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MOVEMENT LAW

*Amna Akbar, * Sameer Asbar,** & Jocelyn Simonson****

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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 of study that unpacks the relationship between lawyers, legal process, and social change—movement law is a methodology for scholars across substantive areas of expertise to draw on and work alongside social movements. We identify seeds for this method in the work of a growing number of scholars that are organically developing methods for movement law. We make the case that it is essential in this moment of crisis to cogenerate ideas alongside grassroots organizing that aims to transform our political, economic, social landscape.

In articulating movement law as a methodology for undertaking and shifting the scholarly enterprise, we identify four methodological moves. 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 strategies, tactics, and experiments—including but not limited to law reform campaigns—movement law scholars engage 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

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social movements. Adopting the episteme of social movement horizons denaturalizes the status quo and allows more radical possibilities to emerge—beyond the status quo, and toward political, economic, social transformation. 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

Following the 2020 uprisings responding to the Minneapolis Police Department’s killing of George Floyd, it has never been more clear how ideas birthed in and by social movements are fundamental forces in law and politics in the United States.¹ On the left²—our core field of focus—in the last decade, Occupy coined “the

¹ In this article, we define social movements as social scientists do: “a collective effort to change the social structure that uses extrainstitutional 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 AMER. SOC. REV. 779, 780 n.3 (1997) (citations omitted).

² This is not to say that social movements are only active or successful on the left. On the right, the Tea Party and more recent right-wing formations have revived nativist politics. *See generally* DANIEL MARTINEZ HOSANG & JOSEPH E. LOWNDES, PRODUCERS, PARASITES, PATRIOTS: RACE AND THE NEW RIGHT-WING POLITICS OF PRECARIETY 3-4 (2020); Ilya Somin, *The Tea Party Movement and Popular Constitutionalism*, 105 NW. U.L. REV. COLLOQUY 300,

99%,” mobilized people disenchanted with growing economic inequality and corporate power, and laid a foundation for the deepening of anti-capitalist critique and democratic socialist politics.³ The Ferguson and Baltimore rebellions, combined with organizing by the Movement for Black Lives and a growing constellation of abolitionist organizations, have made anti-Blackness, white supremacy, and police violence core issues on the U.S. left.⁴ Young people are organizing for a “Green New Deal,” an ambitious 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 anti-colonialist and land politics.⁶ Through powerful strikes and direct action, labor militancy by nurses, teachers, and “rideshare” drivers has reawakened the centrality of worker power to social movements and transformation.⁷ This renewed social movement activity marks a profound shift after

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*, THE ATLANTIC (June 10, 2015), <https://www.theatlantic.com/politics/archive/2015/06/the-triumph-of-occupy-wall-street/395408/> (describing “how the debate over inequality sparked by Occupy has radically remade the Democratic Party.”).

⁴ The Movement for Black Lives (M4BL) is a coalition of over 50 organizations representing thousands of Black people that came together to author *A Vision for Black Lives*. THE MOVEMENT FOR BLACK LIVES, A VISION FOR BLACK LIVES: POLICY DEMANDS FOR BLACK POWER, FREEDOM & JUSTICE (2016), <https://neweconomy.net/resources/vision-black-lives-policy-demands-black-power-freedom-and-justice>; Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 407-10, 412-13, 415-16 (2018) [hereinafter Akbar, *Toward a Radical Imagination*] (describing the M4BL, its vision, and its impact). On the vision for transformative reforms emerging from the Movement for Black Lives, see Marbre Stahly-Butts & Amna A. Akbar, *Transformative Reforms, Abolitionist Demands*, Stanford Civil Rights Civil Liberties Law Journal (forthcoming 2020-2021).

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 generally KATE ARONOFF, ALYSSA BATTISTONI, DANIEL ALDANA COHEN, & THEA RIOFRANCOS, A PLANET TO WIN: WHY WE NEED A GREEN NEW DEAL 3-7 (2019); RHIANA GUNN-WRIGHT & ROBERT HOCKETT, THE GREEN NEW DEAL (2019), https://s3.us-east-2.amazonaws.com/ncsite/new_conesnsus_gnd_14_pager.pdf; Emily Witt, *The Optimistic Activists for a Green New Deal: Inside the Youth-led Singing Sunrise Movement*, THE NEW YORKER (Dec. 23, 2018), <https://www.newyorker.com/news/news-desk/the-optimistic-activists-for-a-green-new-deal-inside-the-youth-led-singing-sunrise-movement>; H.R. Res. 109, 116th Congress (1st Sess. 2019).

⁶ See generally THE RED NATION, PREAMBLE TO THE RED NATION’S PRINCIPLES OF UNITY RATIFIED BY THE FIRST GENERAL ASSEMBLY OF FREEDOM COUNCILS IN ALBUQUERQUE (Aug. 10, 2018), <https://therednation.org/manifesto/principles-of-unity/>.

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*, THE NATION (May 9, 2018), <https://www.thenation.com/article/teachers-are-leading-the-revolt-against-austerity/>; Veena Dubal, *Why the Uber Strike Was a Triumph*, SLATE (May 10, 2019, 1:33 PM), <https://slate.com/technology/2019/05/uber-strike-victory-drivers-network.html>.

decades of relative quiet. Through a series of interconnected organic and organized interventions, 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 Americans. And they help point the way toward transformation.

In this Article, 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. In particular, we identify and defend a growing methodology in legal scholarship, one that cogenerates legal meaning and frameworks for critique alongside social movements and nascent formations of people organizing together against the status quo and for a more equal, just, and sustainable future for us all. This particular moment of political, economic, and social crisis demands that more of us adopt such an approach—a methodology we call “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.⁸ We are inspired by this work, but we aim to articulate something distinct, a methodology for legal scholars across areas of law.

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, it often begins outside of the law in a traditional sense. Movement law scholars join prefigurative efforts toward justice, freedom, and other ideals that the law claims, yet has failed to achieve. In this way, movement law builds on the work of jurisprudential schools of thought such as critical legal studies (CLS), critical race theory (CRT), LatCrit, feminist legal theory, critical lawyering, and democratic constitutionalism. Scholars in these critical traditions have long complicated conventional accounts of law, what it does and for

⁸ See generally 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 L. & 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. PENN. L. REV. 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 . . . 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 extant literature offers second order explanations for the invocation of social movements in both public interest lawyering and in legal scholarship, more generally. In this article, we seek to explore the implications and possibilities of social movement ideation across a broad range of fields of legal scholarship, perhaps best understood as an understudied first order manifestation of the influence of movements.

whom, and how it can and should change, with an eye toward collective struggle and ideation.⁹ 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.”¹⁰ Movement law centers itself within this history of critical thought and this understanding of the place of legal scholarship in the scheme of legal and social change.

We are interested in social movements for their potential to democratize and transform our politics, and embolden our visions for change. Social movements exist on all sides of the political spectrum. Indeed, scholars across the ideological and political spectrum might use movement law. But for us, because our own solidarity is borne of a shared commitment 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, cishnormativity, and heteropatriarchy; and those that struggle to fundamentally transform state and society. Those that posit wholesale transformation rather than simple reform as their end goal. Those that challenge elite rule and aim to build democracy from the ground up. Those focused on collective rather than individual well-being.¹¹ Collectivity—across race, class, gender, sexuality, disability, and social location—leads to solidarity, and that is what both threatens the status quo and promises to profoundly shift our modes of living into ones that are more sustainable vis-a-vis the planet, and more equitable vis-a-vis each other.

Today’s movements are raising deep questions about the propriety of capitalism and the histories of enslavement and colonialism that continue to define our social compact. The United States has always operated in a democratic deficit, a country beholden to the powerful few and dedicated to property rights tied to conceptions of individualized freedom.¹² In working first to protect the market, the

⁹ See *infra* Part I.

¹⁰ Charles R. Lawrence III, *The Fire This Time: Black Lives Matter, Abolitionist Pedagogy and the Law*, 65 J. LEGAL EDUC. 381, 387 (2015).

¹¹ 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).

¹² See, e.g., 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); AZIZ RANA, *THE TWO FACES OF AMERICAN FREEDOM* 189-93 (2010). There is a growing and dynamic body of work in legal scholarship investigating these histories and their ongoing presence 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, 1796, 1791-1800

state allows elites to hoard capital and exploit labor through and against law, concentrating resources and life chances at the top.¹³ But Occupy, Black Lives Matter, and the Standing Rock Water Protectors have reminded us of the circular rather than linear nature of history, the ongoing centrality of indigenous genocide and anti-Black violence—and the ongoing power of people’s resistance to shaping the country.¹⁴

In calling for movement law, we argue that legal scholars invested in democracy; political, economic, and social justice, including racial and gender justice; large-scale redistribution of resources; and substantive equality should be generating ideas alongside social movements. That is because grassroots 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 In times of crisis like ours, radical visions—where the scale of the vision matches the scale of the problems we face—can capture our imagination and change what we think is possible, both within and outside of the law. Social movements and other forms of collective struggle break the molds of political discourse, project new possible futures, and create new terrains of engagement. The visions of movement actors and organizations point us toward new forms of reconstruction, remaking the world in more fundamentally just ways. Social movements galvanize hope and collective action rather than cynicism and alienation in a way that can guide people to face the historically rooted material crises of our time.

(2019) (arguing for the centrality of federal Indian law to the shaping of U.S. public law more broadly); Dorothy E. Roberts, *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).

¹³ See RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 28 (2007) (“Racism, specifically, is the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.”); DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* 2 (2005) (the primary role of the state is to “set up those military, defence, police, and legal structures” required for the stability of private property, free trade, and markets); David Singh Grewal & Jedidiah Purdy, *Introduction: Law and Neoliberalism*, 77 L. & CONTEMP. PROBS. 1, 6-8 (2014) (neoliberalism’s key precepts include “strong property rights and private contracting rights are the best means to increase overall welfare”).

¹⁴ E.g., 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).

¹⁵ See generally CHARLES M. PAYNE, *I’VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE* 1-4 (2nd ed. 2007) (documenting the power of on-the-ground organizing in Mississippi during the civil rights movement); 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).

Social movements do not simply inspire; they also embody dynamic theories and practices of social and legal change.

Legal scholarship—adjacent to the normative and coercive power of the state—will contribute to shaping the road ahead. Scholars are writing and studying with renewed curiosity the history of enslavement and colonialism; capitalism and white supremacy; race, class, and political economy.¹⁶ Contemporary and historical social movements are an important part of left intellectual traditions and commitments.¹⁷ Building off of this, we argue for scholarly experimentation, ideation, and collaboration that recognizes the extent of the crises that face the nation and the world, and the powerful contributions of social movements to represent those who are often locked out of formal political process. From where we stand, legal scholars should bring social movement ideas, strategies, and tactics into legal scholarship to ground our debates and clarify the stakes. We should bring the grassroots into scholarship in the hopes of challenging systemic exclusion, altering relations of power,

¹⁶ 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 12, at 1879-96 (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 the evolution of Fourth Amendment jurisprudence as a way of facilitating police violence against Black people); Jennifer M. Chacón, *Unsettling History*, 131 HARV. L. REV. 1078, 1078-84 (2018) (reviewing KELLY LYTTLE HERNÁNDEZ, *CITY OF INMATES: CONQUEST, REBELLION, AND THE RISE OF HUMAN CAGING IN LOS ANGELES* (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) (reviewing ELIZABETH GILLESPIE MCRAE, *MOTHERS OF MASSIVE RESISTANCE: WHITE WOMEN AND THE POLITICS OF WHITE SUPREMACY* (2018), 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”).

¹⁷ See, e.g., W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA: AN ESSAY TOWARD A HISTORY OF THE PART WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT DEMOCRACY IN AMERICA, 1860-1880*, 87-93, 109-23, 126-28 (Russell & Russell 1962) (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., Int'l Publishers 1970) (1951); FRANTZ FANON, *BLACK SKIN, WHITE MASKS* vii-ix, 110-11 (Charles Lam Markman trans., Pluto Press 1986) (1952); Ida B. Wells, *Lynch Law in America*, in *WORDS OF FIRE: AN ANTHOLOGY OF AFRICAN-AMERICAN FEMINIST THOUGHT* 70-76 (Beverly Guy-Sheftal ed., 1995).

avoiding cooptation, and collaborating with our students and colleagues seeking to understand how to change in the world.

When we speak of producing scholarship in solidarity and conversation with movements, we do not mean to limit our solidarity to currently existing, full-fledged 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 social movements, social movement organizations, fledgling formations of community members in struggle, local organizing groups, or labor organizations old and new, formal and informal. 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.¹⁸ We use the term "movement" because of the collective strength and potential for transformative change that it implies, and because we see these visions, experiments, campaigns, tactics, as in fact interrelated and part of a larger movement ecosystem

The scholarly methodology of movement law is related to but distinct from the practice of movement lawyering, an approach to lawyering in solidarity with social movements.¹⁹ Movement lawyering aims to reorient public interest practice away from traditional subject matter siloes and uni-modal advocacy approaches toward the frames and strategies generated by grassroots movements.²⁰ In contrast, with movement law,

¹⁸ Compare Charles Tilly, *From Interactions to Outcomes in Social Movements*, in 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"), with Minkoff, *supra* note 1, at 780 n.3 (defining social movements as simply "a collective effort to change the social structure that uses extra-institutional methods at least some of the time").

¹⁹ For works on law and organizing and movement lawyering, see, e.g., Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 1, 26-33 (forthcoming 2020); 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, *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); Joseph Phelan, *Purvi & Chuck: Community Lawyering*, ORGANIZING UPGRADE (JUNE 1, 2010, 7:20 AM), <http://www.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering>.

²⁰ See Scott L. Cummings, *Movement Lawyering*, 2017 U. ILLINOIS L. REV. 1645, 1689-1716 (2017) ("[M]ovement lawyering is the mobilization of law through deliberately planned and

our focus is on creating space within legal scholarship to think alongside social movements. To be sure, these practices are mutually reinforcing and many movement law scholars engage in movement lawyering, as well. But in this Article, we give sustained attention to scholarly method.

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 our own methodology and sketch out four moves that together form what we see as a distinct and emergent strand of movement law scholarship. The moves are (a) locating resistance; (b) thinking alongside strategies, tactics, and experiments for justice; (c) shifting epistemes; and (d) adopting a solidaristic stance. These four moves may not exist in every piece of movement law scholarship. But the moves build on and deepen each other, 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 carry certain dangers, for example of losing objectivity or lacking rigor. Moreover, there are risks of fetishizing or feeling beholden to particular social movements such that one is no longer able to access scholarly detachment. While these risks are real, we believe we 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 Crisis of Our Times

We are living in a moment of possibility—where the failures of the state to provide for people are plain and where 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 more liberation for more people. In this Part, we identify this as an important moment of opportunity, name earlier currents in legal scholarship working alongside movements, and make a normative case for such work within today's overlapping crises and possibilities.

The global COVID-19 pandemic has underlined the failures of the neoliberal social contract, particularly its emphasis 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, the most

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.” *Id.* at 1690).

powerful country on earth. Tens of millions of Americans are without work—and as a result many lack health care, experience food insecurity, and face eviction.²¹ Nearly 1.5 million people are behind bars, where the virus spreads even more quickly.²² Local, state, and federal governments have failed to respond to a crisis that requires coordination, collaboration, and an orientation toward meeting human need. 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 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: through their placards and their demands, 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

²¹ See Yun Li, *Nearly Half the U.S. Population is Without a Job, Showing How Far the Labor Recovery Has to Go*, CNBC (June 30, 2020, 9:48 AM EDT), <https://www.cnbc.com/2020/06/29/nearly-half-the-us-population-is-without-a-job-showing-how-far-the-labor-recovery-has-to-go.html>.

²² See Emily Widra & Dylan Hayre, *Failing Grades: States’ Responses to COVID-19 in Jails & Prisons*, PRISON POLICY INITIATIVE (June 25, 2020) https://www.prisonpolicy.org/reports/failing_grades.html.

²³ See, e.g., Keeanga-Yamahtta Taylor, *The Black Plague*, NEW YORKER (Apr. 16, 2020), <https://www.newyorker.com/news/our-columnists/the-black-plague>.

²⁴ Arundhati Roy, *The Pandemic is a Portal*, FINANCIAL TIMES (Apr. 3, 2020), <https://www.ft.com/content/10d8f5e8-74eb-11ea-95fe-fcd274e920ca> (“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 E.g., Jia Tolentino, *What Mutual Aid Can Do During a Pandemic*, NEW YORKER (May 11, 2020), <https://www.newyorker.com/magazine/2020/05/18/what-mutual-aid-can-do-during-a-pandemic>.

²⁶ See Intercepted with Jeremy Scahill, *The Rebellion Against Racial Capitalism*, THE INTERCEPT (June 24, 2020, 3:01 AM), <https://theintercept.com/2020/06/24/the-rebellion-against-racial-capitalism/> (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).

communities.²⁷ And 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 amidst a moment then of great suffering and great possibility—what comes next is uncertain.²⁹ A vaccine will likely arrive to quell the spread of COVID-19, but the devastation of the pandemic will stay with us, as will the incredible rise in movement energy and 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 grassroots movements, working class people, and directly impacted communities. We should labor in service of that other world, the one we can only build if we work together. There is some tradition of such scholarship in law, to which we turn next.

A. *Critical Race Theory as Cornerstone*

We are not the first to try to meet 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 Critical Race Theory and social movements.³⁰ This is not a

²⁷ See Amna A. Akbar, *How Defund and Disband Became the Demands*, N.Y. REV. OF BOOKS (June 15, 2020, 7:00 AM), <https://www.nybooks.com/daily/2020/06/15/how-defund-and-disband-became-the-demands/>; Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>.

²⁸ Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, *Black Lives Matter May be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>; Jia Tolentino, *Where Bail Funds Go From Here*, NEW YORKER (June 23, 2020), <https://www.newyorker.com/news/annals-of-activism/where-bail-funds-go-from-here>; Nicholas Kulish, *Bail Funds, Flush with Cash, Learn to ‘Grind Through this Horrible Process’*, N.Y. TIMES (June 25, 2020), <https://www.nytimes.com/2020/06/25/business/bail-funds.html>; Mary Hooks & Jocelyn Simonson, *The Power of Community Bail Funds*, N.Y. TIMES (Aug. 23, 2020), <https://www.nytimes.com/2020/08/23/opinion/bail-funds.html>.

²⁹ “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.’” Stuart Hall, *Gramsci and Us*, VERSO BLOG (Feb. 10, 2017) (discussing ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS (1971)), <https://www.versobooks.com/blogs/2448-stuart-hall-gramsci-and-us> (internal quotations omitted).

³⁰ Almost 20 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)

comprehensive account of the scholarly roots of movement law—naming the sprawling antecedents that go back a century at least would be its own project.³¹ We would include Legal Realism,³² Critical Legal Studies,³³ the various formations of

(“ground[ing] 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 generally* Cummings, *The Puzzle of Social Movements*, *supra* note 8; Cummings, *The Social Movement Turn in Law*, *supra* note 8.

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 Critical Legal Studies 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* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 3-4 (David Kairys ed., 1982).

“outsider jurisprudence”³⁴ (including LatCrit³⁵ and feminist legal theory³⁶), popular and democratic constitutionalism,³⁷ law and society scholarship,³⁸ critical legal history,³⁹

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 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. MIAMI 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. & B.C. THIRD WORLD L. REV. 477 (1998); 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 See generally CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989); MARTHA CHAMALLAS, *INTRODUCTION TO FEMINIST LEGAL THEORY* (1999). Of course queries of race and gender are interrelated, and there are many works exploring and theorizing their intersections in critique and struggle. See, e.g., Richard Delgado, *Foreword to the Second Edition*, of *CRITICAL RACE FEMINISM: A READER*, 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 “social justice feminism” as drawing from feminist legal theory and critical race feminism, but “emerg[ing] 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 J. 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 rather 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. 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); 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 law on the books). See Brian Z. Tamanaha, *Sociological Jurisprudence Past and Present*, 45 L. & 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. SOC. 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. & HUMAN. 343, 344 (1990) (focusing on the welfare poor, 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 L. & 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 and/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. STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL 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). 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, 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

labor scholarship,⁴⁰ and more.⁴¹ Instead, our goal here is to identify themes in past works by a small group of critical scholars 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 value of legal scholarship when it shifts epistemologies through stances of solidarities with the experiences of outsiders, and it paves the way for our argument in Part I(B) that legal scholarship should engage movement visions. That the scholars we highlight center questions of race, racialization, and racial justice is also

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-LDF school desegregation campaign, with mixed success. TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT 175-211* (2011); see also KENNETH W. MACK, *REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER 1-11* (2012) (though explicitly not a work about movements, Mack documents “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 See generally 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); Benjamin I. Sachs, *Employment Law as Labor Law*, 29 CARDOZO L. REV. 2685 (2008).

⁴¹ Our understanding of co-generated legal meaning draws on the work of Robert Cover, as well. Cover set the jurisgenerative potential of interpretive communities against the jurispathic nature of courts. See Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 40 (1982). In addition, Ed Sparer offered an early analysis of the type of work we seek to do in this article: “the 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, “Acting 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.

central to their importance for thinking alongside today's social movements—where questions of race are central.

A product of the Civil Rights Movement and the Black power era,⁴² CRT scholars challenged narratives about Black, brown, and indigenous people to 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 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

⁴² For various tellings 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, 1510-11 (2009); Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. L. REV. 329, 333 (2006); Cheryl I. Harris, *Critical Race Studies: An Introduction*, 49 UCLA L. REV. 1215, 1220-21 (2002); *Introduction*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 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. *Id.* at xiii, xvi-xviii.

⁴³ Charles Lawrence III, Commentary, *Listening for Stories in All the Right Places: Narrative and Racial Formation Theory*, 46 L. & 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.").

⁴⁵ *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 CRT's core focus on "how the law constructs whiteness" specifically and race and racism generally, without further reference to social movements). *But c.f.* Lawrence, *supra* note 10, at 387 (articulating three lessons of CRT, with two focused on movements, *e.g.*: "All 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.")

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 suffused with 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 NAACP-LDF desegregation strategy out of fidelity to African American community groups and their parent-leaders.⁴⁸ The parents took issue with LDF's focus on the ideal of desegregation over the material quality of educational opportunities for Black 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 their 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 the focus of lawyers—as well as middle-class Black people and whites—on the symbolic domain, Bell critiqued one of the most venerated litigation strategies in our history.⁵¹ He disrupted accepted truths and showed how conceptions of justice can be contested from the grassroots.

⁴⁶ Cho & Westley, *supra* note 30, at 1378-80. Feminist legal theorists and Critical Race Theorists faced off with both Critical Legal Theory scholars (often white men) as well as the larger institutional forces of the mainstream legal academy. *E.g.*, Robin West, Commentary, *Deconstructing the CLS-FEM Split*, 2 WIS. WOMEN'S L.J. 85, 85-86 (1986); Crenshaw, *supra* note **Error! Bookmark not defined.**, at 1288-1300.

⁴⁷ *E.g.*, DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* ix-xii (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 about the failures of the litigation strategy to materially improve the "quality of the education available" with the NAACP-LDF's focus on the "separate" prong of "separate but equal").

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.").

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 Matsuda studied campaigns for reparations by Japanese-Americans for internment during World War II, and by Native Hawaiians for the overthrow of Hawaiian rule and expropriation of indigenous land.⁵⁴ 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.⁵⁵ Reparations was a quintessential “critical legalism” from the bottom designed to “achieve and maintain the utopian vision.”⁵⁶ For decades now, Matsuda distilled brilliance born within collective struggle.⁵⁷

In a parallel vein, Kimberlé Crenshaw’s work on intersectionality attends to multiply constituted forms of oppression to deepen understanding of how the law

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 Critical Legal Studies (CLS) movement. *Id.* at 323. A more recent example of work examining the co-constitutive nature of legal repression, organizing, and race is advanced by Ian F. Haney López. RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE 228 (2004) (examining 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 324 (referring to oppressed people as “special voice[s] to which we should listen”). *But cf.* 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 a further nuanced 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 to “simply 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 362, 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.”).

⁵⁵ See *id.* 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 important first step in producing a counter-ideology of antistatist subordination” and identifying “strategies [such] as affirmative action, reparations, and restriction of hate speech.”).

⁵⁶ Matsuda, *supra* note 52, at 362.

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*]; Mari J. Matsuda, *This Is (Not) Who We Are: Korematsu, Constitutional Interpretation, and National Identity*, 128 YALE L.J.F. 657, 683 (2019).

operates and a broader normative vision of what the law can be.⁵⁸ Using intersectionality, legal scholars might “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 exclusive or even primary focus, to this day, she grounds many of her interventions in social movements and organizing—for example, through her launching of the #SayHerName campaign that we discuss in Part II.⁶²

Building off this work, Lani Guinier’s and Gerald Torres’s work demonstrates how new legal and political understandings can and do emerge from collective imagining, especially within organizing and social movements.⁶³ Guinier and Torres focus on how multiracial groups led by people of color critique the legal, social, and political structures around them, and experiment with political work that “enlarge[s] 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, what they term “demosprudence.”⁶⁵ Although theirs is a theory of legal and social change rooted in historical examples and focused on democracy, the lessons for scholars inspired by Guinier and Torres are clear: that scholars must be part of “a commitment

⁵⁸ See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 UNIV. CHI. LEGAL F. 139, 145 [hereinafter Crenshaw, *Demarginalizing*] (describing the expansion of a “normative vision” through intersectional analysis of anti-discrimination 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*] (“[E]xploring 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 (“[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.”).

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.

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 Part II(d), *infra*.

⁶³ LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 11-22 (2002).

⁶⁴ *Id.* at 37.

⁶⁵ See Lani Guinier & Gerald Torres, *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.”).

not only to struggle but also to struggle toward a larger vision.”⁶⁶ They encourage us that “[j]ust outcomes will emerge, we believe, from experiments in democratic process.”⁶⁷

The potential of scholarship that centers social movements and grassroots contestation is clear beyond CRT as well.⁶⁸ Consider some examples. Catharine MacKinnon 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 the experiences of the most marginalized, illuminating how law can both facilitate and repress their power.⁷⁰ Gerald López called

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. SCOTT L. CUMMINGS, AN EQUAL PLACE: LAWYERS IN THE STRUGGLE FOR LOS ANGELES (forthcoming 2020). Martha Mahoney, John Calmore, and Stephanie Wildman provide another key resource on critical lawyering across subject areas: 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, 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 xii (1976); see also Robin L. West, *Law’s Nobility*, 17 YALE J.L. & FEMINISM 385, 389-90 (2005) (laying out Catharine 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 in 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 (1987-88) (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 community and subsequent concerted social action); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38

for lawyers to work collaboratively with community members, to accompany rather than to lead, to learn rather than wield professional privilege, and to define success through collective work rather than litigation wins.⁷¹ LatCrit scholars emphasized the importance of the collective and of solidarity from within legal education.⁷² 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's operations 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.⁷³ Today, we write in a different era. While we make this call for movement law within a

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 defies 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 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.”).

⁷¹ GERALD LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LEGAL 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 AMER. L.J. 1, 1 (2007) (“We should be collaborators: working *within* 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 Angeles*, 23 CLINICAL L. REV. 707, 707-09 (2017); Veryl Pow, *Rebellious Social Movement Lawyering Against Traffic Court Debt*, 64 UCLA L. REV. 1770, 1773 (2017).

⁷² *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 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* Richard Delgado, *Liberal McCarthyism and the Origins of Critical Race Theory*, *supra* note **Error! Bookmark not defined.**, at 1510-11 for a discussion of 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

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.”⁷⁴

B. *Movement Law Today*

We find ourselves now facing distinct crises and possibilities. Our current political moment underscores the misalignment between much contemporary legal scholarship, the decaying state of conventional democratic institutions, and the material reality of people’s lives.⁷⁵ Though there are important exceptions, the legal academy has largely failed to meaningfully engage current social movement ideation. 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.”⁷⁶ This moment calls on us to contest the dominant ideology and institutions that undergird our legal and political configurations.

Philadelphia) or to bureaucratized and deradicalized non-governmental 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. WARD CHURCHILL & JIM VANDER WALL, *THE COINTELPRO PAPERS: DOCUMENTS FROM THE FBI’S SECRET WARS AGAINST DISSENT IN THE UNITED STATES* (2d ed. 2001). The original CRT scholars both harkened back to the struggle for civil rights, particularly in their defense of rights against the Critical Legal Studies 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., PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR* 5-6 (1991) (discussing the contemporary uses of j rights); Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, *supra* note 55, at 1332 (describing immigrant anti-discrimination activism). 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. *Inequality Rediscovered*, 18 THEORETICAL INQUIRIES L. 61, 70 (2017).

⁷⁴ Cornel West, *The Role of Law in Progressive Politics*, 43 VAND. L. REV. 1797, 1799 (1990).

⁷⁵ For a powerful argument about the gutting of our formal democratic institutions, see Klarman, *supra* at note 12.

⁷⁶ Britton-Purdy et al., *supra* note 16, at 1791.

Movement law gives scholars permission to ground their work in movement organizing and ideation as an initial matter, rather than beginning with 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.”⁷⁷ 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, they may write sharp doctrinal pieces to be used in court by movement allies, or they may excavate histories of resistance that help illuminate the present. We ourselves have written scholarship in this vein.⁷⁸ We celebrate this work even as we call for modes of scholarship that more explicitly align with left social movements. Movement law recognizes a role for legal scholarship *alongside* social movements, the power of an open dialectic between grounded understandings of liberatory possibilities and scholarly understandings of legal and political constellations.⁷⁹

We are not the only legal scholars calling for a shift in scholarly approaches in our current crises. Many of the scholars we discuss above continue to write in response to our crises today in alignment with today’s social movements.⁸⁰ The LPE “Manifesto” demands that we dismantle artificial distinctions between law, politics, and economy.⁸¹ Bernard Harcourt argues that what is required is “a renewed embrace

⁷⁷ Email from Aziz Rana to authors (July 24, 2020) (on file with author).

⁷⁸ 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 itself protected speech).

⁷⁹ See Gerald Torres, *Legal Change*, 55 CLEVELAND 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.”).

⁸⁰ See, e.g., Lawrence, *supra* note 10, at 387-88 (describing the lessons of CRT for the Movement for Black Lives); KIMBERLÉ WILLIAMS CRENSHAW & ANDREA J. RITCHIE, AFR. AM. POL’Y F., SAY HER NAME: RESISTING POLICE BRUTALITY OF WOMEN, 2 (2015) http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF_SMN_Brief_Full_singles-min.pdf; Matsuda, *The Next Dada*, *supra* note 57, at 1216-17.

⁸¹ David Singh Grewal, Amy Kapczynski & Jediah Britton-Purdy, *Law and Political Economy: Toward a Manifesto*, L. & POL. ECON. PROJECT: LPE BLOG (Nov. 6, 2017), <https://lpeproject.org/blog/law-and-political-economy-toward-a-manifesto/>.

of praxis” alongside critique.⁸² We feel this urgency along with these and so many others in the legal academy and our broader communities.⁸³

By co-generating ideas with social movements seeking to transform the political, economic, and social status quo, movement law scholars adopt a counter-cultural posture within the academy and profession. Movement law aims to disrupt the processes of social reproduction within law and legal education that naturalize the status quo and foreclose alternatives to elite rule.⁸⁴ By thinking alongside movements that seek to delegitimize the status quo in service of transformation, we reject the status quo orientation of much of the legal scholarly project. Precisely because of law’s entanglement with hierarchal power relations, it is essential that we pay attention to the grassroots.

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: “in 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.”⁸⁵ 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

⁸² Bernard E. Harcourt, *Introduction to 1/13: On Theory and Praxis, and Truth, Politics, and Power* CRITIQUE & PRAXIS 13/13 (Sept. 8, 2018), <http://blogs.law.columbia.edu/praxis1313/bernard-e-harcourt-introduction-to-1-13-on-theory-and-praxis-and-truth-politics-and-power/>. For a full articulation of this form of critique and praxis, see BERNARD HARCOURT, *CRITIQUE AND PRAXIS: A CRITICAL PHILOSOPHY OF ILLUSIONS, VALUES, AND ACTION* (2020). See also Aziz Rana & Jedediah Britton-Purdy, *We Need an Insurgent Mass Movement*, *DISSENT* (2020), <https://www.dissentmagazine.org/article/we-need-an-insurgent-mass-movement> (calling us to look to mass movements as a way to understand our current situation).

⁸³ See, e.g., Christopher Tomlins & John Comaroff, “*Law As . . .*”: *Theory and Practice in Legal History*, 1 UC IRVINE L. REV. 1039, 1044 (2011) (“Law as . . . dwells instead on the conditions of possibility for a critical knowledge of the here-and-now”).

⁸⁴ See Heidi Boghosian, *The Amoralism of Legal Andragogy*, *AGORA*, <https://perma.cc/LVZ2-J2UG> (“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.”); Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEG. ED. 591, 592, 600-02 (1982) (arguing that legal education trains students to reproduce social hierarchy).

⁸⁵ John Whitlow, *Coming of Age at the End of History*, L. & POL. ECON. PROJECT: LPE BLOG (Apr. 23, 2019), <https://lpeblog.org/blog/coming-of-age-at-the-end-of-history/> (“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 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).

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 and agency to legal scholars in the midst of grassroots revolts led by activists and organizers, largely outside of the academy. We do not wish to exaggerate the importance of academics in political struggle. But we do believe that if we are going to generate scholarly work, we should 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 as 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,⁸⁶ or they can help articulate a contrasting “nomos” that cannot be reconciled with our current arrangements, a different understanding of our ethical commitments to each other with which the academy and the law must then contend.⁸⁷ 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 have begun to transform their own political and legal consciousness through participation in grassroots social movement organizations across issue areas.⁸⁸ 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

⁸⁶ 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.”).

⁸⁷ *Id.* at 47-48 (describing how to protest the law is to create an alternate nomos that a judge must confront in their interpretation).

⁸⁸ Indeed, there are other scholars in ours 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”).

the context of mass struggle.⁸⁹ 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.⁹⁰ 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.⁹¹

Our openness to the alchemy of developing political and legal consciousness in struggle deepens our understanding of the stakes, the strategies, and the emerging imaginaries of today's social movements.⁹² Our posture should not be to dismiss and re-legitimate, but to listen and consider, learn, participate, and cogenerate. By standing in solidarity, we contribute to the larger effort to keep the portal and the possibilities open. We participate in building alternatives rather than reifying the status quo. 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.⁹³ In this Part, we theorize what it looks like for legal scholars to work in sustained ways alongside and

⁸⁹ See ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 3-6 (Quintin Hoare & Geoffrey Nowell Smith, eds. & trans., 1971); 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”).

⁹⁰ 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.”).

⁹¹ Barbara Ransby, *The White Left Needs to Embrace Black Leadership*, THE NATION (July 2, 2020), <https://www.thenation.com/article/activism/black-lives-white-left/> (“This is not like the 1960s. White people marched in civil rights demonstrations, formed committees on interracial cooperation, and joined with the Black freedom movement, but the fire this time is hotter.”).

⁹² Cf. BERNARD HARCOURT, CRITIQUE & PRAXIS 17 (2020) (“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.”).

⁹³ Lani Guinier and Gerald Torres’s concept of demospudence 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. *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.”).

in conversation with social movements fighting for transformation. We use examples of scholars engaging in movement law to illustrate the four main moves of our methodology, but we do not mean to give an exhaustive list of people we consider to be movement law scholars.

We surface movement law as a methodology or mode of legal scholarship. By so doing, we hope to integrate and engage more movement ideas and experiments in legal scholarship and our collective understanding of social change, social justice, and what is possible.⁹⁴ Our aim, like that of Critical Race Theorists, is to uncover voices, experiences, and logics otherwise disappeared in legal scholarship because of the strong institutional commitment to traditional sources of authority and the status quo; to center questions of race and colonialism; and to stay grounded in the practices of contestation and survival by social movements and directly impacted people of all kinds. 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 and commitments that came before us.⁹⁵ But its necessity is situated within twin aspects of our current moment: the increasingly clear failures of neoliberal law and politics, and the surge of social movement activity and grassroots organizing intent on transforming our social relations in fundamentally more just and liberatory ways. In a moment where the right and the left are rushing to fill a crisis of legitimacy of the status quo, and the status quo is increasingly failing, law scholars 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, toward grassroots social movements, their ideas, strategies, and tactics. While social movements are not a perfect proxy for the demos at large—nothing is—they provide an important means by which to deepen democracy and expand collective self-governance.

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

⁹⁴ 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 16, at, 1789, 1794-1818 (2020). We seek to unwind that acquiescence and allow for new sources and methods of social production.

⁹⁵ See *supra* Part I.A.

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 tactics. They recognize that social movements are engaging in deep ideation around questions of legal meaning and entitlement, citizenship and democracy.⁹⁶ Social movements bring to the foreground critiques of the status quo in the margins of law and legal scholarship.⁹⁷ Simultaneously, social movements advance radical reimaginations of law, legal institutions, and society more broadly.⁹⁸ In the course of locating resistance, then, scholars expand the terrain of critique and imagination within legal scholarship and legal institutions.⁹⁹ 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, toward a transformative project of remaking ourselves and the world around us.¹⁰⁰

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

⁹⁶ Guinier & Torres, *supra* note 65 and accompanying text.

⁹⁷ Jocelyn Simonson, Essay, *The Place of "the People" in Criminal Procedure*, 119 COLUM. L. REV. 249, 252-55 (2019).

⁹⁸ Akbar, *Toward a Radical Imagination*, *supra* note 4, at 412.

⁹⁹ 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 BERK. 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 N. Cimini & Doug Smith, *An Innovative Approach to Movement Lawyering: The Immigrant Rights Case Study* 35 GEO. IMMIGR. L.J. (forthcoming 2020). 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).

¹⁰⁰ This study 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) [hereinafter Akbar, *Law's Exposure*].

status quo.¹⁰¹ Because of its utility in organizing campaigns, social media surfaces the work of social movements to a greater degree than ever before.¹⁰² 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.¹⁰³ As a result, local and national news, Twitter, Instagram, and Facebook—not to 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 manner.¹⁰⁴

We do not mean to suggest that movement law is limited to observation from above or afar. Indeed, many scholars are already part of social movements or come from communities that are sites of ongoing radical organizing. For those scholars, movement law facilitates a new kind of relationship to those struggles.¹⁰⁵ As we explain through the proceeding moves, movement law scholarship can also draw from engagement with movement sources and ideas through text and observation, to attendance at local organizing meetings and events, to participation in campaigns, to engagement in participatory action research with movement leaders. Social media and

¹⁰¹ E.g., Keeanga-Yamahtta Taylor, *Of Course There Are Protests. The State Is Failing Black People.*, N.Y. TIMES (May 29, 2020), <https://www.nytimes.com/2020/05/29/opinion/george-floyd-minneapolis.html>.

¹⁰² Consider for example Mariame Kaba's Twitter following of almost 150,000. Mariame Kaba (@prisonculture), TWITTER, <https://twitter.com/prisonculture?lang=en>. Or consider the number of social movement campaigns and organizations that have Instagram accounts. See, e.g., #FreeThemaAll4PublicHealth; JusticeLA (@justicelanow), INSTAGRAM, <https://www.instagram.com/justicelanow/>; see also Monica Anderson et al., 2. *An Analysis of #BlackLivesMatter and other Twitter Hashtags Related to Political or Social Issues*, PEW RESEARCH (July 11, 2018), <https://www.pewresearch.org/internet/2018/07/11/an-analysis-of-blacklivesmatter-and-other-twitter-hashtags-related-to-political-or-social-issues>.

¹⁰³ Robin D. G. Kelley, *What Kind of Society Values Property Over Black Lives*, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/2020/06/18/opinion/george-floyd-protests-looting.html>; Kaba, *supra* note 27; Tolentino, *supra* note 25; Tolentino, *supra* note 28; Derecka Purnell, *George Floyd Could Not Breathe. We Must Fight Police Violence Until Our Last Breath*, THE GUARDIAN (May 27, 2020, 2:12 PM EDT), <https://www.theguardian.com/commentisfree/2020/may/27/george-floyd-police-violence-minnesota-racist>.

¹⁰⁴ See generally MARIAME KABA & SHIRA HASSAN, FUMBLING TOWARDS REPAIR: A WORKBOOK FOR COMMUNITY ACCOUNTABILITY FACILITATORS (AK Press 2019); ALEX VITALE, THE END OF POLICING (Verso 2017); Meagan Day, *The Coming Pandemic-Induced Eviction Crisis*, JACOBIN (June 30, 2020), <https://www.jacobinmag.com/2020/06/cares-act-coronavirus-covid-stimulus-expiring-unemployment>; *Defund Police Organizers Forum*, THE DIG (June 20, 2020), <https://www.thedigradio.com/podcast/defund-police-organizers-forum>; *The Great May Day Rent Strike*, COMMUNE (Apr. 28, 2020), <https://communemag.com/the-great-may-day-rent-strike>.

¹⁰⁵ See generally Christine Zuni Cruz, *[On the] Road Back In: Community Lanyering in Indigenous Communities*, 24 AM. INDIAN L. REV. 229 (1999-2000).

conventional media can be an entry point to finding local grassroots campaigns and organizations for deeper engagement.

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, 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, 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;¹⁰⁶ and (2) turn to 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 transformation.¹⁰⁷ These campaigns and experiments are rooted in a struggle for a radically reconstituted society. The strategies demonstrate commitments to an intersectional politics of anti-racism, anti-patriarchy, anti-capitalism, anti-colonialism, anti-imperialism, abolition, redistribution, gender justice, and economic democracy, even socialism.¹⁰⁸ They are

¹⁰⁶ E.g., BYP100, LAW FOR BLACK LIVES, & THE CENTER FOR POPULAR DEMOCRACY, REIMAGINING SAFETY & SECURITY: BUDGET TOOLKIT & RESOURCE GUIDE (last visited Nov. 15, 2020), <https://static1.squarespace.com/static/5500a55ae4b05a69b3350e23/t/597650396b8f5b857dc48fa8/1500926014325/L4BL+-+Freedom+to+Thrive+Update.pdf>; MOVEMENT FOR BLACK LIVES, REPARATIONS NOW TOOLKIT (2020) <https://m4bl.org/wp-content/uploads/2020/05/Reparations-Now-Toolkit-FINAL.pdf>; NATIONAL BAIL OUT, UNTIL FREEDOM COMES: A COMPREHENSIVE BAILOUT TOOLKIT (2017) <https://www.nationalbailout.org/untilfreedomcomes>.

¹⁰⁷ E.g., Juliana Kim, *How the Floyd Protests Turned Into a 24-Hour ‘Occupy City Hall’ in N.Y.*, N.Y. TIMES (June 28, 2020), <https://www.nytimes.com/2020/06/28/nyregion/occupy-city-hall-nyc.html>; Brooklyn Community Bail Fund, <https://brooklynbailfund.org/>; CHI. CMTY. BOND FUND, <https://chicagobond.org/>; COOP. JACKSON, <https://cooperationjackson.org/>; *Mutual Aid Resources*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/mutual-aid/>; *What is Mutual Aid?*, BIG DOOR BRIGADE, <https://bigdoorbrigade.com/what-is-mutual-aid/>; PEOPLE’S BUDGET L.A., <https://peoplesbudgetla.com/>. 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); Sheila R. Foster & Christian Iaione, *The City as a Commons*, 34 YALE L. & POL’Y REV. 281, 282-91 (2016).

¹⁰⁸ E.g., MOVEMENT FOR BLACK LIVES, A VISION FOR BLACK LIVES: POLICY DEMANDS FOR BLACK POWER, FREEDOM, & JUSTICE (2016), <https://neweconomy.net/resources/vision-black-lives-policy-demands-black-power-freedom-and-justice>; MIJENTE, FREE OUR FUTURE: AN IMMIGRATION POLICY PLATFORM FOR BEYOND THE TRUMP ERA (2018), <https://mijente.net/wp-content/uploads/2018/06/Mijente-Immigration-Policy->

rooted in study of past freedom struggles and the intellectual traditions and debates of those struggles.¹⁰⁹

We focus on such transformative movements for a number of reasons. These movements contend with the violence and inequality of the law.¹¹⁰ They represent experiences and histories often erased or flattened by doctrine and scholarship.¹¹¹ They represent people locked out of meaningful representation in the formal channels of statecraft.¹¹² 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 towards those visions.¹¹³ In short, identifying and examining these movements and what they do make 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 same limits of any other form of political action.¹¹⁴ Social movements are not always democratic or accountable to the grassroots.¹¹⁵ Organizations receive funding and support from the elite political and philanthropic strata in which the horizons of

Platform_0628.pdf; RED NATION, THE RED DEAL: INDIGENOUS ACTION TO SAVE OUR EARTH, PART ONE: END THE OCCUPATION (2020), http://therednation.org/wp-content/uploads/2020/04/Red-Deal_Part-I_End-The-Occupation-1.pdf.

¹⁰⁹ E.g., Estes, *supra* note 14, at 169-99.

¹¹⁰ For example, the Malcolm X Grassroots Movement brought attention to the routineness of lethal police and vigilante violence through its hashtag #Every28Hours in 2014. ARLENE EISEN, MALCOLM X GRASSROOTS MOVEMENT, OPERATION GHETTO STORM: 2012 ANNUAL REPORT ON THE EXTRAJUDICIAL KILLINGS OF 313 BLACK PEOPLE BY POLICE, SECURITY GUARDS AND VIGILANTES (2014), http://www.operationghettostorm.org/uploads/1/9/1/1/19110795/new_all_14_11_04.pdf. See also Akbar, *Law's Exposure*, *supra* note 100, at 354-55.

¹¹¹ 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 108, at 9.

¹¹² For example, Black and Pink is an abolitionist organization rooted in working with queer and trans people who are incarcerated. BLACK & PINK, <https://www.blackandpink.org/>.

¹¹³ For example, the Vision for Black Lives includes six major demands, with a whole range of local, state, and federal possibilities for action. MOVEMENT FOR BLACK LIVES, *supra* note 108.

¹¹⁴ For a related argument that it is impossible to operate outside of the law, for example, see Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 940 (2007).

¹¹⁵ 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); 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).

political change are negotiated and limited.¹¹⁶ Factions are often jockeying for position and power in ways that are difficult to assess from the outside.¹¹⁷ Movement law should recognize this dynamism within social movements and between social movement organizations and other actors in civil society. 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 it is imperative to engage. When we ignore social movement visions and organizing, we tacitly give weight to conventional policy approaches and actors, and 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, political relationships of the world they are working to build. As a result, 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.¹¹⁸ 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

¹¹⁶ See Andrea Smith, *Introduction*, in *THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE PRISON INDUSTRIAL COMPLEX* 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); Susan Staggenborg, *The Consequences of Professionalization and Formalization in the Pro-Choice Movement*, 53 *AM. SOC. REV.* 585, 597 (1988); cf. Ashar, *supra* note 106, at 1473, 1473 nn. 41-43.

¹¹⁷ E.g., WALTER J. NICHOLLS, *THE DREAMERS: HOW THE UNDOCUMENTED YOUTH MOVEMENT TRANSFORMED THE IMMIGRANT RIGHTS DEBATE* 82–83 (2013).

¹¹⁸ 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).

service of that vision.¹¹⁹ The campaigns reject the private ordering of New Deal unionism and the employer-employee dyad as ushered in by the National Labor Relations Act.¹²⁰ 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.¹²¹

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.¹²² The campaign points to pathways for changing the entitlements 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.¹²³ 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.

¹¹⁹ 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).

¹²⁰ Andrias, *supra* note 118, at 58-63.

¹²¹ *Id.* at 63-68.

¹²² E.g., Peter Dreier, *How the Fight for 15 Won*, AM. PROSPECT (Apr. 4, 2016), <https://prospect.org/economy/fight-15-won/>; Jeff Schuhrke, *We’ve Been Fighting for \$15 for 7 Years. Today I’m Celebrating a Historic Victory.*, SALON (Feb. 23, 2019), https://www.salon.com/2019/02/23/weve-been-fighting-for-15-for-7-years-today-im-celebrating-a-historic-victory_partner/. The campaign has been criticized for not being sufficiently grassroots, and for using top down “mobilizing” rather than “organizing,” including by labor organizer and intellectual Jane McAlevey. Michael Rozworski, *Having the Hard Conversations: An Interview with Jane McAlevey*, JACOBIN (Oct. 4, 2015), <https://www.jacobinmag.com/2015/10/strike-chicago-teachers-union-public-private-sector/>; Micah Uetricht, *Is Fight for 15 for Real?*, IN THESE TIMES (Sept. 19, 2013), <https://inthesetimes.com/article/is-fight-for-15-for-real>. McAlevey powerfully lays out the distinctions between advocacy, mobilizing, and organizing in NO SHORTCUTS: ORGANIZING FOR POWER IN THE NEW GUILDED AGE 9-12 (2016).

¹²³ See Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 PERSP. ON POL. 564, 564-65 (2014).

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.¹²⁴ 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.”¹²⁵ His deep study of the campaign allows him to appreciate how the right to counsel is functioning in more complex and 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.”¹²⁶

The right to counsel is the beginning, rather than an end, to a strategy to take the courts away from landlords and a struggle to decommodify housing.¹²⁷ 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. 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 it operates over time in 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.¹²⁸

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

¹²⁴ 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).

¹²⁵ *Id.* at 1082, 1128-32.

¹²⁶ *Id.* at 1123; *see also* SAM STEIN, CAPITAL CITY: GENTRIFICATION AND THE REAL ESTATE STATE 12-13 (2019).

¹²⁷ Whitlow, *supra* note 124, at 1129-30.

¹²⁸ 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 (forthcoming 2020) (arguing that racialized police violence is constitutive of law); *see also* McCann, *supra* note 46.

movement organizations take on to prefigure the worlds that they seek.¹²⁹ This includes institutional prefiguration—for example, the creation of a workers center;¹³⁰ the development of mutual aid networks to provide food and medical equipment to protestors on the streets; or the design of dispute resolution practices within anarchist collectives.¹³¹

Campaigns and prefigurative experiments are in a dialectical relationship—articulating in different ways, through storytelling and relationship building, new modes of relating.¹³² Sameer Ashar and Catherine Fisk have written about worker centers as an innovation within low-wage worker organizing outside traditional unions.¹³³ Worker centers experiment with different forms of worker representation on boards and campaign committees.¹³⁴ Organizers are explicitly prefigurative as they 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.¹³⁵

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 for transformation.¹³⁶ In the last two decades, for example, the National Domestic Workers Alliance has successfully pushed multiple states to adopt domestic

¹²⁹ 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 Lucy 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.

¹³⁰ Gordon, *We Make the Road by Walking*, *supra* note 19, at 428-30, 437

¹³¹ Amy J. Cohen, *On Being Anti-Imperial: Consensus Building, Anarchism, and ADR*, 9 LAW, CULTURE & HUMANS. 243, 244-46 (2011).

¹³² 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 policy-making arrangements); K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 680-89 (2020) (describing social movement pushes for community control of local resources across areas of law and policy, including policing and economic development).

¹³³ Sameer M. Ashar & Catherine L. Fisk, *Democratic Norms and Governance Experimentalism in Worker Centers*, 82 L. & CONTEMP. PROBS., no. 3, 2019, at 141, 168-76.

¹³⁴ *Id.* at 168-72.

¹³⁵ 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* ELIZABETH ANDERSON, PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON’T TALK ABOUT IT) vii-xii (2017).

¹³⁶ Ashar & Fisk, *supra* note 133, at 167-68.

worker bills of rights.¹³⁷ 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.¹³⁸ 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 U.S., of their vulnerability to bullying and abuse by their employers.¹³⁹ Movement organizations are creatively devising means by which workers may make material gains through personal transformation and political engagement. They teach us that because 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. Jocelyn Simonson, for example, 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.¹⁴⁰ 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. Bail funds, cop- and court-watching destabilize the normative footing of the carceral state: they redefine concepts of harm, community, and public

¹³⁷ Lauren Hilgers, *Out of the Shadows*, N.Y. TIMES (Feb. 21, 2019), <https://www.nytimes.com/interactive/2019/02/21/magazine/national-domestic-workers-alliance.html>.

¹³⁸ *Id.* at 168, 173.

¹³⁹ *Id.* at 172-174; see JENNIFER ITO, RACHEL ROSNER, VANESS 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 (Nov. 2014).

¹⁴⁰ See Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. (forthcoming 2021); Jocelyn Simonson, *The Place of “the People” in Criminal Procedure*, 119 COLUM. L. REV. 249, 256 (2019), [hereinafter Simonson, *The Place of “the People”*] (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) [hereinafter Simonson, *Democratizing Criminal Justice*] (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, 2231-32, 2183-85, (2014) [hereinafter Simonson, *The Criminal Court Audience*]; Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. 391, 392-98 (2016).

safety, as they directly contest the racialized logic of criminal law enforcement.¹⁴¹ Institutional experimentalism borne 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."¹⁴² "Community" is a kind of dog whistle—evoking an undifferentiated collective but speaking to whites, wealthy, and upper middle class people to whom the police tend to be accountable and for whom the basic structures and operations of the criminal legal system make sense, equate with justice.¹⁴³ 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.¹⁴⁴ 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 from participating in self-governance. They create space for movements and communities to build bonds of solidarity and safety as they grow their power and their political analysis.¹⁴⁵

Thinking with social movements allows us to see how communities organize to survive increasingly perilous conditions and 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-19.¹⁴⁶ The turn toward mutual aid is an essential alternative and

¹⁴¹ 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).

¹⁴² 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).

¹⁴³ Cf. IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* 4-5 (2013); IAN HANEY LÓPEZ, *MERGE LEFT: FUSING RACE AND CLASS, WINNING ELECTIONS, AND SAVING AMERICA* 16-17 (2019).

¹⁴⁴ CHI. CMTY. BOND FUND, *YEAR-END REPORT 2019 12* (2019), https://chicagobond.org/wp-content/uploads/2019/12/ccbf_year_end_2019-final.pdf.

¹⁴⁵ E.g., Jocelyn Simonson, *The Bail Fund Moment: Reclaim the Neighborhood, Reclaim Community, Reclaim Public Safety*, N+1 (June 22, 2020) (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) <https://nplusonemag.com/online-only/online-only/the-bail-fund-moment/>.

¹⁴⁶ Dean Spade, *Solidarity Not Charity: Mutual Aid for Mobilization and Survival*, 142 SOC. TEXT, Mar. 2020, at 131 [hereinafter Spade, *Solidarity Not Charity*]; DEAN SPADE, *MUTUAL AID: BUILDING SOLIDARITY DURING THIS CRISIS (AND THE NEXT)* (2020). 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 generally Dean Spade, *Intersectional Resistance and Law Reform*, 38 SIGNS 1031, 1046-47 (2013); DEAN SPADE, *NORMAL*

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.¹⁴⁷ Mutual aid is an essential mode of “building new social relations that are more survivable.”¹⁴⁸ Spade speaks to mutual aid as an abolitionist strategy rooted in practices of collective care and self-determination.¹⁴⁹ Mutual aid strategies, like the Black Panther Party’s survival programs, illustrate the failures of the state to provide for the basic needs of everyday people.¹⁵⁰ Through mutual aid, he explains, people do more than facilitate collective survival, they learn how to work together, collaborate, 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.”¹⁵¹ They learn how to make change together.

Whether it is Fight for \$15 or bail funds, mutual aid projects or workers centers, these prefigurative social change projects directly challenge prevailing legal and institutional arrangements and the ideas that hold them in place.¹⁵² 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. 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 taking seriously the epistemes and histories of social movements—their worldviews, source material, and intellectual traditions. This is especially important given the centrality of law in the history of exclusion and domination in the United States, and in today’s attempt to maintain the legitimacy of the status quo. Movement law unearths an alternative arc

LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF LAW (Duke Univ. Press 2015) (2009).

¹⁴⁷ Spade, *Solidarity Not Charity*, *supra* note 146, 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” of law reform).

¹⁴⁸ *Id.* at 136, 147.

¹⁴⁹ *Id.* at 131, 138; *see also* Angela P. Harris, *Compassion and Critique*, 1 COL. J. RACE & L. 326, 351 (2012) (connecting how the capacity to care is central to advancing critical race theory and coalescing movements).

¹⁵⁰ Spade, *Solidarity Not Charity*, *supra* note 146, at 136.

¹⁵¹ *Id.* at 137-38.

¹⁵² For another example, see Cházaro, *supra* note 99, at 67-74 (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).

of history, of people collectively generating ideas and struggling to build and practice alternative possibilities: from the bottom up, often at great risk to their own 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.¹⁵³

Social movements draw on lines of thought and material struggles across time to arrive at their collective analyses of the present. The Movement for Black Lives situates its critiques and paths forward in Black struggles and Black intellectual traditions.¹⁵⁴ The Red Nation grounds itself in centuries of Native resistance.¹⁵⁵ Grounded in not just their own histories, but also the histories of other movements, contemporary movement actors build broader solidarities. 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.”¹⁵⁶ These are histories of intellectual thought born in struggle, always dynamic, but full of wisdom for our times. Contingency—to be rooted in the present crises—is an aspect of grounded and historical analysis from which we learn.

Movement scholars point to the contingency of social-political-economic relations, not simply as a way to throw the status quo into question, but to 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 overshadow our colonial slave-holding past and deep social movement contestation.¹⁵⁷ To recover alternate histories and possibilities,

¹⁵³ 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 (2000) (describing how black feminist epistemology can destabilize established understandings of the world).

¹⁵⁴ Akbar, *supra* note 4, at 408.

¹⁵⁵ THE RED NATION, *supra* note 6.

¹⁵⁶ *Our Principles of Unity*, MIJENTE, <https://mijente.net/our-dna/>.

¹⁵⁷ *See, e.g.*, Aziz Rana, *Rise of the Constitution* (unpublished manuscript, on file with author); AZIZ RANA, *supra* note 12, 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.

Rana tells the story of the Black Panther Party’s (BPP) own 1970 constitutional convention, attended by at least 12,000 people, including members of the American Indian Movement, the Young Lords, Students for a Democratic Society and more.¹⁵⁸ For the BPP, the convention was a rejection of the U.S. Constitution and how it naturalized the “economic and political subordination” of Black people within the United States at the same time that it severed the Black freedom struggle from anticolonial struggles around the world.¹⁵⁹ 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.¹⁶⁰ The resulting proposals included reparations, the transfer of wealth, truth commissions, and expanded socioeconomic rights.¹⁶¹ 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.¹⁶² 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 as central to American political identity. 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.¹⁶³ Movement law scholars take seriously the horizons of social movement imaginations—even if they reject outright the Constitution or

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); Amy Kapczynski, *Historicism, 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.”)]

¹⁵⁸ Rana, *Colonialism*, *supra* note 157, at 285.

¹⁵⁹ *Id.* at 282-85.

¹⁶⁰ *Id.* at 285.

¹⁶¹ *Id.* at 285-86.

¹⁶² The ratification of their Constitution was stymied by internal discord within BPP leadership, and the second ratifying convention was never held. *Id.* at 286.

¹⁶³ 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.”).

prevailing legal norms and arrangements—to make new demands.¹⁶⁴ In so doing they point to new possibilities that legal scholarship might otherwise ignore.

Amna Akbar’s work, for example, centers around the contemporary imaginaries of the Movement for Black Lives and abolitionist organizing.¹⁶⁵ Akbar mines a rich lineage of Black radical thought at the juncture of race and capitalism to contextualize movement demands. She puts this intellectual history in dialogue with contemporary criminal law scholarship to question liberal legalism and our traditional approaches to reform.¹⁶⁶ Like Rana’s turn to the BPP, Akbar features left intellectuals and organizers not commonly featured in legal academic work, such as those of abolitionist intellectual-organizers Rachel Herzing and Mariame Kaba.¹⁶⁷ 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.¹⁶⁸ 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.¹⁶⁹

Movement law inquiries that shift epistemes can range from close, critical analysis of movement texts, to immersion in social movement spaces, to even co-authoring or engaging in participatory action research with movement leaders. Janet Moore, for example, has co-authored with movement leaders in her work examining the power of the practice of participatory defense,¹⁷⁰ and now engages in participatory

¹⁶⁴ In a recent work, Matsuda thinks with 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 was ground enough to demand the end of slavery” and so “it is ground enough to say there is a right to art.”).

¹⁶⁵ See Amna Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 101, 103-07 [hereinafter Akbar, *Abolitionist Horizon*] (forthcoming 2020); Akbar, *Law’s Exposure*, *supra* note 100 at 353, 366-73 Akbar, *Toward a Radical Imagination*, *supra* note 4, at 406-10.

¹⁶⁶ Akbar, *Abolitionist Horizon*, *supra* note 165, at 105; Akbar, *Law’s Exposure*, *supra* note 100, at 352, 355; Akbar, *Toward a Radical Imagination*, *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 (2020).

¹⁶⁷ Akbar, *Abolitionist Horizon*, *supra* note 165, at 149, 162; Akbar, *Toward a Radical Imagination*, *supra* note 4, at 436, 460-61, 466, 468.

¹⁶⁸ Amna Akbar, *Abolitionist Horizon*, *supra* note 165, at 102.

¹⁶⁹ *Id.* at 101; Akbar, *Toward a Radical Imagination*, *supra* note 4, at 412.

¹⁷⁰ 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

action research alongside movement activists who are working to redefine public safety in their community.¹⁷¹ 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, the question “what is public safety?”¹⁷²

Whatever form the scholarship takes, whether participatory action research or a different form of grounded inquiry, 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.¹⁷³ 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 or movements’ stories. Even grounded stories told through conventional frames may reify the status quo; movement intermediation and interpretation is essential. It reveals the limits of liberal legalism and its histories of linear progress. And yet, it gives us hope for future possibilities and openings, too.

participatory defense movement and its power, co-authored with movement leaders who pioneered the practice of participatory defense).

¹⁷¹ See Lauren Johnson, Cinnamon Pello, Ebony Ruhland, Simone Bess, Jacinda K. Dariotis, & Janet Moore, *Reclaiming Safety* at 3, 8-9 (unpublished manuscript) (on file with authors)(describing participatory action research in which community members in Cincinnati are collectively redefining public safety alongside academic researchers, using a method that “prioritizes prioritizes shifting research capacities from academic researchers to the communities themselves by focusing on their needs, strategies, and expertise.”).

¹⁷² Johnson and her co-authors 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 88, 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.”).

¹⁷³ See, e.g., Rana, *supra* note 12, 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.”).

D. *Adopting a Solidaristic Stance*

Movement law asks scholars to engage in the scholarly project in solidarity and in conversation with social movements.¹⁷⁴ 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.¹⁷⁵ Veena Dubal is a powerful example of how a solidaristic stance can transform scholarship. 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. She uses scholarly method—ethnographic interviews with drivers and organizers in the gig economy—to engage worker organizing in a time of deep economic precarity for workers and consolidated political power of employers in the industry. Dubal has studied how state and local regulators have been coopted 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.¹⁷⁶ Dubal has argued that employers maintain an overwhelming advantage over workers through corporate restructuring and their refusal to bargain collectively.¹⁷⁷

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

¹⁷⁴ See COOPER, *supra* note 163, at 20 (exploring “the oscillating movement between imagining and actualization”).

¹⁷⁵ 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, *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).

¹⁷⁶ See V.B. Dubal, Ruth Berins Collier & Christopher Carter, *Disrupting Regulation, Regulating Disruption: The Politics of Uber in the United States*, in PERSPECTIVES ON POLITICS (forthcoming 2020) (manuscript at 2-4) (on file with authors).

¹⁷⁷ 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.

codifying employee status for drivers.¹⁷⁸ 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.¹⁷⁹ Dubal was recently targeted by Uber and Lyft as a consequence of her scholarship and advocacy,¹⁸⁰ as the companies spent \$200 million to overturn the state legislative effort in which she was involved.¹⁸¹ She has picked sides, with fledgling organizing formations and against the ongoing efforts by established unions to collaborate with the platform companies to create a new legal status for workers devoid of statutory employee protections.¹⁸² 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 and she has not backed down.

Angélica Cházaro’s work also embodies a strong dialectic between scholarship and solidarity.¹⁸³ At the outset of her academic career, in 2014, 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.¹⁸⁴ The hunger strike emerged in response to a one-day shut down of NWDC by the nascent #Not1More

¹⁷⁸ Veena Dubal, *Rule Making as Structural Violence: From a Taxi to Uber Economy in San Francisco*, L. & POL. ECON. PROJECT: LPE BLOG (June 28, 2018) <https://lpeproject.org/blog/rule-making-as-structural-violence-from-a-taxi-to-uber-economy-in-san-francisco/>; 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). 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).

¹⁷⁹ Declaration of Veena Dubal in Support of Objections to Class Action Settlement Filed by Adham Shaheen, Gladys Quinones, Mahmood Noori, and Edward Escobar, Mohammad Zadran, at 2, 7 *O’Connor v. Uber Technologies, Inc.*, 904 F.3d 1087 (9th Cir. 2018) (Nos. 13-3826-EMC & 15-00262-EMC).

¹⁸⁰ Dara Kerr, ‘A totally different ballgame’: Inside Uber and Lyft’s fight over gig worker status, CNET.com (Aug. 28, 2020), <https://www.cnet.com/features/uber-lyfts-fight-over-gig-worker-status-as-campaign-against-labor-activists-mounts/>.

¹⁸¹ Wilfred Chan, *Can American Labor Survive Prop 22?*, The Nation (Nov. 10, 2020), <https://www.thenation.com/article/politics/prop-22-labor/> (Quoting Veena Dubal as saying, “It 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.”).

¹⁸² *Id.*

¹⁸³ Cházaro started her legal career at the Northwest Immigrant Rights Project (NWIRP). UNIV. WASH. SCH. L., *Angélica Cházaro*, <https://www.law.uw.edu/directory/faculty/chazaro-angelica>.

¹⁸⁴ *Id.*; Liz Jones, *Protestors Try to Block Deportations from Northwest Detention Center*, KUOW (Feb. 25, 2014, 8:45 AM), <https://www.kuow.org/stories/protestors-try-block-deportations-northwest-detention-center/>.

formation—an early abolitionist turn among immigrant organizing.¹⁸⁵ Later, Cházaro helped to start La Resistencia, a grassroots effort to shut down NWDC, which eventually became a hub organization in Mijente and an organization in the Decriminalize Seattle coalition focused on defunding the Seattle Police Department.¹⁸⁶ As she engaged in organizing and produced scholarship, Cházaro co-authored Mijente’s abolitionist policy platform *Free Our Future*.¹⁸⁷ In scholarly work on deportation abolition, Cházaro builds out critiques of deportation and detention embedded within *Free Our Future*.¹⁸⁸ Cházaro reframes the scholarly question of how to “comport” deportation “with the rule of law” to whether deportation is justifiable as a broader matter of politics and ethics.¹⁸⁹ She situates deportation in a historical context, denaturalizing its existence and questioning its ongoing function.¹⁹⁰ In this way, she suggests the *fait accompli* embedded within the mode of analysis that takes

¹⁸⁵ 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://medium.com/@LaTania/we-fell-in-love-in-a-hopeless-place-a-grassroots-history-from-not1more-to-abolish-ice-23089cf21711>; NWDC Resistance, *A Hunger Strikers Handbook* 13-16 (Apr. 2017), available at <https://www.nwdcresistance.org/wp-content/uploads/2015/09/HungerStrikersHandbook-ENG.pdf>.

¹⁸⁶ LA RESISTENCIA, <http://laresistencianw.org/>; Daniel Beekman, *Seattle City Council Pressed to Defund Police, Move 911 Response Dispatchers Out of Department*, SEATTLE TIMES (July 8, 2020 7:33 PM) (updated Aug. 12, 2020 11:35 AM), <https://www.seattletimes.com/seattle-news/politics/seattle-city-council-pressed-to-defund-police-move-911-response-dispatchers-out-of-department/>; *Seattle Urged to See a ‘World Without Law Enforcement,’* ASSOCIATED PRESS (July 9, 2020), <https://apnews.com/7ff3a5143ae9306ced7613c9824e05d0>.

¹⁸⁷ Press Release, Leading Latinx Racial Justice Organization Releases “Free Our Future” Policy Platform in Wake of War Waged Against Immigrants, Mijente (June 28, 2018), <https://mijente.net/2018/06/leading-latinx-racial-justice-organization-releases-free-our-future-policy-platform-in-wake-of-war-waged-against-immigrants-policy-calls-for-full-scale-decriminalization-of-immigrat/>; Marielena Castellanos, *Demonstrators Call for ICE to be Abolished and Protest Operation Streamline*, PORTSIDE (July 4, 2018) <https://portside.org/2018-07-04/demonstrators-call-ice-be-abolished-and-protest-operation-streamline>; *Coalition Demands Moratorium on Construction of Youth Jail*, PUBL. NEWS SERV. (Mar. 20, 2018) <https://www.publicnewsservice.org/2018-03-20/juvenile-justice/coalition-demands-moratorium-on-construction-of-youth-jail/a61880-1>.

¹⁸⁸ Cházaro, *supra* note 99, 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.”).

¹⁸⁹ *Id.* at 23-24, 27-28, 37 (citing Angela Davis, Ruth Wilson Gilmore, Micol Siegel, and Chandan Reddy).

¹⁹⁰ *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.”).

for granted a historically contingent form of enforcement, and gestures at the deeper questions that social movement actors are posing.¹⁹¹

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 on high.¹⁹² 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.¹⁹³ Kimberlé Crenshaw has authored a number of reports in conversation with the Movement for Black Lives and street mobilizations against police killings of Black people. Most significantly, in 2015, through the African American Policy Forum, she coauthored with Andrea Ritchie the #SayHerName report, which draws attention to Black women’s experiences of police violence.¹⁹⁴

¹⁹¹ She 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; *see also* E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509, 1519-20 (2019).

¹⁹² *See, e.g.*, Farbman, *supra* note 11, 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”); Dorothy E. Roberts, *The Supreme Court 2018 Term—Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 6-10 (2019) (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 approaches to low-level criminal offenses).

¹⁹³ Monica C. Bell, *Safety, Friendship, and Dreams*, 54 HARV. C.R.-C.L. L. REV. 703, 707-08 (2019).

¹⁹⁴ Crenshaw & Ritchie, *supra* note 80, at 1; *see also* #SayHerName: *Resisting Police Brutality Against Black Women*, African American Policy Forum, AFR. AM. POL’Y F., <http://aapf.org/sayhername-report/>; #SayHerName, African American Policy Forum, (n.d.) <https://aapf.org/shn-campaign> (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 co-authored with Priscilla Ocen and Jyoti Nanda a report on the experiences of girls of color with the “school-to-prison pipeline.” KIMBERLÉ WILLIAMS CRENSHAW, PRISCILLA OCEN & JYOTI NANDA, AFR. AM. POL’Y F., BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED, AND UNDERPROTECTED, at 5 (2015), https://www.law.columbia.edu/sites/default/files/legacy/files/public_affairs/2015/february_2015/black_girls_matter_report_2.4.15.pdf. 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

Solidarity generates new understandings.¹⁹⁵ We, too, have each learned profound lessons about law, violence, justice, and social change from collaborations with social movement organizers and organizations.¹⁹⁶ We 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, co-authoring reports or toolkits for movement spaces, or 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

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) (“[I]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.”).

¹⁹⁵ 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*, L. & POL. ECON. PROJECT: LPE BLOG (Apr. 26, 2019), <https://lpeblog.org/2019/04/26/debtor-organizing-against-neoliberalism/>; see also Luke Herrine, *The Law and Political Economy of a Student Debt Jubilee*, 68 BUFF. L. REV. 281 (2020).

¹⁹⁶ 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 together about how to teach differently. We worked with Bill Quigley and a cohort of law faculty who strive to teach our classes in a way that responded to the period of protest and organizing that was sparked by Darren Wilson’s killing of Michael Brown. We issued a series of Guerrilla Guides to Law Teaching on a number of core law school classes. GUERRILLA GUIDES TO L. TEACHING, <https://guerrillaguides.wordpress.com/>. We started with four principles that began to articulate what we are now theorizing here. *No. 1: Four Principles, Guerrilla Guides to Law Teaching* (2016), <https://guerrillaguides.wordpress.com/2016/08/29/fourprinciples/>.

discourse of power and legitimation, as well as a tool to build power from the left and for the many. Solidarity is borne of collaboration 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.¹⁹⁷ Many clinical legal scholars have unearthed potential for transformative change through their clinical work alongside social movement organizations.¹⁹⁸ These scholars recognize that regnant forms of public interest legal practice reconstitute 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.¹⁹⁹

¹⁹⁷ 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) (evaluating existing clinical legal education and emerging alternative models and their impact on the field of public interest law) [hereinafter Ashar, *Law Clinics*]; 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, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CALIF. L. REV. 201, 203-06 (2016) (arguing for progressive reform of legal education emphasizing justice and cogeneration of solutions by lawyers and communities on the ground) [hereinafter Ashar, *Deep Critique*].

¹⁹⁸ See Ashar, *Fieldwork and the Political*, *supra* note 197, 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 socio-economic organization from grassroots organizers).

¹⁹⁹ See, e.g., Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399, 400-402 (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 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 in human rights and impact litigation in clinical contexts); John Whitlow, *Community Law Clinics in the Neoliberal City: Assessing CUNY’s Tenant Law and Organizing Project*, 20 CUNY

But the methodology of movement law is not just for clinical professors, or for professors who formally engage in the “practice of law.” There are many forms of solidarity and engagement: paying close attention to the words and actions of social movements, reading and learning from both scholarly histories of left movements and movement toolkits and manifestos articulating their own histories and visions, and above all crediting the generation of those ideas within movement spaces. 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 collectives 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 ways that are in conversation both with other scholars and with social movements. It diversifies the episteme, strategies, and community of ideas collectively building energy and power 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.

III. Revisiting the Scholarly Stance

In our commitment to working alongside grassroots social movements with particular visions for political, economic, 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.²⁰⁰ 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.”²⁰¹ Through movement law, we wish to expand modes of generating

L. REV. 351, 352-55 (2017) (describing collaborations with organizers on eviction cases in New York).

²⁰⁰ 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. Legal scholarship does not want for critics.”).

²⁰¹ West, *supra* note **Error! Bookmark not defined.**, at 16.

normative scholarship in particular ways: alongside grassroots social movements committed to racial, economic, social justice.²⁰²

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.²⁰³ Like all methodologies, ours comes with risks: of losing objectivity, lacking rigor, or depending so much on current social configurations that lessons soon evaporate. We recognize these risks, but we defend the methodology as necessary if legal scholars are to work toward undoing the fundamentally undemocratic nature of our political, economic, and social order.

A. Objectivity

Scholarly objectivity is a challenge oft put to scholars who study legal, political, or social change, racial and gender justice. On the one hand, as scholars we all aim for truth rather than opinion.²⁰⁴ On the other hand, objectivity is perpetually out of our grasp. Sociologist Pierre Bourdieu famously challenged the notion of scholarly objectivity, but urged constant self-reflexivity with regard to our social positions and how those positions influence and reflect our own approaches to what we study.²⁰⁵

²⁰² 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 restatements,” “recasting projects,” “policy analysis,” empirical analyses (either that test a theory or explain and assess legal institutions), sociological and historical approaches, and critical projects. And, as she notes, these approaches can be combined. Martha Minow, *Archetypal Legal Scholarship: A Field Guide*, 63 J. LEGAL EDUC. 65, 65-69 (2013) (capitalization altered).

²⁰³ 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, 459-60, 471 (1996) (examining the relationship between activism and lawyering, from the position of a clinical law professor).

²⁰⁴ 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.”).

²⁰⁵ 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 60, 73-99 (1992); see generally 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”).

With this we agree: while objectivity is merely a cover for other concerns, movement law scholars must, like all legal scholars, remain self-reflexive in our work.²⁰⁶

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,²⁰⁷ including through funding by and collaborations with groups with explicit political commitments.²⁰⁸ In this way, what passes as objective can often be regressive. The mantle of objectivity has its own profound status-quo-enhancing implications.²⁰⁹ Indeed, for well over a century, legal scholars have unearthed ways in which our primary commitments to legal institutions and elites perpetuate social and political hierarchies.²¹⁰ These observations have most often come from critical legal scholars, who have embraced bias and subjectivity as inevitable.²¹¹

²⁰⁶ 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).

²⁰⁷ 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).

²⁰⁸ 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).

²⁰⁹ See Britton-Purdy et al., *supra* note 16, 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. That 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.”).

²¹⁰ Cf. 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.”).

²¹¹ 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.

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.²¹² We are not claiming that we have always been 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 Critical Race Theory, 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.²¹³ MacKinnon emphasizes this in searing terms that resonate for us: “to 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.”²¹⁴

In contravention to the common sense 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 are central questions 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

Joseph William Singer, *Legal Realism Now*, 76 CALIF. L. REV. 465, 543 (1988) (“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.”).

²¹² 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.”).

²¹³ See generally WILLIAMS, *supra* note 77, 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)); Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2323-24 (1989) (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.”).

²¹⁴ MacKinnon, *supra* note 204, at 201.

inequality and explore new pathways for change in solidarity and in conversation with others outside the academy.

As a scholarly methodology, movement law is not necessarily restricted to collaboration with and learning from left and progressive social movements. Much like movement lawyers, scholars of movement law must be self-conscious about the process through which they choose particular coalitions to support.²¹⁵ This process must be grounded by reflection tied not just to movements, but also to 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.²¹⁶

How one chooses the social movement actors and ideas that match one's political commitments is difficult, in part because the process is so iterative: to be engaged with social movement ideations is so often to be moved to shift one's moral understandings of the world; and to think and write about those understandings in dialogue with movement actors is in turn to co-create new theories of change, and potentially to critique existing methods and ideas on the ground. This is praxis.²¹⁷

This praxis, in turn, requires constant self-reflexivity of the kind Bourdieu described. As part of our position within elite institutions, we risk reinforcing hierarchies even as we name them and try to dismantle them.²¹⁸ And, on the other end, accountability to movements must not mean an unquestioning following of those

²¹⁵ Cf. Ashar, *supra* note 99, 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”).

²¹⁶ See *supra* note 11 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, it is both less likely to happen and less likely to have a formative impact. Cf. Farbman, *supra* note 11 at 1937-39 (making similar arguments with respect to his theory of resistance 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”).

²¹⁷ See, e.g., Bernard 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 Hook'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*, at 2:36 (July 14, 2016), <https://southernersonnewground.org/themandate/>.

²¹⁸ See PIERRE BOURDIEU, PASCALIAN MEDITATIONS 15 (Richard Nice trans., Polity Press 2000) (“[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.”)

movements' ideas.²¹⁹ Scholars interested in movement law should be vigilant about these concerns through ongoing introspective and outward-looking critique.²²⁰

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.²²¹ Critiques of social movements should come from engagement with particular social movement spaces, rather than declarations from afar and on high. Critiques should be borne of a recognition of shared commitments rather than a “gotcha.” This should include an awareness of one’s own positionality, a question we examine in Part III.C below.

B. Rigor

Like all legal scholarship, movement law aims to engage in rigorous analysis of the law. Scholarship must take care to choose its subject 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.”²²² One concern with movement law may be that without defined parameters it could veer into something more akin to reporting or opinion writing.²²³ In order to maintain rigor, then, scholars engaged in movement law must combine their urgent quest to co-generate ideas alongside social movements with a deep commitment to the slow,

²¹⁹ 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 8, 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.”).

²²⁰ For a scholarly critique in conversation with movement ideation, see Jamelia N. Morgan, Disability’s Fourth Amendment 9, 12 (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,”* HARRIET TUBMAN COLLECTIVE, (Sept. 7, 2016), <https://harriettubmancollective.tumblr.com/post/150072319030/hctevision4blacklives> (criticizing the Movement for Black Lives’ 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”).

²²¹ 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 supremacy or patriarchy. But such scholarship cannot be rejected simply on the grounds that it is political or aligned with social movements.

²²² Reginald Leamon Robinson, *Race, Myth and Narrative in the Social Construction of the Black Self*, 40 HOW. L.J. 1, 15 n.54 (1996).

²²³ 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[ing] 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.”

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 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.²²⁴ Critical scholars endured accusations that their methods lacked rigor,²²⁵ and defended those accusations with renewed methodological commitments.²²⁶ Patricia Williams, for

²²⁴ See generally Scheppele, *supra* note 213, 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 (1989) (telling a hypothetical story about the effect of *Michigan Law Review*’s storytelling issue as his contribution to *Michigan Law Review*’s storytelling issue).

²²⁵ See, e.g., Kennedy, *supra* note **Error! Bookmark not defined.**, at 1801–08 (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 (reviewing DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997)) (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, 852–53 (1993) (critiquing the “validity” of the forms of narrative storytelling found in feminist legal theory and critical race theory).

²²⁶ 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”); Larry Alexander, *What We Do, and Why We Do It*, 45 STAN. L. REV. 1885, 1888–97 (1993); 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, 1239–1340 (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, 665–76 (1993) (countering Farber and Sherry’s assessment of outsider scholarship); 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, 807 (1994)

example, described student editors' requests for her to omit reference to her own race in her scholarship—in service to “principles of neutrality.”²²⁷ 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’....”²²⁸

Just as critical scholars deployed and defended storytelling to advance their arguments, so too do we seek to elevate movement-based narratives that stem from everyday precarity and collective analysis. These movement narratives help denaturalize the status quo and make another world seem within reach. Movement law does not necessarily center narrative. But it often does in part because storytelling is central to what social movements do.

Indeed, a meta-insight of critical scholarship is that judgments of rigor are themselves political.²²⁹ 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.

(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.”); 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 (2009) (proposing “guideposts” for LatCrit and other outsider scholarship, “rooted in our jurisprudential legacy.”).

²²⁷ Williams, *supra* note **Error! Bookmark not defined.**, at 48.

²²⁸ Roithmayr, *supra* note 213, at 1671.

²²⁹ See, e.g., Bandes, *supra* note 226, 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, . . . Yet conclusions at the level of what is valuable or interesting are very often dispositive in deciding which of two articles is better.”).

For those who are already on board with movement law's orientation, in Part II we outline the requirements for rigorous work within this method.²³⁰ 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 lay 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 for 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 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 of both deep engagement and solidarity with movement actors, and the distance required for nuanced scholarship and humble solidarity.

A constant awareness of one's own positionality is necessary because scholars can coopt social movements in unintended ways. There is always the risk that our own position as elites will distort social movement ideas toward legitimation of injustice.²³¹ As Aziza Ahmed reminds us in the context of reproductive justice struggles, social movements have splintered and sub-movements have formed when faced with elite-driven efforts at law reform.²³² Often “the pull towards mainstream issues and constitutional doctrine prevails.”²³³ This does not mean that as elites we should

²³⁰ 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 criteria with which to evaluate different methods of legal scholarship, specific to each methodology).

²³¹ Cf. Lawrence, *supra* note 10, at 381, 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.”).

²³² See Aziza Ahmed, *Social Movements in the Struggle for Redistribution*, L. & POL. ECON. PROJECT: LPE BLOG (Apr. 24, 2019), <https://lpeblog.org/2019/04/24/social-movements-in-the-struggle-for-redistribution>. 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.*

²³³ *Id.*

abandon attempts to co-produce dynamic ideation. Instead, we should engage social movements as collaborators, not seers.²³⁴ 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.²³⁵ Questions like how much space to take up, whether one's role is in the background or foreground, are central. Our identities matter, not as signifiers in and of themselves, but as having been formed socially through the interaction of systems of power and wealth that endow some with the presumptions of intelligence, while marginalizing and diminishing others.²³⁶ 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 may have come.²³⁷ It is our responsibility to resist habits of intellectual extraction and exploitation.²³⁸

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

²³⁴ See 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, 573-74 (1984) (“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 (1982-83) (stating that radical lawyers “build the power of popular movements”).

²³⁵ Intersectionality offers an intellectual framework by which social movements integrate its membership and generate power. See Sumi Cho, Kimberlé Williams 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 (2020) (examining local intersectional alliances within the immigrant rights, queer and trans, and labor rights movements).

²³⁶ See generally White, *To Learn and Teach*, *supra* note 70, at 752-54; Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 33-44 (2011).

²³⁷ 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).

²³⁸ See Zuni Cruz, *supra* note 122 at 233-35 (on scholarly appropriation and the call for non-exploitation).

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 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 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, amongst cultural conservatives and business elites—will remain vigorous. We see this dynamic in the aftermath of the killing of George Floyd in Minneapolis. As street protesters pull back from the violent police reaction to demonstrations, police unions are reasserting their power²³⁹ and politicians retreat on early pledges to defund the police.²⁴⁰ As scholars invested in transforming our political, economic, and social order, what are we to do?²⁴¹

One contribution that we can make is the development of 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."²⁴² However, our lack of centrality does not permit us to abdicate space. It is incumbent on legal scholars to document, critique, and advance grassroots struggle in an era where so many are reinforcing the democratic deficit at the heart of our system.

Movement law facilitates cogeneration of ideas necessary for largescale 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.²⁴³ Our collaborations have allowed us to see aspects of our political, economic, and social

²³⁹ See Sam Adler-Bell, *How Police Unions Bully Politicians*, THE NEW REPUBLIC (Oct. 20, 2020), <https://newrepublic.com/article/159706/police-unions-bully-politicians-new-york-deblasio> (noting multiple examples of police intimidation of elected officials).

²⁴⁰ See, e.g., Astead W. Herndon, *How a Pledge to Dismantle the Minneapolis Police Collapsed*, THE N.Y. TIMES (Sept. 26, 2020), <https://nyti.ms/2S0hDRJ> (discussing the retreat of Minneapolis city council members from their pledge to defund police).

²⁴¹ Cf. HARCOURT, *supra* note 82, 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).

²⁴² Mari J. Matsuda, *supra* note 52, at 349.

²⁴³ See *supra* note 18 and accompanying text.

order that are hidden in legal academic discourse. Our immersion in organizing spaces has given us a lens through which to see people who are often ignored in that 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.

Movement activity has stimulated tectonic rumblings in certain fields of law. In the last decade, organizers and allied scholars are questioning the liberal nationalist underpinnings of immigration law and the ostensible “nation of immigrants” narrative which serves as a cover for colonialism and settlement as well as a system of mass detention and deportation. In criminal law, the Movement for Black Lives and abolitionist organizing have put police violence and impunity—and now the failures of reform—at the center of academic discourse. 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?

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. Movements are coopted, contained, and channeled when they attempt to translate long-term organizing and mobilizing into policy programs. Elected officials and bureaucracies appear to respond to 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. This furthers a form of political austerity that devastates poor and working class people by foreclosing real change. Movement law helps our organizational collaborators protect their most far-reaching aspirations. Rather than scholarship being “pull[ed] by the policy audience,”²⁴⁴ 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.²⁴⁵

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 challenge and alter academic discourse and we transform legal education.²⁴⁶ It is beyond the bounds of this Article, focused squarely on the production of legal scholarship, to explore the role of social

²⁴⁴ Austin Sarat & Susan Silbey, *The Pull of the Policy Audience*, 10 L. & POL. 97 (1988).

²⁴⁵ See Rahman & Simonson, *supra* note 133 (on entrenching social change through changes to institutional and policy-making arrangements).

²⁴⁶ *Supra* note 99.

movements in the transformation of legal pedagogy.²⁴⁷ However, it is important to note that lawyers are trained to integrate bodies of knowledge that shift over time. When movement law alters 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.²⁴⁸ 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 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.²⁴⁹ 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 lay 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 rethinkings of social, political, and legal arrangements. And it is also

²⁴⁷ We have attempted to do this in prior work, separately and together. See Akbar, *Law's Exposure*, *supra* note 1007; GUERRILLA GUIDES TO LAW TEACHING, *supra* note 200; Ashar, *Law Clinics, Fieldwork and the Political*, and *Deep Critique*, *supra* note 202.

²⁴⁸ Jennifer Gordon, *Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133 (2007).

²⁴⁹ Akbar, *supra* note 27.

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.