies that can address multiple forms of systemic injustice to contest the overpolicing of women of color and expose how it props up an unjust social order."); Jyoti Nanda, *Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System*, 59 UCLA L. REV. 1502, 1521 (2012) ("An intersectional analysis allows us to see how the marginalization experienced by girls of color is different from that experienced by girls generally and boys of color."); Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 UCLA L. REV. 1540, 1559-64 (2012) ("When we examine the surveillance and exclusion that occurs in the context of subsidized housing, we can see the ways in which the constructs of Black women are doing significant work in the maintenance of racial stratification and the criminalization of Black populations.").

202. Luke Herrine gives a compelling example of this when he describes lawyering alongside the Debt Collective, through which the "shared condition of indebtedness" became "a source of solidarity that could strike at the very heart of both the current structure of governance and the dominant form of profit accumulation." Luke Herrine, *Debtor Organizing Against Neoliberalism*, LAW & POL. ECON. PROJECT: LPE BLOG (Apr. 26, 2019), https://perma.cc/J2RQ-2HAT; *see also* Luke Herrine, *The Law and Political Economy of a Student Debt Jubilee*, 68 BUFF. L. REV. 281, 288-327 (2020) (providing a grounded critique of student debt).

203. We have also learned the importance of collaborative projects within the academy, and how they open up new ways to study and teach. The three of us came together in 2016 to think about how to teach differently. We worked with Bill Quigley and a cohort of

footnote continued on next page

have shifted our habits of study, lawyering, teaching, and writing as a result. Our collaborations with social movements live on the page as well as in how we spend our time: lawyering for immigrant workers or caged human beings, providing legal support for protests, coauthoring reports or toolkits for movement spaces, and participating in meeting after meeting for campaigns or bail funds. And we do much of this work with our students, both inside and outside of the classroom.

Movement law scholars share commitments to experimentation; collectivity; political, economic, and social transformation; and building mass social movements of ordinary people. This solidarity is born of a recognition and understanding of law as a discourse of power and legitimation, as well as a tool to build power from the left and for the many. Solidarity is born of collaboration, relationship, and accountability. One result of this orientation is a degree of accountability to get the stories right, to offer thick description of social movement activity and the normative frameworks that undergird such activity. As we write about the lived experience of the people engaged in movement work and organizing from an orientation that grounds us in a collective project, we are simultaneously accountable to them. This stance of solidarity changes the work of legal scholarship itself.

Clinical legal scholars have cultivated solidarity in robust ways over the last decade, engaging in a "collective critical stance" grounded in lived realities.[204] Clinical legal scholars have unearthed potential for transformative change through their clinical work alongside social movement

law faculty who strove to teach our classes in a way that responded to the period of protest and organizing that was sparked by the killing of Michael Brown by Darren Wilson. We issued a series of Guerrilla Guides to Law Teaching on a number of core law school classes. GUERRILLA GUIDES TO L. TEACHING, https://perma.cc/KVY5-UCCG (archived Feb. 6, 2021). With Bill Quigley, we identified four principles that began to articulate what we are now theorizing here. *See No. 1: Four Principles*, GUERRILLA GUIDES TO L. TEACHING (Aug. 29, 2016), https://perma.cc/2K2B-RBF8.

204. *See* Wendy A. Bach & Sameer M. Ashar, *Critical Theory and Clinical Stance*, 26 CLINICAL L. REV. 81, 81-83 (2019). Ashar argues that social movement collaborations have the power to remake legal work, its strategies, and its possibilities. *See* Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 357-59 (2008) [hereinafter Ashar, *Law Clinics*] (evaluating existing clinical legal education and emerging alternative models and their impact on the field of public interest law); Sameer M. Ashar, *Fieldwork and the Political*, *in* TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 288, 289-90 (Susan Bryant, Elliott S. Milstein & Ann C. Shalleck eds., 2014) [hereinafter Ashar, *Fieldwork and the Political*] (describing "the many pedagogical opportunities created by collaborations with movement organizations"); Sameer M. Ashar, Essay, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CALIF. L. REV. 201, 203-06 (2016) [hereinafter Ashar, *Deep Critique*] (arguing for progressive reform of legal education emphasizing justice and cogeneration of solutions by lawyers and communities on the ground).

organizations.[205] These scholars recognize that regnant forms of public-interest legal practice reinstantiate the lawyerly idea of the client's individuated "problem" in ways that undermine collective power building. Clinical collaboration with collectives allows for cogeneration of collective understanding and strategizing for transformative change that speaks to the collective realities of poor, Black, brown, and Indigenous people. This cogeneration then feeds into distinct modes of lawyering practice and scholarly projects.[206]

But the methodology of movement law is not just for clinical professors, or for professors engaged in the "practice of law." There are many forms of solidarity and engagement: for example, participating in organizing projects; paying close attention to the words and actions of social movements; learning from scholarly histories of movements and movement toolkits and manifestos; and crediting the generation of movement ideas to movement organizers and sources. Movement law scholars should take the time to notice the collective struggle happening around us, or within the areas of law that we study. We should find out what groups are meeting in our local areas, and go to those meetings, or, if not, follow Twitter feeds of grassroots organizations. We should ask our peers what movements they seek wisdom from or work alongside. We should join in when we are moved to do so. And we must recognize that all of this is just a beginning.

Movement law, then, provides a model for scholars to generate ideas in conversation both with other scholars and with social movements. It diversifies the episteme, strategies, and ideas collectively building energy around social, political, and economic transformation. It allows us to engage explicitly with the inescapable politics of the scholarly and legal enterprise. It is possible and it is being done. In the next Part we explore why it is necessary.

205. *See, e.g.*, Ashar, *Fieldwork and the Political*, *supra* note 204, at 288, 293 (arguing for clinical practice that aims to expose law students to the limits of law and the promise of alternative visions of socioeconomic organization from grassroots organizers).

206. *See, e.g.*, Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399, 400-02 (2019) (describing how "[c]linical teaching's signature pedagogical vehicle" fails to "effectively prepare students to address and combat structural or chronic inequality" and how clinical educators should expose students to "integrated advocacy"); Ramzi Kassem & Diala Shamas, *Rebellious Lawyering in the Security State*, 23 CLINICAL L. REV. 671, 675-77 (2017) (describing collaborations with Muslim community organizers in New York City against FBI and NYPD surveillance and harassment in the post-9/11 period); Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 CLINICAL L. REV. 775, 776-80 (2017) (describing efforts to infuse critical concepts of human rights and impact litigation into clinical contexts); John Whitlow, *Community Law Clinics in the Neoliberal City: Assessing CUNY's Tenant Law and Organizing Project*, 20 CUNY L. REV. 351, 352-55 (2017) (describing collaborations with organizers on eviction cases in New York City).

III. Revisiting the Scholarly Stance

In our commitment to working alongside grassroots social movements with particular visions for political, economic, and social transformation, movement law may open up questions about what it means to be a legal "scholar" at all, in contrast to other possible identities: activist, movement lawyer, public interest lawyer, public intellectual. But legal scholarship has various traditions of normativity: approaches to scholarship that seek not just to describe the law, legal institutions, and how they play out in the world, but also to critique outcomes and to proscribe how law or legal institutions *should* behave.[207] We agree with Robin West, who, in defending what she terms "impassioned normativity," has argued that legal scholars should "embrac[e] the passionate root of justice, of our understanding of it, and hence of our normative scholarship."[208] Through movement law, we wish to expand modes of generating normative scholarship in particular ways: alongside grassroots social movements committed to racial, economic, and social justice.[209]

In this Part, we address questions and potential criticisms of movement law in relation to traditional notions of what it means to be a legal scholar, recognizing that critical scholars who have come before us have also engaged with many of these questions.[210] Like all methodologies, ours comes with risks: of losing objectivity, lacking rigor, or depending so much on current social configurations that the lessons soon evaporate. We recognize these risks, but we defend the methodology as necessary if legal scholars are to work toward

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207. Normative legal scholarship is itself a contested terrain, and we do not jump full-on into that debate here. *See* Pierre Schlag, *Normativity and the Politics of Form*, 139 U. PA. L. REV. 801, 808 (1991) ("The normative orientation is so dominant in legal thought that it is usually not noticed."); Robin West, *The Contested Value of Normative Legal Scholarship*, 66 J. LEGAL EDUC. 6, 8 (2016) (describing various critiques of normative legal scholarship and concluding that "[f]or every critique, both inside and outside the academy, one can find its opposite, also forcefully voiced," and noting that "[l]egal scholarship does not want for critics").

208. West, *supra* note 207, at 16.

209. In 2013, Martha Minow put together a "field guide" to archetypical forms of legal scholarship. Although her typology is not meant to be exhaustive, it does present a series of eight prominent ways that legal scholars can and do approach their work, including "doctrinal restatement[s]," "recasting project[s]," "policy analysis," empirical analyses (either that test a theory or that explain and assess legal institutions), sociological and historical approaches, and critical projects. Martha Minow, *Archetypal Legal Scholarship: A Field Guide*, 63 J. LEGAL EDUC. 65, 65-69 (2013) (capitalization altered). And as she notes, these approaches can be combined. *Id.* at 69.

210. *See supra* Part I.A; *see also* Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443, 443, 459-60, 471 (1996) (examining the relationship between activism and lawyering from the position of a clinical law professor).

undoing the fundamentally undemocratic nature of our political, economic, and social order—and our laws.

A. Objectivity

Scholarly objectivity is a challenge often put to scholars who study legal, political, or social change, or racial and gender justice. On the one hand, as scholars we all aim for truth rather than opinion.[211] On the other hand, objectivity is perpetually out of our grasp. Sociologist Pierre Bourdieu famously challenged the notion of scholarly objectivity. Bourdieu instead urged constant self-reflexivity with regard to our social positions and how those positions influence and reflect our own approaches to what we study.[212] With this we agree: While objectivity is often merely a cover for other concerns, movement law scholars must, like all legal scholars, remain self-reflexive in our work.[213]

Scholarship with normative commitments to social movements is biased. But this aspect of the methodology does not make it stand out. All legal scholarship is biased: Inevitably our views of the law are shaped by our underlying moral understandings and commitments, by our experiences and social location. The most revered legal thinkers—those often viewed as objective and unbiased—generated their ideas from their own life experiences in particular institutional contexts,[214] including through funding by and

211. *See* Catharine A. MacKinnon, Essay, *Engaged Scholarship as Method and Vocation*, 22 YALE J.L. & FEMINISM 193, 193-94 (2010) ("Scholarship . . . is ideally imagined to be, in a word, disengaged. Its disengagement is believed to conduce to objectivity, meaning beginning from no preconceived position, taking no sides, pulled by no consequence or advocacy necessity, making no judgments of value.").

212. *See* Pierre Bourdieu, *The Scholastic Point of View*, 5 CULTURAL ANTHROPOLOGY 380, 381-88 (1990) (explaining how factors like power, position, and prestige interact with forces and stakes unique to the academic community to influence the outcome of academic scholarship); Pierre Bourdieu & Loïc J.D. Wacquant, *The Purpose of Reflexive Sociology (The Chicago Workshop)*, *in* AN INVITATION TO REFLEXIVE SOCIOLOGY 61, 73-99 (1992); *see also* PIERRE BOURDIEU, HOMO ACADEMICUS, at xi (Peter Collier trans., Polity Press 1988) (1984) (noting that sociologists who wish to "study [their] own world" must "exoticize the domestic").

213. For a discussion of Pierre Bourdieu's idea of self-reflexivity in sociology as applied to the theory–practice divide in lawyering and legal academia, see Nisha Agarwal & Jocelyn Simonson, *Thinking Like a Public Interest Lawyer: Theory, Practice, and Pedagogy*, 34 N.Y.U. REV. L. & SOC. CHANGE 455, 464-67 (2010).

214. *See* Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 561-66 (1984) (identifying a scholarly tradition of racial exclusion in scholarship on civil rights); J. Skelly Wright, *Professor Bickel, the Scholarly Tradition, and the Supreme Court*, 84 HARV. L. REV. 769, 769-72 (1971) (defining a tradition of scholarly hostility to the Warren Court's judicial responses to injustice).

collaborations with groups with explicit political commitments.[215] This mantle of objectivity has its own profound status quo–enhancing implications.[216] Indeed, for well over a century, legal scholars have unearthed ways in which our primary commitments to legal institutions and other elites perpetuate social and political hierarchies.[217] These observations have most often come from critical legal scholars, who have embraced bias and subjectivity as inevitable.[218]

We should be as cognizant of our own biases as ever, situated as we are at the dawn of political ferment and change. Our challenge is to approach our scholarship openly: We *are* committed to certain visions of liberation, solidarity, and equality. And we aim to avoid "scholarmush": a combination of descriptive and normative claims that fails to explicitly name its political or moral commitments.[219] We are not claiming that we have always been

215. *See, e.g.*, Robert Van Horn, *Corporations and the Rise of Chicago Law and Economics*, 47 ECON. & SOC'Y 477, 477-78, 481-87 (2018) (tracing the mutually beneficial relationship between large corporations and law and economics scholars at the University of Chicago in the mid-twentieth century).

216. *See* Britton-Purdy et al., *supra* note 18, at 1806 (arguing that law and economics focused legal scholarship in the twentieth century "lost the ability to see certain commitments in our law . . . as either reflecting or calling forth certain kinds of political values, or as taking a side in disputes that were inevitably struggles for power" and arguing that "[t]hat move . . . expressed a particular view of power and legitimacy, one that viewed market ordering as tending to diffuse and neutralize power and as earning legitimacy by producing both a wealthy society and an appropriately constrained state").

217. *See* Katerina Linos & Melissa Carlson, *Qualitative Methods for Law Review Writing*, 84 U. CHI. L. REV. 213, 213 (2017) ("For over a century, American legal scholars have participated in the realist project, understanding law not as an autonomous, independent system of rules, akin to geometry, but as the product of heated political, economic, and societal conflicts.").

218. *See, e.g.*, Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, 79 IOWA L. REV. 803, 830 (1994) ("The neutral principles or process that critics seek to enforce against feminists and scholars of color is based on the existence of a scholarly community whose intellectual values are synonymous (majoritarian) and exclusive of the Feminist Voice and the Voice of Color."); *cf.* Joseph William Singer, *Legal Realism Now*, 76 CALIF. L. REV. 465, 543 (1988) (reviewing LAURA KALMAN, LEGAL REALISM AT YALE: 1927-1960 (1986)) ("Liberal and critical theorists . . . do not disagree about the possibility of generating legitimate moral commitments or normative discourse. We do disagree, in fundamental ways, about how to conceptualize and engage in moral inquiry and conversation.").

219. Adam J. Kolber, *How to Fix Legal Scholarmush*, 95 IND. L.J. 1191, 1193-94 (2020) (coining the term "scholarmush" and arguing that legal "scholars must be more clear, transparent, and rigorous about the extent to which their claims are descriptive as opposed to normative (and what sort of normativity is at issue)"); *cf.* Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 9 (2002) ("Too much legal scholarship ignores the rules of inference and applies instead the 'rules' of persuasion and advocacy. These 'rules' have an important place in legal studies, but not when the goal is to learn about the empirical world.").

successful ourselves in making these distinctions. But we have come to believe that they are critical. In this call for transparency in our social and political orientations, we are inspired by "outsider" scholars, including in CRT, feminist legal theory, LatCrit, and OutCrit, who have demonstrated the value of a scholarly stance that names itself as directly engaged in the lived realities of the world, in inequality, racism, and patriarchy, in the violence of the law.[220] MacKinnon emphasizes this in searing terms that resonate for us: "[T]o attempt to be truly disengaged is to strain to say so little that one's scholarship weighs nothing at all on the scale of the legal quotidian. What an ambition. Imagine not only what is ossified but what is lost because of it."[221]

In contravention of the common sentiment in law that the embrace of politics is the end of analysis, we believe it is a beginning. As a result, we do not evade but rather embrace the politics of what we do as scholars, teachers, and lawyers. We believe the politics of law is a central question that scholars should take head on. Embracing the politics of law reorients—arguably reveals—the terrain of analysis, the subjects, objects, and processes of research and solidarity. It allows us to better understand inequality and explore new pathways for change in solidarity and in conversation with others outside the academy.

Much like movement lawyers, scholars of movement law must be self-conscious about how they choose coalitions and campaigns to support.[222] This process must be grounded by reflection tied to movements and larger political commitments. For us, this requires attention to the layers of subordination that structure material realities, and a focus on movements that hope to transform both those layers and those realities.[223]

220. *See* WILLIAMS, *supra* note 74, at 3-14; Daria Roithmayr, *Guerrillas in Our Midst: The Assault on Radicals in American Law*, 96 MICH. L. REV. 1658, 1663 (1998) (reviewing DANIEL A. FARBER & SUZANNA SHERRY, BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW (1997)); Matsuda, *supra* note 34, at 2323-24 (defining the term "outsider jurisprudence"); Kim Lane Scheppele, Foreword, *Telling Stories*, 87 MICH. L. REV. 2073, 2074-75 (1989) (describing the methodology of focusing on narrative in legal scholarship as one that brings out the perspectives of outsiders excluded from our reigning understandings of law and legal theory); Valdes, *supra* note 34, at 377-78 n.4 ("These genres of outsider jurisprudence have in common an outsider, and often times critical, perspective vis-à-vis law and society.").

221. MacKinnon, *supra* note 211, at 201.

222. *Cf.* Ashar, *supra* note 100, at 1490 (placing "the actions of activists and their lawyers in the fight for immigrant rights within the socio-legal framework of law and resistance").

223. *See supra* note 14 and accompanying text (describing our commitment to left social movements). The methodology of movement law could potentially be taken up by someone in solidarity with a right-leaning social movement. And yet, because movement law focuses on broadscale transformative possibilities, that is both less likely to happen and less likely to have a transformative impact. *See* Farbman, *supra* note 14, at 1937-39 (making similar arguments with respect to his theory of resistance

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How one chooses social movements to study is difficult, in part because the process of study is dynamic. To be engaged with social movement ideations is so often to be moved to shift one's moral understandings of the world. To think and write about those understandings in dialogue with movement actors is in turn to cocreate new theories of change, and potentially to critique existing methods and ideas on the ground. This is praxis.[224]

This praxis requires constant self-reflexivity of the kind Bourdieu described. Because of our position as elites within powerful institutions, we risk reinforcing hierarchies even as we name them and try to dismantle them.[225] But accountability to movements cannot mean an unquestioning support.[226] Scholars interested in movement law should be vigilant about these concerns through ongoing introspective and outward-looking critique.[227]

To engage in movement law is therefore to write in solidarity with movement actors with particular stances and commitments, and to recognize that solidarity requires reflexive analysis.[228] For movement law scholars,

lawyering, for which critical thinking from the left is what "supplies the latent political power to the project of resistance lawyering in the first place").

224. *See, e.g.*, Bernard E. Harcourt, *A Dialectic of Theory and Practice*, 12 CARCERAL NOTEBOOKS 19, 19-23 (2016) (describing how Michel Foucault's politics and theories dialectically influenced each other during the period in which Foucault was involved deeply in the movement effort *Le Groupe d'information sur les prisons* (the Prisons Information Group)). This mandate also evokes organizer Mary Hooks's mandate for Black people, which includes being "willing to be transformed in service of the work." Southerners on New Ground, *The Mandate: A Call and Response from Black Lives Matter Atlanta* (July 14, 2016), https://perma.cc/BPV3-REDA.

225. *See* PIERRE BOURDIEU, PASCALIAN MEDITATIONS 15 (Richard Nice trans., Polity Press 2000) (1997) ("[T]he suspension of economic or social necessity . . . in the absence of special vigilance [by scholars], threatens to confine scholastic thought within the limits of ignored or repressed presuppositions, implied in the withdrawal from the world.").

226. Scholars of social movements have long been critically engaged with the place of the scholar in relation to the social movements we study. *See* Rubin, *supra* note 9, at 43 (describing the "distinctive theme in Continental social movement scholarship [of] the self-conscious concern with the scholar's own role in the social movements that she studies").

227. For a scholarly critique in conversation with movement ideation, see Jamelia N. Morgan, Disability's Fourth Amendment 9, 12 (Sept. 2020) (unpublished manuscript) (on file with the *Stanford Law Review*) (describing "[t]he erasure of disability in movements" against police violence). *See also Disability Solidarity: Completing the "Vision for Black Lives,"* TUMBLR: HARRIET TUBMAN COLLECTIVE (Sept. 7, 2016), https://perma.cc/SQ9F-JP5L (criticizing the M4BL's *Vision for Black Lives* for "not once mention[ing] disability, ableism, audism or the unspeakable violence and Black death found at the intersection of ableism, audism, and anti-Black racism" (emphasis omitted)).

228. Indeed, legal scholars with different political commitments can still use our methodology—for example, someone might generate ideas alongside the Tea Party, or even the Alt-Right. That scholarship might suffer from a particular bias, in that one can imagine scholarship that implicitly or explicitly upholds tenets of white

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critiques come from engagement with particular social movement spaces, rather than declarations from afar and above. Critiques are born of shared commitments rather than a "gotcha." This should include an awareness of one's own positionality, a question we examine in Subpart C below.

B. Rigor

Like all legal scholarship, movement law aims to engage in rigorous analysis of the law and legal institutions. Scholarship must take care to choose its subjects and methods, and engage in those methods with diligence. Analytical rigor in legal scholarship consists of "precise questions, correct frameworks, technical answers, and logical conclusions."[229] One concern with movement law may be that without defined parameters it could veer into something more akin to reporting or opinion writing.[230] In order to maintain rigor, then, scholars engaged in movement law must combine their urgent quest to cogenerate ideas alongside social movements with a deep commitment to the slow, difficult work of producing writing that reflects the nuanced legal and social worlds that we inhabit.

The debate in the early 1990s and beyond over the use of narrative and storytelling in critical legal scholarship is instructive for thinking through the concept of rigor. During that period, CRT, feminist legal studies, and other critical traditions used narrative, including first-person narrative, as a device to denaturalize legal and social arrangements that conventional forms of scholarship did not question.[231] This was powerful work that questioned the fundamentals of scholarship and lawmaking. Critical scholars endured

supremacy or patriarchy. But such scholarship cannot be rejected simply on the grounds that it is political or aligned with social movements.

229. Reginald Leamon Robinson, *Race, Myth and Narrative in the Social Construction of the Black Self*, 40 HOW. L.J. 1, 15 n.54 (1996).

230. For an articulation of the goals of legal scholarship, see Orin S. Kerr, *Blogs and the Legal Academy*, 84 WASH. U. L. REV. 1127, 1128 (2006) (stating that the goals include "shed[ding] light in an important and lasting way on the function, purposes, meaning, and impact of the legal system and the role of law in society").

231. *See, e.g.*, Scheppele, *supra* note 220, at 2074-75; Kathryn Abrams, *Hearing the Call of Stories*, 79 CALIF. L. REV. 971, 982 (1991) (examining "feminist narrative scholarship as a distinctive form of legal argument"); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2413 (1989) ("Stories, parables, chronicles, and narratives are powerful means for destroying mindset—the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place."); *see also* Derrick Bell, *The Final Report: Harvard's Affirmative Action Allegory*, 87 MICH. L. REV. 2382, 2409-10 (1989) (telling a hypothetical story about the effect of the *Michigan Law Review*'s storytelling issue as his contribution to the *Michigan Law Review*'s storytelling issue).

accusations that their methods lacked rigor,[232] and defended against those accusations with renewed methodological commitments.[233] Patricia Williams, for example, described student editors' requests for her to omit reference to her own race in her scholarship—in service to "principles of neutrality."[234] As Daria Roithmayr explains, to defend narrative in legal scholarship is to make "the radical argument that the choice of which stories are 'accurate,' 'valid' or 'good scholarship' is a political choice, . . . [that] requires the suppression or marginalization of alternative 'counterstories.'"[235]

Movement law often centers narrative in part because storytelling is central to what social movements do. Just as critical scholars deployed and defended storytelling, so too do we seek to elevate movement-based narratives

232. *See, e.g.*, Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1801-08 (1989) (arguing that critical race theorists are wrong to claim a uniquely valuable perspective for scholars of color—to claim "racial status as an intellectual credential," in Kennedy's words); Richard A. Posner, *The Skin Trade*, NEW REPUBLIC, Oct. 13, 1997, at 40, 40-41 (reviewing FARBER & SHERRY, *supra* note 220) (critiquing the "identity politics" of the "postmodern left" in legal academia); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 807, 831, 852-53 (1993) (critiquing the "validity" of the forms of narrative storytelling found in feminist legal theory and CRT).

233. For a summary of these critiques, see Kimberlé Williams Crenshaw, *The First Decade: Critical Reflections, or "A Foot in the Closing Door,"* 49 UCLA L. REV. 1343, 1365-70 (2002) (describing the "media reports that CRT truly is [a] backward, racist, unsophisticated assortment of half-baked scholarship"). *See also* Cheryl I. Harris, *Critical Race Studies: An Introduction*, 49 UCLA L. REV. 1215, 1218 (2002) (describing how "CRT . . . has often been characterized as (or caricatured and reduced to) nothing more than relativism and narratives"); Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255, 256 (1994) (describing "the sudden, and rather vehement, resistance to legal storytelling"); Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 COLO. L. REV. 683, 683-89 (1992) (arguing that outside scholarship and its storytelling are the future of scholarship); Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229, 1239-40 (1995) (discussing mainstream legal discourse's rejection of outsider perspectives as related to the universal human experience); Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 VAND. L. REV. 665, 667-73, 675-76 (1993) (countering Farber and Sherry's assessment of outsider scholarship); Johnson, *supra* note 218, at 807 (defending "the value inherent in Critical Race Theory and Narrative"); Philip C. Kissam, *The Evaluation of Legal Scholarship*, 63 WASH. L. REV. 221, 221-23, 244-51 (1988) (arguing that new pluralism in legal scholarship requires more evolved evaluation methodologies). On the development of measures of rigor, see Susan Bandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. CHI. L. REV. 361, 390 (1996) ("[W]e need some safeguards to ensure that critical reflection supersedes preconscious prejudice, and to ensure equality of treatment."); and Francisco Valdes, *Rebellious Knowledge Production, Academic Activism, & Outsider Democracy: From Principles to Practices in LatCrit Theory, 1995 to 2008*, 8 SEATTLE J. FOR SOC. JUST. 131, 138, 160 n.42 (2009) (proposing "guideposts" for LatCrit and other outsider scholarship, "rooted in our jurisprudential legacy").

234. WILLIAMS, *supra* note 74, at 48.

235. Roithmayr, *supra* note 220, at 1671.

that stem from everyday precarity and collective analysis. These movement narratives work simultaneously to denaturalize the status quo and to help make another world more possible.

Indeed, a meta-insight of much critical legal scholarship is that judgments of rigor are themselves political.[236] To bring this observation to our own method: Those who believe that the rule of law is neutral and objective—separate from our political and social arrangements, from white supremacy, and from gender and class hierarchies—are unlikely to be persuaded by movement law scholarship. And those who believe we live in a robust democracy, who trust our current institutions of governance to represent all people fairly, are unlikely to be sympathetic to grassroots social movements demanding alternative visions. These scholars will likely leave unconvinced that it is possible to judge the rigor of scholarship that situates itself in solidarity with some of those alternative visions.

For those who are already on board with movement law's orientation, in Part II we outlined the requirements for rigorous work within this method.[237] Moreover, we can imagine work that writes about social movement ideas that is *not* rigorous—perhaps it does not engage adequately with context, or with ideas in movement spaces. Perhaps it does not bring up counterarguments or name difficulties with movement ideation. Perhaps there are not adequate citations to the collective genealogy of ideas, especially to writings of people at the center of struggle. To run through the four moves that we laid out in Part II is, we believe, to see a pathway to rigorous scholarship, as well as to see possible offramps to less rigorous forms of scholarly engagement with social movement visions.

C. Positionality

The self-reflexivity necessary to movement law requires maintaining awareness of one's own position in relation to the social movements one studies. This awareness of positionality is in part about our professional identities—as law faculty, our professional identities shape our experiences, judgments, and scholarship. But it is also about maintaining an awareness of

236. *See, e.g.*, Bandes, *supra* note 233, at 393 (describing "the emptiness of the concepts of empathy and narrative when they are not constrained by extrinsic normative, political, or moral principles"); Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 DUKE L.J. 705, 733 ("[A particular piece of scholarship] can be judged only by reference to a particular research tradition or scholarly paradigm, . . . [y]et conclusions at the level of what is valuable or interesting are very often dispositive in deciding which of two articles is better.").

237. *See supra* Part II; *cf.* Edward L. Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 CALIF. L. REV. 889, 889-91 (1992) (describing the need for methodology-specific criteria for evaluating legal scholarship).

our social locations and how they shape our worldviews in more intersectional ways, including as to our race, class, gender, sexuality, disability, and national origin. One can be situated as a clinical or doctrinal teacher, or a budding scholar who has yet to enter a classroom on the other side of the podium. The key is to maintain an awareness of that position and its relationship to one's scholarship. In movement law, this can mean walking a tightrope between engaging in solidarity with movement actors and maintaining the distance required for nuanced scholarship. This self-reflexivity requires attention to the dangers of co-opting or deradicalizing movement demands.

A constant awareness of one's own positionality is necessary because scholars co-opt social movements in intended and unintended ways alike. There is always the risk that our own position as elites will distort social movement ideas toward legitimation of injustice.[238] As Aziza Ahmed reminds us in the context of reproductive-justice struggles, social movements have splintered and submovements have formed when faced with elite-driven efforts at law reform.[239] Often "the pull towards mainstream issues and constitutional doctrine prevails."[240] This does not mean that as elites we should abandon attempts to coproduce dynamic ideation. Instead, we should engage social movements as collaborators, not seers.[241] When there is splintering, we need to make choices with the information and relationships we hold in that moment, without defaulting to frameworks of relegitimation.

We should be mindful and engaged about how our professional and other identities, including race, gender, class, sexuality, and disability, may impact how one shows up in movement spaces, and how those identities shape what it means to engage in solidarity.[242] Questions like how much space to take up, or

238. *Cf.* Lawrence, *supra* note 13, at 387 ("When people's movements successfully challenge and disrupt racist structures and institutions, and contest the narratives of racial subordination, the plunderers will respond with new law.").

239. *See* Aziza Ahmed, *Social Movements in the Struggle for Redistribution,* LAW & POL. ECON. PROJECT: LPE BLOG (Apr. 24, 2019), https://perma.cc/WZ8S-N9P3. In the reproductive-justice context, the result was that "issues like HIV that continue to disproportionately impact largely poor, Black, and Latina women are left off of the mainstream reproductive rights agenda." *Id.*

240. *Id.*

241. *See* Sparer, *supra* note 41, at 573-74 ("The radical law teacher's responsibility is not simply to expose doctrinal incoherencies and build historical accounts. It is to point the way to a different kind of practice, one which utilizes that historical account. . . . It is a practice located 'out there,' in the world outside the law school, where injustice, legal procedures and programs, incipient protest, and social movement constantly intermingle."); *see also* Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law,* 11 N.Y.U. REV. L. & SOC. CHANGE 369, 377-78 (1983) (stating that radical lawyers can "build the power of popular movements").

242. Intersectionality offers an intellectual framework by which social movements integrate their membership and generate power. *See* Sumi Cho, Kimberlé Williams

footnote continued on next page

whether one's role is in the background or foreground, are central. Our identities matter because they are formed socially and through relation with systems of power and wealth that endow some with the presumptions of intelligence, while marginalizing and diminishing others.[243] Stepping forward to make contributions in movement spaces can be risky, but so too can hanging back and only observing and writing. This is the case both when we are engaged in collaborations across identities, as well as when we may be working in the communities from which we ourselves have come.[244] It is our responsibility to resist habits of intellectual extraction and exploitation.[245]

Collective struggle is a necessary part of building a more just and free future, in part because elite rule is a central problem for democracy. When we do not engage in these collective projects, we have no hope of redistributing power or resources, we hoard them for ourselves, we fight for the status quo, sometimes unwittingly. When we do engage collectively and accountably, there are challenges and limits, undoubtedly, to our engagement as elites. But there is greater potential when we take the contradictions head on, when we pay attention to the material conditions of people and the world, and when we work in solidarity with people outside of the academy.

IV. Legal Scholarship and Radical Possibility

Even as the long, slow work of organizing continues, this past decade's surge of movement activity and grassroots contestation may soon begin to ebb. We can be assured that defenses of the current order—on the white supremacist right, in the diversity-and-inclusion center, among cultural conservatives and business elites—will remain vigorous. We see this dynamic already in the aftermath of the killing of George Floyd in Minneapolis and Breonna Taylor in Louisville. As street protesters pull back from the violent

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Crenshaw & Leslie McCall, *Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis*, 38 SIGNS 785, 801 (2013) ("One set of questions has to do with how identities, awareness, and transformation are fostered within organizations that attend to a diverse array of issues and power differentials among members."); ERIN MAYO-ADAM, QUEER ALLIANCES: HOW POWER SHAPES POLITICAL MOVEMENT FORMATION 1-22 (2020) (examining local intersectional alliances within the immigrant rights, queer and trans, and labor rights movements).

243. *See* White, *To Learn and Teach*, *supra* note 70, at 752-54; Grinthal, *supra* note 10, at 33-44.

244. *Cf.* Julie D. Lawton, *Am I My Client? Revisited: The Role of Race in Intra-race Legal Representation*, 22 MICH. J. RACE & L. 13, 42-50 (2016) (describing the challenges of same-race legal representation).

245. *See* Cruz, *supra* note 106, at 560-63 (discussing scholarly appropriation and the call for nonexploitation).

police reaction to demonstrations, police unions are reasserting their power[246] and politicians are retreating from early pledges to defund the police.[247] As scholars invested in transforming our political, economic, and social order, what are we to do?[248]

One possible contribution from legal scholars is movement law scholarship. We agree with Matsuda's admonition that "since legal scholars will never be the center of any successful movement for social change, if we believe that change is necessary, we must build coalitions with others."[249] However, our lack of centrality does not permit us to abdicate space. It is incumbent on legal scholars to cogenerate ideas with grassroots struggle in an era when so many are surfacing the democratic deficit at the heart of our system. And when legal scholarship has for so long obscured that deficit.

Movement law facilitates cogeneration of ideas necessary for large-scale change. Legal scholars are assimilated into an intellectual universe that assumes its own primacy in debates about the construction and governance of the social. Movement law disrupts our uncritical incorporation into that universe. All three of us—and the scholars we discuss throughout this Article—have found direction and meaning from our engagement with social movement organizations, broadly defined.[250] Our collaborations have allowed us to see aspects of our political, economic, and social order that are hidden in legal discourse. By immersing ourselves in organizing spaces, we have engaged in solidarity with people who are often ignored or distorted in legal discourse. We have sought to integrate movement ideas, strategies, and horizons in our academic work on law and lawyering. We have named movement thinkers and grassroots leaders who have nurtured new ways of knowing and doing. We, in turn, have made modest contributions to those movements in the course of our work with them. But this is what grassroots movements are about—many contributing to the collective, in various ways.

Movement activity has stimulated tectonic rumblings in certain fields of law. Organizers and allied scholars are questioning the liberal nationalist underpinnings of immigration law and the ostensible "nation of immigrants"

246. *See* Sam Adler-Bell, *How Police Unions Bully Politicians*, NEW REPUBLIC (Oct. 20, 2020), https://perma.cc/KEE4-HTAB (noting multiple examples of police intimidation of elected officials).

247. *See, e.g.*, Astead W. Herndon, *How a Pledge to Dismantle the Minneapolis Police Collapsed*, N.Y. TIMES (updated Jan. 2, 2021), https://perma.cc/ZFW3-AAY6 (discussing the retreat of Minneapolis City Council members from their pledge to defund police).

248. *Cf.* HARCOURT, CRITIQUE & PRAXIS, *supra* note 83, at 466-503 (asking "What more am I to do?" and describing how injustice should perhaps be one's primary motivator when engaging with and being on the side of social change (capitalization altered)).

249. Matsuda, *supra* note 52, at 349.

250. *See supra* note 20 and accompanying text.

narrative which serves as a cover for colonialism and settlement as well as a system of mass detention and deportation.[251] In criminal law, the M4BL and abolitionist organizing have put police violence and impunity, and the failures of reform, at the center of academic discourse.[252] Still, institutions and individuals—including NGOs, foundations, and universities—use the material force of the current order to suppress and co-opt these disruptive efforts.[253] Academic institutions increasingly rely on soft funding to fund centers and institutes that issue reports and advise state bodies; these initiatives tend to entrench the status quo and the experts that lead them.[254] They often obscure the protest, rebellion, and organizing that made possible the shifts in ideation with which they engage and respond.

So how might movement law ripple across other fields of law? How might we challenge the restricted scope of center-right academic debate in most fields of law? In short, the answer lies in ongoing organizing. To grow in strength and numbers, social movements need ongoing and diverse forms of support and participation.

When we write to identify and support the horizons of progressive and left movements, we contribute to seeding policy discourse with radical aims and means.[255] Movements can be co-opted, contained, and channeled when they attempt to translate long-term organizing and mobilizing into policy programs. Elected officials and bureaucracies appear to respond to

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251. *See, e.g.*, Angélica Cházaro, *Challenging the "Criminal Alien" Paradigm*, 63 UCLA L. REV. 594, 659-61 (2016) (arguing for immigration law scholars to place the immigration legal system within the larger, highly racialized context of U.S. criminal enforcement); Park, *supra* note 16, 1932-37 (noting that immigrant deportation has facilitated settler colonialism and racialized control of labor).

252. *See, e.g.*, Roberts, *supra* note 16 (centering abolitionist organizing in the Foreword to the annual Supreme Court edition of the *Harvard Law Review*); *Developments in the Law—Prison Abolition: Introduction*, 132 HARV. L. REV. 1568 (2019) (introducing a series of essays on prison abolition).

253. *See supra* note 117 and accompanying text; STEFANO HARNEY & FRED MOTEN, THE UNDERCOMMONS: FUGITIVE PLANNING & BLACK STUDY 22-43 (2013); *see also id.* at 41 (discussing the co-optation of critical academics in state carceral projects and noting that "[w]hatever else they do, critical intellectuals who have found space in the university are always already performing the denial of the new society when they deny the undercommons, when they find that space on the surface of the university, and when they join the conquest denial by improving that space").

254. *See, e.g.*, Michelle Chen, *Beware of Big Philanthropy's New Enthusiasm for Criminal Justice Reform*, NATION (Mar. 16, 2018), https://perma.cc/R8GX-C4TH (to locate, click "View the live page") (describing the push toward privatized "community corrections" that extend systems of surveillance without democratic accountability and the role of Charles Koch's philanthropic network in that push).

255. *See* Robert Hockett, Comment, *Institutional Fixes Versus Fixed Institutions*, 39 CORNELL INT'L L.J. 537, 538-42 (2006) (describing the dialectical relationship between movements and institutions).

mobilizations while altering as little as possible. They say that we cannot do what is being demanded by the movement because of conventional interpretations of law and politics. This furthers a form of political austerity that devastates poor and working-class people by foreclosing real change. By engaging in radical and collective ideation, movement law helps our organizational collaborators protect their most far-reaching aspirations. Rather than scholarship being "pull[ed by] the policy audience,"[256] movement law has the capacity to resist compromise and prevent the dilution of movement programs of structural social change. Movement law can help to sustain policy shifts and make them more politically durable.[257]

When we write alongside movements, we incrementally transform the discourse in which we participate. The lenses provided by social movements have the capacity to change what we study and how we study it. When movement law makes the academy permeable to movement influence, we alter academic discourse and support students seeking to work with movements.[258] It is beyond the bounds of this Article, focused squarely on the production of legal scholarship, to explore the role of social movements in the transformation of legal pedagogy.[259] However, it is important to note that lawyers are trained to integrate bodies of knowledge that shift over time. When movement law alters those bodies of knowledge to incorporate radical grassroots ideation and experimentation, we change how lawyers are trained, how they practice, and with whom. Movements enable lawyers to practice with a new, critical understanding of the plasticity and contestation of legal frameworks in their fields of specialization. Movement law enables law teachers to train cadres of lawyers prepared to support organizers and communities.

Legal scholars and lawyers are not the protagonists in movement struggles for progressive social change.[260] But law has constrained change and facilitated violence against working people, poor people, people of color, migrants, and youth, amongst many others. Legal scholars and practitioners have a responsibility to abate the violence of law and, in the most optimal cases, draw on movement struggle to transform the construction and governance of our

256. Austin Sarat & Susan Silbey, *The Pull of the Policy Audience*, 10 LAW & POL'Y 97, 98 (1988).

257. *See* Rahman & Simonson, *supra* note 135, at 727-32 (discussing methods of entrenching social change through changes to institutional and policymaking arrangements).

258. *See supra* notes 85, 101, 204-06 and accompanying text.

259. For prior works where we have attempted to do this, separately and together, see generally Akbar, *supra* note 101; GUERRILLA GUIDES TO L. TEACHING, *supra* note 203; Ashar, *Law Clinics*, *supra* note 204; Ashar, *Fieldwork and the Political*, *supra* note 204; and Ashar, *Deep Critique*, *supra* note 204.

260. *See* Jennifer Gordon, Concluding Essay, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CALIF. L. REV. 2133, 2133-36, 2140 (2007).

polities. Movement law offers a means by which we may uphold our responsibility and make good use of our relative privilege—in service of transformation and redistribution.

Conclusion

By the time that Minneapolis police officer Derek Chauvin killed George Floyd in May 2020 and the country erupted into a national uprising against police violence amidst an ongoing pandemic, sustained social movement contestation had made the ground ripe for demands that took aim at the very structure of our government: defund the police and defend Black lives.[261] The radicality of the demand took many in law and policy circles by surprise. But for scholars who study social movement ideation, campaigns, and prefigurative politics, the surprise came in only how quickly the idea took hold within the massive uprisings across the country. Because we were already engaged in movement law, we were familiar with abolitionist frameworks to defund and dismantle the police, and to build communities of care and systems of provision. We knew the decades of social movement labor behind it: organizing, debating, political education. We were ready to be a part of this change, to support it, to engage in loving critique that strengthens rather than undermines because it comes from a place of solidarity.

This is the promise and the urgency of movement law: As legal scholars, to situate ourselves in solidarity with social movements is to be a part of long-term, radical, collective rethinking of social, political, and legal arrangements. And it is also to be ready when the big changes happen, in swells of social movement energy and uprisings whose timing we cannot always predict. As legal scholars, we can be a part of collectively transforming these swells of power building into durable, structural change. But we can only do so from a stance of solidarity. The choice is ours.

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261. *See* Akbar, *supra* note 27.