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It's Critical: Legal Participatory Action Research

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IT'S CRITICAL: LEGAL PARTICIPATORY ACTION RESEARCH

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This Article introduces a method of research that we term “legal participatory action research” or “legal PAR” as a way for legal scholars and activists to put various strands of critical legal theory into practice. Specifically, through the lens of legal PAR, this Article contributes to a rapidly developing legal literature on the “fringe economy” that comprises “alternative lending services” and products, including but not limited to pawnshops, check cashers, payday lenders, direct deposit loans, (tax) refund anticipation loans, and car title loans. As importantly, this Article also contributes to the related fields of critical race theory, feminist legal theory, and critical race feminism by advocating legal PAR as a form of critical race/feminist praxis, which we employ, specifically, to address the ways in which race and gender remain inextricably linked to poverty and ever-widening economic inequalities and disparities.

To demonstrate how legal PAR works in practice, we describe in this Article a local, community-based research project on predatory lending practices that we undertook from fall 2012 through summer 2013 in partnership with Public Allies Cincinnati, an AmeriCorps program whose goal is to identify, develop, and train a new “generation” of diverse community leaders and organizers. Further, we explain in this Article how and why our ongoing community-based research is grounded in theoretical commitments and values represented by critical race/feminism and the established, interdisciplinary field of participatory action research. Finally, we examine and reflect upon the challenges and benefits involved in doing legal PAR—both in practical and theoretical terms—in the context of our specific project, in the hopes that interested legal researchers, scholars, teachers, students, and activists will be inspired to develop legal PAR research projects of their own.

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** Charles Hartsock Professor of Law, University of Cincinnati College of Law; Co-Director, Center for Race, Gender, and Social Justice at the University of Cincinnati College of Law. We would like to thank our following coresearchers: Mary Brydon-Miller and her colleagues at the Action Research Center at the University of Cincinnati, Donald Warner, Cynthia Stolba, Maria Schneider, William Weber, Jen Cuesta, Matthew Wiseman, Lisa Mills, Kathy Burklow, LuShonda Gibson, and members of the Public Allies Cincinnati Powershift Team. We also would like to thank Verna Williams, our friend, colleague, and Co-Director of the Center for Race, Gender, and Social Justice, for all of her encouragement. Finally, special thanks to the Harold C. Schott Foundation at the University of Cincinnati College of Law, whose support made the completion of this Article possible.

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I use them [payday lenders] when I don't have money, don't have family to borrow from. I'd borrow from them because I don't like people bein' in my business And then once you're in there you just keep goin' back. They just call your cell phone, they make sure you got a phone where they can get in touch with you.

—LuShonda Gibson¹

[I]t's very important for us to get out of Washington and hear from people firsthand on all sides of these issues [T]here is a deep concern and desire . . . to find the right approach to these issues so that we can improve the lives of the American people. That's what [the Consumer Financial Protection Bureau is] all about

—Richard Cordray²

Looking to the bottom—adopting the perspective of those who have seen and felt the falsity of the liberal promise—can assist critical scholars in the task of fathoming the phenomenology of law and defining the elements of justice. . . . When notions of right and wrong, justice and injustice, are examined not from an abstract position but *from the position of groups who have suffered through history*, moral relativism recedes and identifiable normative priorities emerge.

—Mari J. Matsuda³

INTRODUCTION

In 1987, in the pages of an elite law journal (albeit one dedicated to issues of civil rights and civil liberties), Mari Matsuda urged critical and progressive law scholars to “look to the bottom” in doing the important work of (re)theorizing what justice and equality should mean under the law.⁴ Twenty-five years later, at a field hearing in Birmingham, Alabama

1. Member of a focus group conducted at the University of Cincinnati College of Law in September 2010.

2. CONSUMER FIN. PROT. BUREAU, Transcript of Field Hearing on Payday Lending at 13–14 (Birmingham, Ala. Jan. 19, 2012) (on file with the authors) [hereinafter CFPB Transcript].

3. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 325 (1987) (emphasis added).

4. *Looking to the Bottom* appeared in a symposium issue of the *Harvard Civil Rights-Civil Liberties Law Review* that published articles presented at the Tenth National Critical Legal Studies Conference as part of a panel on “the minority critique of [critical legal studies].” See Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L. REV. 297, 297 (1987). That panel included not just Matsuda, but also critical race theory pioneers Richard Delgado, Patricia Williams, and Harlon Dalton. See *id.* at 301, 401, 435.

on payday lending—a practice that disproportionately impacts low-income communities and communities of color⁵—Richard Cordray, inaugural Director of the Consumer Financial Protection Bureau (CFPB),⁶ expressed similar sentiments about “getting out of Washington” and “hearing from people firsthand.”⁷ We were likewise interested in “hearing from people firsthand” when, in 2010, we began our own study of the impact that “alternative financial services” such as payday lending have on the communities that use them. We held an initial focus group to discuss payday lending with five women who live in the low-income and predominantly Black West End neighborhood of Cincinnati, Ohio. LuShonda Gibson’s comments above reflect the complicated relationship between payday lenders and their customers, who, like Ms. Gibson, recognize both the value of the services such institutions provide and the ways in which she and those like her are exploited by them.

Matsuda’s *Looking to the Bottom* was one of several articles that launched the exponential growth of scholarly literature in critical race theory (CRT) and critical race feminism (CRF), and her thesis continues to inform discussion and study of the various forms of social, economic, and political inequalities that permeate American life.⁸ “Race crits” and critical race feminists⁹ have continued to expose the structural and conceptual

5. See THE PEW CHARITABLE TRUSTS, PAYDAY LENDING IN AMERICA: WHO BORROWS, WHERE THEY BORROW, AND WHY 4 (2012), available at http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Payday_Lending_Report.pdf (noting in key findings that African Americans are among five groups of borrowers more likely to use payday lending); Linda R. Crane, *Checking Out of the Exception to 3-104: Why Parties Should Be Able to Negotiate Whether Checks Should Be Payable On Demand*, 3 COLUM. J. RACE & L. 73, 89–90 (2013) (discussing how payday lending disproportionately affects communities of color).

6. The CFPB was created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 to implement and enforce federal consumer financial protection laws in response to the mortgage-backed securities debacle. Cordray was confirmed as the CFPB’s inaugural director on July 16, 2013. Emily Stephenson, *Senate confirms Cordray as consumer bureau chief*, REUTERS (July 16, 2013, 6:33 PM), <http://www.reuters.com/article/2013/07/16/us-financial-regulation-cordray-idUSBRE96F0UD20130716>.

7. Richard Cordray, *Testimony of Richard Cordray before the U.S. Senate Committee on Banking, Housing, and Urban Affairs*, CONSUMER FIN. PROTECTION BUREAU (Jan. 31, 2012), <http://www.consumerfinance.gov/newsroom/testimony-of-richard-cordray-before-the-u-s-senate-committee-on-banking-housing-and-urban-affairs/>.

8. For excellent compilations of foundational writings in CRT and CRF, see generally CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1996); CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stefancic eds., 3d ed. 2013); CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 2d ed. 2003).

9. Terminology relating to critical legal theory/studies (CLS), critical race theory (CRT), critical race feminism (CRF), and scholars in those fields is not uniform. “Crits” is most commonly understood as referring to those who do critical legal studies and “race crits” to those who do critical race theory. As such, we use those terms throughout this Article to refer to scholars (including ourselves) in those respective areas. Critical race feminism is not as easily abbreviated. The term “fem crits” might be used as shorthand for those who do CRF, but that

deficiencies in the rule of law as well as in mainstream modes of scholarly legal analyses. Theorizing across a diverse spectrum of legal issues, such critics expose how law maintains and sometimes constructs subordinating status regimes based on race, gender, sexuality, and class. Despite this theoretically deep exposure in the academic literature, many such subordinating status regimes remain entrenched. For example, in the twenty-seven years since the publication of *Looking to the Bottom*, efforts to roll back the gains of the sociopolitical movements that culminated in the passage of the Civil Rights Act of 1964 have struck with stunning force and success.¹⁰ Similarly, data from the 2011 Census shows that despite the oft-trumpeted successes of middle- and upper-middle class women in the white-collar workplace,¹¹ the gender wage gap persists.¹² Moreover, poverty rates for

term more accurately and commonly refers to feminist scholars who, beginning in the 1980s, “incorporated, yet contested, many of the central features of CLS.” MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 78 (3d ed. 2013). On the genesis of the term “critical race feminism,” Adrien Wing writes that the term was chosen “to describe an emphasis on women of color . . . indicating its links to . . . CLS, CRT, and feminist jurisprudence.” CRITICAL RACE FEMINISM: A READER 4 (Adrien Katherine Wing ed., 2d ed. 2003).

10. Sociologists Michael Omi and Howard Winant have written extensively about “racial formation” in the United States and the neoconservative racial project to limit the reach and effect of the modern civil rights movements and, particularly, the Civil Rights Act of 1964. *See, e.g.*, MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S (2d ed. 1994). Their theory of racial formation accounts for the shifting legal and political understandings of racism and racial discrimination and the material effects of those shifting meanings, thus explaining the reactionary political shift to the right we have been experiencing since the 1970s. *See id.*; *see also* Howard Winant, *Racism Today: Continuity and Change in the Post-Civil Rights Era*, 21 ETHNIC & RACIAL STUD. 755, 759 (1998) (“[T]he post-civil rights era has witnessed a significant racial reaction . . . [that] has rearticulated the demands for equality and justice made by the black movement and its allies in a conservative discourse of individualism, competition, and laissez-faire. We must recognize that it is this ‘new right’ discourse which is hegemonic today, and that in these terms racism is rendered invisible and marginalized. It is treated as largely an artifact of the past.”). This rightward shift is reflected, for example, in the 2007 Supreme Court opinion that struck down school desegregation plans in Seattle, Washington, and Louisville, Kentucky, in which Chief Justice John Roberts wrote, “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 748 (2007).

11. *See, e.g.*, Hanna Rosin, *The End of Men*, ATLANTIC MONTHLY, July/Aug. 2010, available at <http://www.theatlantic.com/magazine/archive/2010/07/the-end-of-men /308135/>. In this much-debated cover story for the July/August 2010 issue of *The Atlantic Monthly*, Hanna Rosin reports on the “unprecedented role reversal” of workforce gender dynamics and “its vast cultural consequences.” She later turned the article into a book, *THE END OF MEN: AND THE RISE OF WOMEN* (2012), in which she asserts, in greater depth, that the feminist revolution is indeed underway, as evidenced by the stunning numbers of women entering the workforce due to the rise of the global service economy.

12. According to a report published by the National Women’s Law Center (NWLC) in 2012, full-time working women were paid seventy-seven cents for every dollar paid to their male counterparts in 2011; the wage gap for Black and Hispanic women is even more significant, at sixty-four cents and fifty-five cents, respectively, for every dollar earned by their White male counterparts in 2011. NAT’L WOMEN’S L. CENTER, INSECURE AND UNEQUAL: POVERTY AND

women are “substantially higher than for their male counterparts” and “substantially higher” for Black and Hispanic women than for women overall.¹³ These persistent economic disparities are accompanied, as has always been the case, by sociopolitical and cultural representations that continue to cast women in supporting, objectified, and subordinate roles. Yet, despite the fact that existing disparities in wealth, employment, and health continue to grow along lines of race, ethnicity, gender, and class,¹⁴ the hegemonic discourses of colorblindness and formal equality that dominate both popular and (formal) legal cultures have successfully persuaded many that “we” exist in a post-feminist and post-racial age.¹⁵

The proliferation in low-income communities of “alternative financial services” (AFS) providers, such as the payday lenders referenced above, is symbolic of and perhaps causally related to these status-contingent inequalities.¹⁶ As teachers of both commercial law *and* critical race theory, critical race feminism, and feminist legal theory, we are particularly concerned with such forms of retrenchment. And as critical race/feminist scholars,¹⁷ we believe that critical perspectives must be brought to bear on

INCOME AMONG WOMEN AND FAMILIES 2000–2011 1–2, (2012), http://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_povertyreport.pdf. The NWLC has provided such important statistical gender breakdown and analysis of Census data for several years, as the Census Bureau does not itself do so. *Id.*

13. *Id.* at 1–2, 3, 5.

14. See, e.g., COURTNEY KISHBAUGH & JEFFREY HAYES, INSTITUTE FOR WOMEN’S POLICY RESEARCH, THE GENDERED DYNAMICS OF INCOME SECURITY: HOW SOCIAL SCIENCE RESEARCH CAN IDENTIFY PATHWAYS OUT OF POVERTY AND TOWARD ECONOMIC SECURITY 6, 4 (2013), available at <http://www.iwpr.org/publications/pubs/the-gendered-dynamics-of-income-security> (discussing “how women experience poverty and economic insecurity across the life course” and finding that “women—and minority women in particular—have been the population hardest hit by the recession [of 2007–2009]”); WOMEN’S FUND OF THE GREATER CINCINNATI FOUND., PULSE: A STUDY ON THE STATUS OF WOMEN AND GIRLS IN GREATER CINCINNATI (2005) http://www.gcfnd.org/Portals/0/Uploads/Documents/Public/Reports/WF_Pulse_full.pdf (reporting on gender disparities in the Greater Cincinnati area in health care, childcare, education, and job training). The Institute for Women’s Policy Research regularly updates its many published reports on the status of women and women of color nationally and state-by-state with regard to, for example, employment and earnings, social and economic autonomy, health and well-being, and political participation.

15. For an excellent discussion of “post-racialism” as not only a “political trend or social fact” but an ideological movement calling for the state to “eschew race as a central organizing principle of social action,” decision-making, and legal remedies, see Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589, 1594 (2009). For an excellent discussion of “post-feminism,” see Elaine J. Hall & Marnie Salupo Rodriguez, *The Myth of Postfeminism*, 17 GENDER & SOC’Y 878 (2003), in which Hall and Rodriguez find little empirical support for the postfeminist claims that, overall, support for feminism has declined since the 1990s.

16. See *infra* Part I.A.

17. In writing this Article, we struggled mightily with how to label ourselves—are we fem crits, race crits, or CRF scholars/adherents? At first glance, it might appear that one of us is the fem crit (Kalsem, who is a White woman), while the other is the race crit (Houh, who is an Asian American woman), and that we both are CRF adherents. After all, one of us (Kalsem) regularly teaches a seminar in Feminist Jurisprudence at our institution, while the other (Houh)

conventional legal scholarship. Thus, we have each sought in our individual scholarly capacities to address the ways in which social identity and economic inequality intersect and interact in, for example, bankruptcy and contract law.¹⁸ This Article represents our first collaborative attempt to explore these intersections and interactions through the additional and new—for us—lens of participatory action research (PAR), an interdisciplinary and community-based method of qualitative inquiry.

By employing PAR methods, this Article contributes to a rapidly developing literature on what Professor Michael Barr, former Assistant Secretary for Financial Institutions at the United States Department of the Treasury and a key architect of the Dodd-Frank Wall Street Reform and Consumer Protection Act, refers to as “the financial lives of low-income Americans”¹⁹ and the “fringe banking” institutions that serve so many of them.²⁰ The ongoing community-based PAR project that we describe in

regularly teaches one in CRT. But year after year, we delight in the fact that, while our classes are very different, our syllabi always converge and class discussions culminate around intersectionality. Although we recognize and respect the historical development of these three fields and the ways in which they stand alone, overlap, interrelate, and continue to develop, we find each of the aforementioned labels for ourselves to be both over- and under-inclusive. Moreover, since the fields are in fact not fungible, we did not feel comfortable using the terms interchangeably. And to use all three to describe ourselves and our work seemed unwieldy to say the least. As such, we decided on the nomenclature “critical race/feminist” to describe ourselves. We consider the work we have each done in the past and that we do in this Article together to be critical race/feminism as well as social justice feminism. See *infra* notes 18, 219.

18. See Emily M.S. Houh, *Critical Race Realism: Re-Claiming the Antidiscrimination Principle Through the Doctrine of Good Faith in Contract Law*, 66 U. PITT. L. REV. 455 (2005) (theorizing a common law antidiscrimination claim grounded, doctrinally, not in civil rights law, but in a contractually-implied obligation of good faith that incorporates contemporary reconceptualizations of antidiscrimination jurisprudence); Emily M.S. Houh, *Critical Interventions: Toward an Expansive Equality Approach to the Doctrine of Good Faith in Contract Law*, 88 CORNELL L. REV. 1025 (2003) (employing critical race and law and market economy theories to argue that using the doctrine of good faith in contract law to prohibit improper considerations of race in contracting is consistent not only with equitable principles embodied by doctrines of implicit obligation, but also with contractual goals of protecting parties' bargains, wealth formation, and facilitation of exchange transactions); Kristin Brandser Kalsem, *Bankruptcy Reform and the Financial Well-Being of Women: How Intersectionality Matters in Money Matters*, 71 BROOK. L. REV. 1181 (2006) (arguing that the discourse surrounding major reforms to the Bankruptcy Code in 2005 framed women's issues in essentialist ways and calling for an intersectional framing and approach to analysis of women's financial well-being).

19. MICHAEL S. BARR, *NO SLACK: THE FINANCIAL LIVES OF LOW-INCOME AMERICANS* (2012).

20. Throughout this Article, we intentionally use the terms “alternative financial services” and “fringe banking,” or variations of those terms, somewhat interchangeably. Although some might argue that the use of the term “alternative financial services” is more “objective” or neutral than “fringe banking,” which connotes a bias against such institutions, we as critical scholars believe that the neutrality of language is in large part an impossibility and that the label of neutrality itself, in this context, suggests a bias in favor of neoliberal market economies. Thus, in our effort to be as transparent as possible about our own perspectives—a concept that is key in both critical work and action research—we use both terms. We use “alternative financial services” when discussing other researchers' work that uses that term, out of respect to them, and on

this Article will contribute, we hope, to an understanding of the fringe economy by offering insights into what remains “unexplained” in the literature, namely, gender and race disparities in the use of AFS products.

This Article likewise contributes to a growing body of literature within CRT and CRF that deals with economic inequalities and how they are inextricably and structurally linked to race and gender subordination.²¹ By explicitly incorporating PAR values and methods into our work as critical race/feminist researchers, we offer a “new” way of doing critical race/feminist work that is designed specifically to enable likeminded legal scholars to “get out of [the ivory tower] . . . and hear from people firsthand.”²² We describe in this Article our efforts to *do* rather than simply write about this type of work. Specifically, we describe the community-based research we conducted on predatory lending practices in partnership with Public Allies Cincinnati, an AmeriCorps program whose goal is to identify, develop, and train a new “generation” of diverse community leaders and organizers.

Consistent with Matsuda’s call to do critical work by “looking to the bottom,” our PAR intervention puts the voices and concerns of community stakeholders and research partners at the center of the work itself. The first principles of PAR require our partners to identify the problems that need solving and analyzing within a specific context (such as access to financial services in the fringe economy) and, ultimately, to generate community-based and practically viable solutions. The role of the academic researcher, then, is not to “run the show,” but rather to contribute the expertise and specialized knowledge that can most effectively facilitate community-based problem solving. Thus, our approach, which we call “legal participatory action research,” or “legal PAR,” 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.

To be clear, the PAR values and methods we champion in this Article are not new. PAR in its explicit form has existed in the United States as a community-based research methodology since the first half of the twentieth century. In fact, it was very influential in the academy until it was linked in the 1960s to radical political activism, at which point PAR began

occasion when discussing the more technical aspects of loan products included in that category. Otherwise, we use variations of the term “fringe banking.”

21. See, e.g., Athena D. Mutua, *Introducing ClassCrits: From Class Blindness to a Critical Legal Analysis of Economic Inequality*, 56 BUFF. L. REV. 859, 860, 870–86 (2008) (explaining that “ClassCrits” “aim[] to ‘foreground economics in progressive jurisprudence and to reconsider longstanding assumptions and approaches in legal scholarship and practice’ around economic issues,” to identify “gender-blindness” and color-blindness as phenomena that “in part allowed the unchecked growth of economic inequality”) (internal citation omitted).

22. CFPB Transcript, *supra* note 2, at 13.

to recede as an academic research method precisely due to its explicitly political roots.²³ Nevertheless, in the past three decades, participatory action researchers within many fields²⁴ have resuscitated PAR in order to effect interventions into the dominant positivist paradigms of social science research.

This positivist paradigm is characterized by the researcher's assumption that "science is objective" and "value-free" and, therefore, that social science research conducted according to the scientific method "is capable of representing everyone equally because it is done in an objective, unbiased manner."²⁵ PAR adherents have criticized the claim that social science is value-free and objective as untenable, arguing that "[r]esearch that does not reflect on and analyze the social context from which it springs serves only its creators and does not enable us to engage with the nature of knowledge and its relationship and relevance to others in society."²⁶ A central goal of PAR, then, is to disrupt and destabilize the characterization of traditional knowledge production and social science research as objective, apolitical, and democratic.

Since the early 1980s, critical legal scholars of many stripes have been making the same sorts of interventions in traditional legal research. Legal race, feminist, and feminist race critics continue to challenge the rule of law's "objective neutrality" and to expose its structurally subordinating foundations, implementations, and analytic paradigms. Further linking the two fields are the parallels in the historical development of PAR and CRT/CRF. Just as a contemporary iteration of PAR developed in part as a response to the limitations in practice created by a split between global Northern and Southern action researchers,²⁷ CRT developed as a response to the limitations of the legal critics' deep and obliterating critique of the liberal underpinnings of our legal system. PAR was forever altered by feminist critiques in the 1980s, just as CRF developed as a response to the gendered limitations of CRT's critiques not only of the law but also of the legal critics.

23. See Mary Brydon-Miller, Davydd Greenwood & Patricia Maguire, *Why action research?*, 1 ACTION RESEARCH 9, 12 (2003).

24. *Id.* at 12 (describing the influence of action research in the fields of organization development, anthropology, education, economics, psychology, sociology, and management). Peter Reason and Hilary Bradbury also emphasize its influence in "health promotion and nursing, and community development both in Western countries and in the majority world." Peter Reason & Hilary Bradbury, *Introduction* to THE SAGE HANDBOOK OF ACTION RESEARCH PARTICIPATIVE INQUIRY AND PRACTICE 1, 3 (Peter Reason & Hilary Bradbury eds., 2d ed. 2013).

25. SANDRA L. KIRBY ET AL., EXPERIENCE RESEARCH SOCIAL CHANGE: METHODS BEYOND THE MAINSTREAM 2 (2d ed. 2006).

26. *Id.* (emphasis added). See also Mary Brydon-Miller et al., *Jazz and the Banyan Tree: Roots and Riffs on Participatory Action Research*, in THE SAGE HANDBOOK OF QUALITATIVE RESEARCH 387 (Norman K. Denzin & Yvonna S. Lincoln eds., 4th ed. 2011).

27. See *infra* Part II.A.

Thus, the PAR principles we introduce in this Article are “new” only to the extent that they have not yet been explicitly incorporated into CRT, CRF, feminist legal scholarship, or the growing legal literature on fringe economies and economic justice. As teachers and researchers who are concerned with economic inequality in the United States, incorporating PAR values and methods into our work provides a way for us to *do* critical socio-economic justice work and to perform and document intersectional analyses with partner-stakeholders. This Article introduces what we have learned about PAR and presents our ongoing research as an example to help and hopefully inspire similarly concerned researchers in the legal academy.

This Article proceeds as follows. In Part I, we provide a descriptive grounding for our intervention by presenting an overview of some recent empirical studies on those most likely to use alternative financial services; these individuals are known as the “unbanked” and “underbanked.” We then briefly discuss and critique in this Part the relevant legal literature on fringe banking and the unbanked and underbanked, with some emphasis on payday lending. We also briefly highlight some organizational efforts that aim not only to protect the unbanked and underbanked from predatory lending practices, but also to encourage and facilitate more responsible lending practices and innovations.²⁸ Thus, Part I sets out some of the “expertise” that we bring to community conversations on predatory lending practices and the fringe economy.

Part II then introduces PAR, including its origins and critical developments, specifically highlighting the ways in which feminism, intersectionality, and CRT have and are continuing to impact the field. In this Part, we also illustrate methodologies of PAR in the context of three studies conducted by other researchers and an introduction to our own current study on fringe banking. Finally, Part III makes the case that PAR has much to offer legal scholars and scholarship, while also setting forth some of the challenges—and resulting benefits—of doing legal PAR.

I. THE LOW-DOWN ON FRINGE BANKING AND THE UNBANKED AND UNDERBANKED

In his 1996 monograph, *Fringe Banking: Check-Cashing Outlets, Pawnshops, and the Poor*, financial and urban economist John Caskey observed that deregulation of an increasingly interstate banking industry in the 1980s had resulted in “a rapid, nationwide expansion in the number of pawnshops and commercial cashing outlets.”²⁹ One of the first academics to study these “fringe banks” and their effect on their largely low- and middle-income customers, Caskey demonstrated how fringe banks con-

28. See *infra* Part I.C.

29. JOHN P. CASKEY, FRINGE BANKING: CHECK-CASHING OUTLETS, PAWNSHOPS, AND THE POOR 1 (1996).

tributed to the “increasing segmentation of consumer financial markets,” which in turn “reflected the increasing polarization in the economic well-being of American families.”³⁰ Because his study also demonstrated that fringe banking customers used such services on both a discretionary *and* no-viable-alternative basis, Caskey’s prescriptions for how to prevent consumer exploitation by fringe banks called for both consumer financial education and greater regulation of fringe banking institutions and markets.³¹

Caskey’s 1996 study remains highly relevant today, as deregulation of the banking and lending industry continued to foster the expansion of an even more diverse AFS market in the 2000s, which now includes products like payday loans, tax refund anticipation loans (RALs), and auto-title loans. Consequently, and as already noted, academic literature on the fringe economy has expanded significantly since 1996.³² In fact, the general unavailability of mainstream financial services and products offered by traditional banks to low- and middle-income individuals and households

30. *Id.* at 1, 7.

31. *Id.* at 8–9. Caskey argues not for absolute caps on rates charged by pawnbrokers and check-cashing outlets, for example, but rather for better regulation of those rates that vary greatly from the median. *Id.* at 121, 126.

32. See, e.g., Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1 (arguing for credit regulatory standards and institutions commensurate with physical product safety standards and institutions); Richard R.W. Brooks, *Credit Past Due*, 106 COLUM. L. REV. 994 (2006) (identifying fringe credit markets’ failure to contribute to and build their users’ creditworthiness as an underlying structural barrier to access to traditional credit markets and eschewing regulatory reform of fringe markets in favor of incentivizing fringe banks to report credit); Karen E. Francis, Note, *Rollover, Rollover: A Behavioral Law and Economics Analysis of the Payday-Loan Industry*, 88 TEX. L. REV. 611 (2010) (arguing that payday lending regulations should focus on informing borrowers, reducing refinancing, curtailing unfair collection practices, and enforcing current regulations rather than imposing strict usury laws); Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending*, 87 MINN. L. REV. 1 (2002) (arguing that “a large number of payday lenders engage in predatory practices”); Angela Littwin, *Testing the Substitution Hypothesis: Would Credit Card Regulations Force Low-Income Borrowers into Less Desirable Lending Alternatives*, 2009 U. ILL. L. REV. 403 (2009) [hereinafter Littwin, *Testing*] (finding that credit cards are actually many low-income borrowers’ least-preferred source of credit and that, therefore, low-income borrowers would not be forced into a worse alternative form of credit); Ronald J. Mann, *A Requiem for Sam’s Bank*, 83 CHI.-KENT L. REV. 953 (2008) (detailing Wal-Mart’s proposed financial institution and the need for the Federal Reserve Board to promote regulations that would keep entities like this with enough capital on hand to handle daily transactions); Ronald J. Mann & Jim Hawkins, *Just Until Payday*, 54 UCLA L. REV. 855 (2007) (proposing that payday lending regulations increase transparency of lending services and increase common disclosures among lenders to those using payday lending services); Nathalie Martin, *1,000% Interest – Good While Supplies Last: A Study of Payday Loan Practices and Solutions*, 52 ARIZ. L. REV. 563 (2010) (proposing federal usury cap on payday lending industry); Nathalie Martin & Ozymandias Adams, *Grand Theft Auto Loans: Repossession and Demographic Realities in Title Lending*, 77 MO. L. REV. 41 (2012) (describing the need for greater regulation and arguing for more regulations to protect lower class credit products); Richard J. Thomas, *Rolling Over Borrowers: Preventing Excessive Refinancing and Other Necessary Changes in the Payday Loan Industry*, 48 WM. & MARY L. REV. 2401 (2007) (calling for increased cooperation among groups adversely affected by payday lending).

prompted Congress, in 2006, to amend the Federal Deposit Insurance Reform Conforming Amendments Act of 2005. The amendments now require the Federal Deposit Insurance Corporation (FDIC) to undertake biannual national surveys relating to FDIC-insured banks' and financial institutions' efforts to make traditional financial services more accessible to unbanked and underbanked households and to bring those households into the "conventional finance system."³³

In accordance with the Act, the FDIC has since conducted two rounds of national surveys, first in 2009 and again in 2011, not only to assess FDIC-insured banks' efforts to better serve unbanked and underbanked households, but also to gather demographic data on those households.³⁴ This Part briefly reviews the results of the FDIC household surveys, as well as some of the academic literature that has developed since the publication of Caskey's book. It also looks at what some government and nonprofit organizations are doing to address predatory lending practices that make up, in part, the fringe economy. This discussion thus provides the descriptive underpinnings for our PAR intervention, which we explore in Part II.

A. *Data Snapshot: Who Are the "Unbanked" and "Underbanked"?*

In early 2009, the FDIC conducted its first national survey of unbanked and underbanked households in order to "address a gap in the availability of comprehensive data on the number of unbanked and underbanked households in the United States."³⁵ The FDIC collected data from forty-seven thousand participating households on the number of unbanked and underbanked households in the United States, and also those households' "demographic characteristics, and their reasons for being unbanked and underbanked."³⁶ Unbanked households are defined by the FDIC as those in which no member has either a checking or savings account. Underbanked households are defined as those in which members have a checking or savings account, but rely on alternative financial prod-

33. Fed. Deposit Ins. Reform Conforming Amendments Act of 2005, Pub. L. No. 109-173, § 7(a)(1), 119 Stat. 3601, 3609-10.

34. FDIC, BANKS' EFFORTS TO SERVE THE UNBANKED AND UNDERBANKED (2008) [hereinafter 2008 FDIC SURVEY OF BANKS' EFFORTS]; 2011 FDIC, BANKS' EFFORTS TO SERVE THE UNBANKED AND UNDERBANKED (2012) [hereinafter 2011 FDIC SURVEY OF BANKS' EFFORTS]; FDIC, SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS (2009) [hereinafter 2009 FDIC SURVEY]; FDIC, 2011 SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS (2012) [hereinafter 2011 FDIC SURVEY]. Official FDIC reports, surveys, and other related documents are available at <http://www.economicinclusion.gov/surveys/>.

35. 2009 FDIC SURVEY, *supra* note 34, at 13.

36. *Id.* at 10. The 2009 FDIC Survey was administered to fifty-four thousand households through inclusion of a special supplement to the U.S. Census Bureau's 2009 population survey and collected responses from forty-seven thousand households. *See id.* The 2011 FDIC survey was administered in partnership with the U.S. Census Bureau in June 2011 and collected responses from forty-five thousand households. *See* 2011 FDIC SURVEY, *supra* note 34, at 4.

ucts—that is, non-bank money orders, rent-to-own agreements (RTOs), payday loans, or pawn shops—at least twice a year or have taken out a RAL at least once in the past five years.³⁷

Published in 2009, this first survey found that approximately thirty million or 27.6 percent of U.S. households were either unbanked or underbanked, with 7.7 percent unbanked and 17.9 percent underbanked.³⁸ Further, it found that unbanked and underbanked households were more concentrated in the South³⁹ and that the “proportion of unbanked households declines with education and age.”⁴⁰ The most common reason given by unbanked households for not having a checking or savings accounts was, not surprisingly, “[n]ot having enough money to feel they need an account.”⁴¹

The FDIC’s second survey on unbanked and underbanked households, conducted in 2011, yielded comparable though slightly more concerning data.⁴² The *2011 FDIC Survey* reported 8.2 percent of U.S. households as being unbanked and 20.1 percent as underbanked. It further found that one in four households used at least one AFS provider in the prior year, while one in ten households used two or more such services during that time. The *2011 FDIC Survey* found no statistically significant difference from 2009 in the demographic data on who uses AFS products.⁴³ Moreover, in the 2011 executive summary, the FDIC stated that it is “committed to ensuring that all Americans have access to safe, secure, and affordable banking services” and that “public confidence in the banking system derives in part from how effectively banks serve the needs of the nation’s diverse population.”⁴⁴

As to the demographic data referenced above, both the 2009 and 2011 surveys found considerable and comparable variations between different racial and ethnic groups, as well as between married and unmarried households. For example, both surveys reported in their key findings that Blacks, American Indian/Alaskans, and Hispanics are more likely to be both unbanked and underbanked than the general population, whereas

37. 2009 FDIC SURVEY, *supra* note 34, at 10 n.3, 16, 32.

38. *Id.* at 11.

39. *Id.* at 11, 20, 48 app.A, tbl.A-1.

40. *Id.* at 11, 18–19.

41. *Id.* at 11, 20–25.

42. Some revisions were made to both the 2009 survey estimates and the 2011 survey instrument. As to the former, for example, the FDIC changed the way survey respondents were defined in order to make it consistent with the definition used in the 2011 survey, which resulted in no change to the general findings made in the 2009 FDIC Survey. See 2011 FDIC SURVEY, *supra* note 34, at 9.

43. 2011 FDIC SURVEY, *supra* note 34, at 4.

44. *Id.*

Asians and Whites are less likely to be either unbanked or underbanked.⁴⁵ The 2009 survey reported that within racial/ethnic groups, “almost 54 percent of black households, 44.5 percent of American Indian/Alaskan households, and 43.3 percent of Hispanic households are either unbanked or underbanked.”⁴⁶ Similarly, the 2011 survey reported that close to one-half of Black, American Indian/Alaskan, and Hispanic households are unbanked or underbanked, compared to one-quarter of Asian and white households.⁴⁷ Additionally, the 2011 survey found that “almost one-third [sic] (62.7 percent) of all unbanked households are black or Hispanic, as are 38.7 percent of underbanked households[,]” while “[i]n contrast, fewer than one in five (16.2 percent) fully banked households are [B]lack or Hispanic.”⁴⁸ Not surprisingly, these more recent findings reflect no significant change from those reported in 2009.⁴⁹

Finally, both surveys also found that family households headed by unmarried females or males are considerably more likely than married households to be unbanked or underbanked.⁵⁰ Gender was also a significant factor: for example, 19.5 percent in 2009 and 19.1 percent in 2011 of unmarried female-headed family households were unbanked, compared to 14.8 percent in 2009 and 14.3 percent in 2011 of unmarried male-headed households.⁵¹

A similar 2006 study conducted by University of Michigan (UM) law professor Michael S. Barr, in collaboration with UM’s Survey Research Center, focused on low- and middle-income (LMI) households in the greater Detroit area and surveyed for more-variegated data about the specific financial services used by members of those households. While much of the data collected by Barr is wholly consistent with the national data generated by the 2009 and 2011 FDIC surveys, Barr employed qualitative inquiry in order to obtain a more “in-depth look at the use of financial services in the local area” and to “understand household attitudes and behaviors within the context of local financial services offerings and market structures.”⁵² In his book *No Slack: The Financial Lives of Low-Income Americans*, Barr published his data and distinguished his study from the 2009 FDIC Survey, noting that his study provides “a more nuanced and textured

45. 2009 FDIC SURVEY, *supra* note 34, at 10–11; 2011 FDIC SURVEY, *supra* note 34, at 5.

46. 2009 FDIC SURVEY, *supra* note 34, at 11.

47. 2011 FDIC SURVEY, *supra* note 34, at 5.

48. *Id.* at 21.

49. 2009 FDIC SURVEY, *supra* note 34, at 18. The 2009 Survey reported that Black and Hispanic households constituted 65 percent of all unbanked households, and 37.9 percent of all underbanked households. *Id.*

50. *Id.* at 11, 17; 2011 FDIC SURVEY, *supra* note 34, at 16–17.

51. 2009 FDIC SURVEY, *supra* note 34, at 11, 18 fig.4.6; 2011 FDIC SURVEY, *supra* note 34, at 16 fig.4.4.

52. BARR, *supra* note 19, at 8.

understanding of LMI households than can be gained solely with aggregated national data [referring to the *2009 FDIC Survey*].”⁵³

Barr’s study, for example, delves more deeply into *why* the unbanked do not have banking accounts. While the FDIC surveys provide the obvious answer (lack of money), a “substantial share” of the unbanked surveyed in Barr’s study stated that “lower fees, less confusing fees, or more convenient bank hours and locations would make them more likely to open a bank account.”⁵⁴ Additionally, many of the underbanked AFS users in Barr’s study indicated that they used money orders, pawnshops, and payday lenders in addition to their traditional banking accounts because of those products’ “convenience and ease of use.”⁵⁵

Most significantly, Barr draws important conclusions about how the financial system, as currently structured, negatively affects LMI Americans and their ability to accumulate both short- and long-term savings. Like Caskey and others who have studied the unbanked and underbanked, Barr demonstrates the increased costs associated with being poor that result from not only the price of using AFS products, but also other factors relating to unstable employment, lower home ownership rates, and poorer access to schools, health and medical care, and other supports.⁵⁶ According to Barr, all of this “makes saving even harder.”⁵⁷ He sums up his analysis of the data succinctly:

The results [of the study] suggest that existing financial services, credit, and payment systems impose high transaction costs on lower-income households, increase their costs of credit, and reduce their opportunities to save. . . .

LMI households have no financial slack. And the financial system as it is currently organized makes it harder for families to cope. While many LMI households engage in a range of strategies to manage their finances, these strategies can impose heavy economic and noneconomic costs on those households. Restructuring the financial system to better serve them could improve outcomes and social welfare.⁵⁸

The FDIC household surveys and Barr’s *No Slack* study provide data-rich contexts at both a macro and micro level relating to how the unbanked and underbanked manage their finances and gain access to credit. Barr further argues that because it functions so sub-optimally, the financial system servicing the unbanked and underbanked should be reformed to

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 15.

57. *Id.*

58. *Id.* at 8, 15.

provide better, more convenient, and less costly financial products to low-income individuals and communities, and he goes on to advocate for “behaviorally informed” policy reform and regulation.⁵⁹ Also, as reported in the *2011 FDIC Survey of Banks’ Efforts*, FDIC-insured banks are undertaking some efforts to provide financial services and products to unbanked and underbanked individuals and households, such as offering low initial deposit, no-fee checking accounts, and small dollar (up to \$2,500) loans.⁶⁰ Many also engage in some outreach via community partnerships and financial education programs.⁶¹

Finally, and of particular significance to us, Barr notes that race plays an important but “unexplained” role in his data: “even when controls for income, education, and employment are implemented, large, unexplained racial differences in bank-account ownership are found: African American respondents are 12 percentage points less likely to have a bank account than their nonblack counterparts in the survey.”⁶² While interrogating these “unexplained” racial and gender differences is not part of Barr’s project, it is central to ours. And while we believe proposals put forward by Barr, Caskey, and others warrant the serious attention and consideration of policymakers at both state and national levels, we are, for purposes of this Article, more interested in the snapshots these studies provide of an empirically-demonstrated material reality that both maintains and reproduces economic inequality—often on “unexplained” race and/or gender lines—for many low-income individuals and families.

B. *Academic Snapshot: What Some Scholars Are Saying*

Many traditional and purely “legal” scholars⁶³ have also attempted to address the problem of fringe borrowing—or at least to accurately describe and critique it. But as with most traditional legal scholarship, these commentators have, for the most part, marshaled their evidence in order to propose top-down policy solutions. Moreover, while more scholars, like Barr, are admirably “getting out of Washington” to collect data,⁶⁴ their

59. Regarding such “behavioral” reform, Barr discusses how “context, decisional conflict, mental accounting, knowledge and attention constraints, and institutions shape individual decisionmaking and behavior.” *Id.* at 247, 246–76.

60. 2011 FDIC SURVEY OF BANKS’ EFFORTS, *supra* note 34, at 4–6.

61. *Id.* at 3.

62. BARR, *supra* note 19, at 9. In this regard, Barr further writes that “lower income families have substantially less wealth than high-income families. In itself, this is not surprising, since these families have less capacity to save and invest But for some groups, particularly African Americans and immigrants, income differences alone do not explain these wealth differences; wealth holdings are lower even after accounting for income and demographic differences.” *Id.* at 15.

63. See *supra* note 32.

64. Yale law professor and MIT-trained economist Ian Ayres, for example, has spent much of his career disrupting the “[h]egemony of economic analysis of law” and empirically documenting race and gender discrimination, including in the context of consumer purchasing. See

efforts are rooted in traditional empirical social science methods, rather than in values that prioritize stakeholder-based problem solving. This Subpart summarizes and analyzes some of the more current academic literature addressing the fringe economy, with some emphasis on its most successful new player, the payday lending industry. It also examines the work of scholars like Angela Littwin, whose empirical research on the credit card industry takes into account input from community stakeholders who participated in her research.

As stated in the Introduction to this Article, the literature on the fringe economy has grown tremendously since John Caskey first published *Fringe Banking* in 1996. For example, Ronald Mann, one of the foremost scholars of commercial law, has published extensively on small- and large-scale payday lending, doing much to continuously flag and describe its exploitative effects and to call for further regulation of payday lending practices.⁶⁵ Creola Johnson also authored an early and extraordinarily thorough study of the payday lending market in Ohio in 2002, in which she argued for the necessity of federal legislation to protect payday loan consumers. Johnson's call for federal as opposed to state-by-state legislative regulation was prescient and, unfortunately, unheeded. In states where payday lending has been more restrictively regulated through the capping of interest rates or where they have been banned all together, payday lenders have simply reorganized under other state laws,⁶⁶ or they have partnered with large national banks to circumvent state law altogether.⁶⁷

Ian Ayres, *Never Confuse Efficiency with a Liver Complaint*, 1997 WIS. L. REV. 503, 504–06 [hereinafter Ayres, *Never Confuse Efficiency*]; see also IAN AYRES, *PERVASIVE PREJUDICE? UNCONVENTIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION* (2001) (discussing top-down solutions while proposing certain types of empirical analysis be used to analyze discrimination in other fields other than car retail sales); Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 HARV. L. REV. 817, 817 (1991) (presenting evidence of discrimination against, in particular, Black women in context the of retail car negotiations); Ian Ayres, *Further Evidence of Discrimination in New Car Negotiations and Estimates of Its Cause*, 94 MICH. L. REV. 109, 109 (1995) (presenting a new quantitative method of identifying discrimination in the context of retail car negotiations).

65. See, e.g., Mann, *supra* note 32; Mann & Hawkins, *supra* note 32, at 855.

66. For example, when the Short-Term Loan Act was passed in 2008 to more strictly regulate payday lending and cap interest rates on payday loans in the state of Ohio, payday lenders there simply began to license and organize themselves under other state statutes so that they could continue to impose triple-digit interest rates on borrowers. See Short-Term Loan Act, OHIO REV. CODE ANN. §§ 1321.35–1321.48, 1321.99 (West 2014); Small Loan Act, OHIO REV. CODE ANN. §§ 1301.01–1321.20 (West 2014); Mortgage Loan Act, OHIO REV. CODE ANN. §§ 1321.20, 1321.21, 1321.51, 1321.60 (West 2014); Pawnbroker Act, OHIO REV. CODE ANN. §§ 4727 *et seq.*, 1321.20 (West 2014); Credit Services Organization Act, OHIO REV. CODE ANN. § 4712 *et seq.* (West 2014); see also Jessica Silver-Greenberg, *Major Banks Aid in Payday Loans Banned by States*, N.Y. TIMES, Feb. 24, 2013, at A1 (describing how payday lenders in states that have banned payday loans have moved operations to “more hospitable states or far flung locales like Belize, Malta[,] and the West Indies” to circumvent state restrictions).

67. See Silver-Greenberg, *supra* note 66, at A1 (“Banks, which include giants like JPMorgan Chase, Bank of America and Wells Fargo . . . enable . . . [payday] lenders to withdraw

Many other scholars have likewise advocated for financial regulation reform to protect consumers, both in broad and specific contexts and in many different ways.⁶⁸

This growing literature makes a strong case to legal scholars, policy-makers, and future lawyers that fringe banking institutions should be more heavily regulated and, in some cases, prohibited. Some of the literature also proposes more innovative reform that involves, for example, consumer and industry partnerships.⁶⁹ Of particular relevance to our work, some commentators have analyzed the specific ways in which the fringe economy helps to maintain intersectional subordination of LMI communities of color and women.⁷⁰ All of this literature forms a solid foundation for further study and legal reform efforts. However, most legal scholarship has not utilized a bottom-up approach to the problem. An exception is the work of Angela Littwin, who has written extensively on the credit card industry and low-income credit card users. Because we find inspiration in her work, we briefly discuss here how some of it intersects with our own.

Most relevant to our research, Littwin has studied how credit cards have been made increasingly available to low-income users due to the steady deregulation of the credit card industry over the past twenty years. Littwin has explored the impact of this trend on low-income credit card users and what it assumes about their behaviors and preferences. For example, in a 2009 article, Littwin challenges the “substitution hypothesis,” a traditional economic theory that has been used successfully by those advo-

payments automatically from borrowers’ bank accounts, even in states where the loans are banned entirely.”).

68. See *supra* note 32.

69. See, e.g., Christopher Choe, *Bringing in the Unbanked off the Fringe: The Bank on San Francisco Model and the Need for Public and Private Partnership*, 8 SEATTLE J. FOR SOC. JUST. 365, 366–67 (2009–2010) (arguing that federal, state, and local regulations should be used not only to encourage private institutions to provide financial products and services to the unbanked and underbanked, but also to limit interest rates for payday and title loans).

70. See, e.g., Regina Austin, *Of Predatory Lending and the Democratization of Credit: Preserving The Social Safety Net of Informality In Small-Loan Transactions*, 53 AM. U. L. REV. 1217 (2003–2004) (explaining how predatory lenders use informal lending practices and race to exploit borrowers); Alexander J. Chenault, *New Financial Regulation Reform: A Good Measure for African Americans*, 33 N.C. CENT. L. REV. 123, 132–33 (2011) (providing recommendations to strengthen the Dodd-Frank Act that include bringing African Americans into the regulatory process and placing a greater emphasis on financial literacy education); Paulina E. Davis, *Racism, Capitalism, and Predatory Lending: How The U.S. Government’s Failure to Regulate The Disproportionate Negative Effects of Payday Lending in Black Communities Violates The International Convention on the Elimination of All Forms of Racial Discrimination*, 4 HUM. RTS. & GLOBALIZATION L. REV. 61, 62 (2010–2011) (advocating regulation against predatory lending practices like payday lending in order to comply with the Convention for the Elimination of All Forms of Racial Discrimination); Creola Johnson, *The Magic of Group Identity: How Predatory Lenders Use Minorities to Target Communities of Color*, 17 GEO. J. POVERTY L. & POL’Y 165, 169–74 (2010) (explaining that predatory lenders have used the collective instinct of minority groups and prominent spokespersons from those groups to exploit those groups).

cating deregulation of the credit card industry. The substitution hypothesis states that “if a restriction on one form of credit limits access to credit, borrowers will respond by using other, less desirable forms of credit.”⁷¹ Deregulation advocates have employed this theory to argue that the increasing availability of credit cards to lower income users enables “low-income people to borrow from credit card companies [and to] . . . decrease their use of less desirable forms of credit available in what is known as the ‘fringe banking’ or ‘alternative’ credit market.”⁷²

Littwin challenges this type of economic “common sense”—so much of which has dominated legal research and driven policy and legal reform since the 1980s⁷³—by unpacking some of the problematic assumptions underlying the substitution hypothesis, including the treatment of different forms of credit as interchangeable to low-income consumers and the conflation of low-income borrowers’ behaviors with their actual preferences. In her 2009 piece, Littwin conducted extensive interviews with individuals and small groups using a “snowball” sample of fifty low-income women, most of whom had dependents living in the household and most of whom were women of color living in the Boston area.⁷⁴ Contrary to the substitution presumptions relating to the interchangeability of different forms of credit and the preferences of low-income borrowers, Littwin found:

Middle-class bias and traditional economic methodologies have caused the assumption that all regulation-driven substitution away from credit cards is harmful. But the current study suggests that credit cards are actually among the least-preferred sources of credit, meaning that there is no “worse” alternative to which they would turn if credit card access were reduced.⁷⁵

Littwin’s critique of traditional economic assumptions and her use of qualitative research methods and theoretical analysis is part of a larger intervention into the orthodoxy of conventional economic analyses of law being carried out quite effectively by behavioral economists and critical legal scholars alike.⁷⁶ This intervention seeks to challenge dominant assump-

71. Littwin, *Testing*, *supra* note 32.

72. *Id.* at 407–08.

73. See, e.g., Ayres, *Never Confuse Efficiency*, *supra* note 64, at 504–06.

74. Littwin, *Testing*, *supra* note 32, at 408–09 (discussing the “snowball sample” and content analysis methodologies used in study); see also Angela Littwin, *Beyond Usury: A Study of Credit Card Use and Preference Among Low-Income Consumers*, 86 *TEX. L. REV.* 451, 456, 505–06 (2008) [hereinafter Littwin, *Beyond Usury*] (reporting that “86% of study participants had dependents in the home” and “racial and ethnic composition of the sample was 44% black, 40% Latina, 10% white, 2% Asian, and 4% biracial”).

75. Littwin, *Testing*, *supra* note 32, at 454.

76. See, e.g., Ayres, *Never Confuse Efficiency*, *supra* note 64. For background on how implicit bias impacts law, see, e.g., Linda Hamilton Krieger, *The Content of Our Categories: A Cogni-*

tions underlying the rule of law and driving policy reform. In doing so, it helps us in our own work to uncover the ways law and policy continue to reify subordinating status regimes based on race and gender.

Littwin's work jibes with ours in another important way: it reflects some key values of PAR. In an earlier article focusing exclusively on the study she used for the 2009 article discussed above, Littwin not only probed and reported on her study participants' actual preferences relating to credit cards and other credit sources, but she also interviewed them about the types of innovations *they* thought might help protect them against accumulating oppressive credit card debt. Study participants cited such methods as (nonexhaustively) lowering credit limits, imposing stricter eligibility requirements, offering classes for first-time credit card users, offering installment payment plans, and offering consumer-driven limits.⁷⁷ In undertaking the project, Littwin expressed concern that commentators on "both sides" of the "usury debate" "proceed as if low-income families have little to add directly to the debate."⁷⁸ She instead put forward "fresh ideas" generated by the study participants themselves about possible protections outside of capping interest rates and other conventional types of consumer protection regulation.⁷⁹

Littwin's reliance on the participants themselves to express how credit cards impact them (relative to other forms of credit) and to generate their own solutions to the problems credit cards pose is consistent with the values and methods inherent to PAR that so appeal to us as critical scholars. As discussed further in Part II.C.1, looking to stakeholders to identify problems and generate solutions can yield nuanced and sophisticated approaches to issues that are normally handled with the blunt instrument of regulation, which, although necessary, often provides only superficial relief.

C. Organizational Reform and Advocacy Efforts

Legislative reforms of the fringe banking industry at both the state and federal level have focused primarily on capping interest rates and requiring AFS providers to give full and proper notice to potential users. However, in some states, certain forms of payday lending have been banned altogether.⁸⁰ But, as is often the case, such regulation has resulted

tive Bias Approach to Discrimination and Equal Employment Opportunity, 47 STAN. L. REV. 1161 (1995); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005); Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. REV. 465 (2010).

77. Littwin, *Beyond Usury*, *supra* note 74, at 479.

78. *Id.* at 454.

79. *Id.* at 478–88.

80. To date, payday loans are prohibited by law in Arkansas, Arizona, Colorado, Connecticut, the District of Columbia, Georgia, Maine, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, and West Virginia. Proposed Guidance to the FDIC and OCC on Deposit Advance Products, 78

in the creation of other AFS products, such as car title loans, that also are suboptimal.⁸¹ In the wake of such innovation, both governmental and nonprofit agencies are recognizing the need to do more than provide notice, cap interest rates, and bar specific types of fringe banking products, since the AFS industry can often circumvent these regulatory measures.⁸² Although there are many national and local organizations doing the much-needed work in this area,⁸³ this Subpart discusses very briefly the efforts of three particularly effective organizations. It thereby helps situate our own project within these ongoing efforts.

1. The Feds: Consumer Financial Protection Bureau

As discussed above, the Federal Deposit Insurance Reform Confirming Amendment Act requires the FDIC to collect data biannually on the unbanked and underbanked and on traditional financial institutions' efforts to make traditional credit products available to them.⁸⁴ Also mentioned above, the Dodd-Frank Act resulted in the creation of the Consumer Financial Protection Bureau (CFPB), the stated mission of which is to “make markets for consumer financial products and services work for Americans—whether they are applying for a mortgage, choosing among

Fed. Reg. 25268, 25353 (proposed April 30, 2013) (comments by the AARP, CRL, Consumer Fed'n of America, Leadership Conference on Civil and Human Rights, NAACP, Nat'l Consumer Law Center, Nat'l Council of La Raza), available at http://www.nclc.org/images/pdf/rulemaking/comments_to_occ_fdic_bank_payday_may_30_2013.pdf (*13 n.58).

81. In conventional economic terms, people engage in “optimal” behavior when they make choices that “maximize their utility”—in other words, choices that maximize their “happiness.” Conversely, people behave suboptimally when they make choices that “adversely affect their own happiness.” Christopher K. Hsee et al., *Suboptimal Choices and the Need for Experienced Individual Well-Being in Economic Analysis* 1 (Inst. for the Study of Lab., Discussion Paper No. 6346, 2012), available at <http://ftp.iza.org/dp6346.pdf>.

82. See *supra* note 66.

83. See, e.g., *About Us*, NAT'L CONSUMER L. CTR., <http://www.nclc.org/about-us/about-us.html> (last visited Mar. 26, 2014); *Our Mission and Our Work*, CTR. FOR FIN. SERV. INNOVATION, <http://www.cfsinnovation.com/about> (last visited Mar. 26, 2014); *About the Urban Institute*, URBAN INST., <http://www.urban.org/about> (last visited Mar. 26, 2014); *Race and Ethnicity*, ECON. POLICY INST., <http://www.epi.org/research/race-and-ethnicity/> (last visited Mar. 26, 2014); *Asset Building Program*, NEW AMERICA FOUND., http://assets.newamerica.net/about_this_program_7 (last visited Mar. 26, 2014); *Principles of Solidarity*, STRIKE DEBT, strikedebt.org/#about (last visited Mar. 26, 2014) (explaining that as an offshoot of the Occupy Wall Street movement, Strike Debt is “a nationwide movement of debt resisters fighting for economic justice and democratic freedom” that uses “direct action, research, education, and the arts . . . to imagin[e] and creat[e] alternatives” to debt); *Vision*, FIN. ACCESS INITIATIVE, <http://www.financialaccess.org/about> (last visited Mar. 26, 2014). FAI (along with the CFSI and Bankable Frontier Associates) is a partner in the U.S. Financial Diaries Project, which “track[s] more than 200 low- and moderate-income households over the course of a year, and collect[s] highly detailed data on household financial activity” in order to broaden how we think about poverty. *Project*, U.S. FINANCIAL DIARIES, <http://www.usfinancialdiaries.org/about-us/project> (last visited Mar. 26, 2014).

84. See *supra* notes 33–34 and accompanying text.

credit cards, or using any number of other consumer financial products.”⁸⁵ The CFPB employs a three-pronged strategy to fulfill its mission: it educates consumers, it enforces federal consumer laws through both supervision of and direct action relating to financial institutions, and it studies consumer financial markets.⁸⁶ Through its website, consumers and the general public can submit formal complaints to the CFPB; indeed, over one hundred seventy-five thousand complaints have been submitted since the CFPB began operating in 2012.⁸⁷

Consistent with the recently (and finally) confirmed CFPB Director Richard Cordray’s call to “get out of Washington,” individuals can also use the website to “tell your stories” about their experiences with consumer financial products.⁸⁸ Additionally, in the spirit of getting out of Washington, the CFPB since early 2012 has conducted field hearings and public town hall meetings in fifteen cities across the country on topics like prepaid cards, payday lending, credit reporting, debt collection, student loans, and mortgage policy (including reverse mortgages).⁸⁹

In July 2013, the CFPB submitted its first Financial Literacy Annual Report to Congress, in which it reports on its efforts to date to “help consumers make better informed choices about their personal finances and achieve financial goals.”⁹⁰ Although much of the CFPB’s work has focused on the mortgage loans that gave rise to the ongoing economic crisis, it researches, educates on, and monitors a broad spectrum of consumer financial services and products, including (quite non-exhaustively) payday lending, bank overdraft loans, student loan affordability, car title loans, credit cards, harmful debt collection practices, and deceptive lending prac-

85. *About Us*, CONSUMER FIN. PROT. BUREAU, <http://www.consumerfinance.gov/the-bureau/> (last visited Mar. 26, 2014).

86. *We’re 732 Days Old: Here’s What We’ve Been Up To*, CONSUMER FIN. PROT. BUREAU (Jul. 22, 2013), <http://www.consumerfinance.gov/blog/hbd/>.

87. *Id.*

88. *Tell Your Story*, CONSUMER FIN. PROT. BUREAU, <https://help.consumerfinance.gov/app/tellyourstory> (last visited Mar. 26, 2014).

89. To date, field hearings and town halls have been conducted by the CFPB on various topics in: Atlanta, Georgia; Baltimore, Maryland; Birmingham, Alabama; Cleveland, Ohio; Des Moines, Iowa; Detroit, Michigan; Durham, North Carolina; Los Angeles, California; Miami, Florida; Minneapolis, Minnesota; Mountain View, California; New York, New York; Philadelphia, Pennsylvania; Portland, Maine; and Seattle, Washington. All field hearings and town halls are announced, reported, or webcast via the CFPB’s Blog. *See Blog*, CONSUMER FIN. PROT. BUREAU, <http://www.consumerfinance.gov/blog/>.

90. The CFPB’s three guiding principles around financial education are: “Make sure people have the help they need, when they need it; Research and identify financial education methods that work; Collaborate with other groups to apply and fine-tune the best approaches.” *Our First Financial Literacy Report to Congress*, CONSUMER FIN. PROT. BUREAU, <http://www.consumerfinance.gov/blog/our-first-financial-literacy-report-to-congress/>. The possibility of developing our research team, discussed *infra* Parts III and Conclusion, into one of the community groups with which the CFPB could collaborate was often discussed as one of many possible outcomes of our work together.

tices aimed at active-duty military. In early 2014, the CFPB's newest initiative (to date) will begin; this three-year financial outreach and education project will make "financial coaches" available to transitioning veterans and their families and other "economically vulnerable" consumers in spaces where they already receive related services like job training and housing counseling services.⁹¹

Despite the political embroilments plaguing the Bureau since its inception, the CFPB has managed to do a remarkable amount of work since 2012. Its efforts to engage community stakeholders in ways that go far beyond traditional agency notice-and-comment rulemaking are of particular interest to us as legal PAR researchers, and its website provides invaluable data to researchers, policymakers, educators, and the general public alike.

2. National Nonprofits: Center for Responsible Lending

One very productive national nonprofit organization (and there are many) working on specific forms of fringe banking such as payday lending is the Center for Responsible Lending (CRL). Based in Durham, North Carolina, CRL's mission is to "protect homeownership and family wealth by fighting predatory lending practices," with particular emphasis on consumer mortgages, payday loans, credit cards, bank overdraft loans, and auto loans (both auto financing loans and car title loans).⁹² A 2012 recipient of the MacArthur Award for Creative and Effective Institutions,⁹³ CRL was established in 2002 by the Self-Help Credit Union, a major national community development lender, as a result of Self-Help's success in coalition-building in North Carolina to fight predatory home equity lending practices. These coalition efforts resulted in the enactment of the North Carolina Predatory Lending Law, the first such state law in the United States. CRL had such great success assisting state-based coalitions on other consumer lending issues that it soon established offices in Washington, D.C., and Oakland, California, to monitor and advocate against abusive lending practices.

CRL conducts extensive research to propose meaningful policy solutions, develops and provides accessible "financial tips and tools" to consumers so they can make the "best financial choices," engages in high-impact consumer protection litigation, and organizes with other community-based consumer advocacy, civil rights, labor, and faith-based organi-

91. Holly Petraeus & Clifford Rosenthal, *Financial Coaching Services to Transitioning Veterans and Economically Vulnerable Consumers*, CONSUMER FIN. PROT. BUREAU (Jul. 19, 2013), <http://www.consumerfinance.gov/blog/financial-coaching-services-to-transitioning-veterans-and-economically-vulnerable-consumers/>.

92. *About CRL*, CTR. FOR RESPONSIBLE LENDING, <http://www.responsiblelending.org/about-us/> (last visited Mar. 26, 2014).

93. *Id.*

zations in order to push for more bottom-up reform.⁹⁴ In addition to commenting on proposed federal and state consumer lending legislation and regulation, CRL's website provides to its lay users the most current information on the state of consumer lending; new AFS products, such as car title loans; and new trends, such as certain national banks' entry into the payday loan market (at which the FDIC and Office of the Comptroller of the Currency are beginning to take aim).⁹⁵ CRL also provides resources to "allies," including those in the faith community, which are an important part of many community organizing efforts, in order to aid them/us in taking local action and ensuring stakeholder voices are heard.⁹⁶

3. Local (State) Nonprofits: Policy Matters Ohio

State-focused nonprofit organizations such as Policy Matters Ohio are also conducting localized research in order to "create a more prosperous, equitable, sustainable and inclusive Ohio, through research, media work and public advocacy."⁹⁷ Policy Matters Ohio works not only on consumer protection and "asset building," but also on proposing sound budget and revenue policies and providing research, education, and training on energy policy, work and wages, basic needs and unemployment compensation, privatization, and democracy and government.⁹⁸ What we particularly like about Policy Matters Ohio is not only that it sees these issues as linked together, but also that it explicitly situates its more localized work within a larger global, social, and economic context that implicates "[the] global recession, . . . deindustrialization, rising inequality, and global warming."⁹⁹ In a sense, Policy Matters Ohio does in the nonprofit world what we as researchers believe should happen more in the world of academic research: it focuses on the local within the context of the global, and it links seemingly disparate and complicated economic "issues" in service to its larger goal of "forg[ing] an economy that works better for all."¹⁰⁰

D. *Always Room for More*

We draw great inspiration and energy from the work being done by so many organizations to address how long-term debt impacts the un-

94. *Id.*

95. *Id.*

96. *Resources for Allies*, CTR. FOR RESPONSIBLE LENDING, <http://www.responsiblelending.org/allies/> (last visited Mar. 26, 2014).

97. *Who We Are*, POLICY MATTERS OHIO, <http://www.policymattersohio.org/about-us> (last visited Mar. 26, 2014).

98. *Research & Policy*, POLICY MATTERS OHIO, <http://www.policymattersohio.org/category/research-policy> (last visited Mar. 26, 2014).

99. POLICY MATTERS OHIO, *supra* note 97.

100. *Id.*

banked and underbanked. But what do we—as critical race/feminist theorists, law teachers, and hopeful legal PAR scholars—have to bring to a table so stacked with expertise? The answer is twofold. First, we bring an explicit and specific intersectional analysis to the existing work, which almost always mentions the continuing and “unexplained” *fact* of race- and gender-based economic inequality, but almost never tackles *how* and *why* race, gender, and economic inequality are (and always have been) so interconnected. Particularly in light of recent (successful) moves by some policymakers, legal advocates, and academics to disaggregate race and gender from class, we think it necessary to counter this trend by more closely interrogating these interconnections. Second, in trying to examine these interconnections, we attempt to heed Mari Matsuda’s call to “look to the bottom” by employing PAR approaches. We explain what this means and how we are attempting to do so in the next part of this Article.

II. PARTICIPATORY ACTION RESEARCH: PUTTING THEORY INTO PRACTICE—REALLY

Practice needs theory and theory needs practice just like fish need clean water.

—Paulo Freire¹⁰¹

As its name suggests, PAR is research that concerns itself with action—making a difference, moving toward solutions—but only when those differences and solutions have been agreed upon by the relevant community members. Here, we want to make clear and explicit an important distinction between the terms “Action Research” (AR) and “Participatory Action Research” (PAR). AR currently refers to a broad range of methodologies that share certain characteristics, among them a commitment to social change and democratic practice. Within this larger framework of AR, PAR has developed specifically to focus on community-based initiatives and participatory practices. Different forms of AR comprise a broad spectrum of political engagement, and PAR is at the more radical and “emancipatory” (as opposed to “technical”) end of that spectrum.¹⁰² The *research* and the *action* must be *participatory*, with those who

101. PAULO FREIRE, LETTERS TO CRISTINA: REFLECTIONS ON MY LIFE AND WORK 107 (1996).

102. See Ortrun Zuber-Skerritt, *Emancipatory Action Research for Organisational Change and Management Development*, in NEW DIRECTIONS IN ACTION RESEARCH 68, 69 (Ortrun Zuber-Skerritt ed., 1996) (“In the tradition of the Frankfurt School of Critical Theory, I have described emancipatory action research as collaborative, critical and self-critical inquiry by practitioners . . . into a major problem or issue of concern in their own practice More precisely, action research is emancipatory when it aims not only at technical and practical improvement . . . but when it also aims at changing the system itself or those conditions which impede desired improvement in the organization. Emancipatory action research also aims at the participants’ empowerment and self-confidence about their ability to create ‘grounded theory’—that is theory

will be affected by the actions—the stakeholders—involved at all stages of the research and decision-making processes. As Peter Reason and Hilary Bradbury describe it, PAR is “not so much a *methodology* as an *orientation to inquiry*,” a perspective on research that “seeks to create participative communities of inquiry in which qualities of engagement, curiosity and question posing are brought to bear on significant practical issues.”¹⁰³

Differentiating itself from research that involves “subjects” of study who are not participating as coresearchers, PAR requires ongoing reflection and vigilance concerning issues of power and context. In their glossary of key PAR concepts, Fran Baum, Colin MacDougall, and Danielle Smith identify three distinctive aspects of PAR: first, its focus on action; second, its “careful attention to power relationships, advocating for power to be deliberately shared between the researcher and the researched”;¹⁰⁴ and, third, its emphasis on the important connections between information and data and the specific contexts in which they are collected.¹⁰⁵

Finally, PAR is not about bringing people together just to bring them together (although it recognizes the value in that, too). Rather, a foundational belief of this kind of research is that all of the participants bring information and knowledge to the process that is of value. In fact, several methodological tools of PAR are designed to bring awareness to both individuals and the group of the “assets” they possess. As another definition of PAR stresses:

It is built upon the notion that knowledge generation is a collaborative process in which each participant’s diverse experiences and skills are critical to the outcome of the work. PAR combines theory and practice in cycles of action and reflection that are aimed toward solving concrete community problems while deepening understanding of the broader social, economic, and political forces that shape these issues.¹⁰⁶

In this Part, we briefly introduce the field of PAR, specifically its history, critical developments, and methodologies. This discussion and the examples included herein highlight and elaborate upon some of the defining characteristics of PAR’s “orientation to inquiry.” An understanding of the premises and tools of PAR illuminates why and how it can be valuable to critical legal researchers.

grounded in experience and practice—by solving complex problems in totally new situations . . . on an equal footing with everyone else. There is no hierarchy, but open and ‘symmetrical communication.’”) (internal citations omitted).

103. Reason & Bradbury, *supra* note 24, at 1.

104. Fran Baum et al., *Participatory Action Research: Glossary*, 60 J. EPIDEMIOLOGY CMTY. HEALTH 854, 854 (2006).

105. *Id.*

106. Brydon-Miller et al., *supra* note 26, at 1.

A. Participatory Action Research: A Brief History

1. Narratives of Origin

Orlando Fals Borda is credited with coining the term Participatory Action Research in the late 1970s.¹⁰⁷ Fals Borda has traced the development of PAR to two distinct “action research” movements, one that was evolving in the Northern Hemisphere and the other in the Southern Hemisphere.¹⁰⁸ In his narrative of PAR’s origin, PAR evolved from convergences in these two movements. The first wave took place in the 1970s and was “predominated by the South,”¹⁰⁹ while the second wave took place in the 1980s and became more balanced, with greater involvement by northern theorists.¹¹⁰ Fals Borda describes the third wave, in the 1990s, as tipping the balance to the North, with important studies taking place within the university setting.¹¹¹

Expanding both the geography and era of PAR’s inception, Mary Brydon-Miller and Patricia Maguire elaborate on Fals Borda’s history. Moving beyond the North/South convergence, Brydon-Miller and Maguire write, “the practice of PAR seems to have developed at much the same time in various locations around the world including India, Brazil, Tanzania, Colombia, and the Appalachian region of the United States.”¹¹² Additionally, Brydon-Miller and Maguire’s account of the origin of PAR predates Fals Borda’s first wave. More specifically, they maintain that PAR is at least as old as the storied Highlander Folk School, which was founded by Myles Horton in 1932.¹¹³

2. Persons of Early (Participatory) Influence

The social psychologist Kurt Lewin is recognized as the father of the northern branch of action research. Escaping fascism, Lewin came to the United States from Germany in the late 1930s.¹¹⁴ Lewin conceptualized

107. Budd L. Hall, *In From the Cold? Reflections on Participatory Research From 1970–2005*, 38 CONVERGENCE 5, 11 (2005). Fals Borda was a Colombian sociologist and scholar-activist whose conception of *praxis* within PAR involved research that extends “in time and space, both horizontally and vertically in communities and regions. [PAR] moves from the micro to the macro level and thus acquires a political dimension.” Orlando Fals Borda, *The Application of Participatory Action-Research in Latin America*, 2 INT’L SOC. 329, 334 (1987).

108. Orlando Fals Borda, *The North-South Convergence: A 30-Year First-Person Assessment of PAR*, 4 ACTION RESEARCH 351, 355 (2006).

109. *Id.*

110. See Hall, *supra* note 107, at 14–16 (detailing who was involved in the development of the Northern branch of the international action research network).

111. Fals Borda, *supra* note 108, at 355.

112. Mary Brydon-Miller & Patricia Maguire, *Participatory Action Research: Contributions to the Development of Practitioner Inquiry in Education*, 17 EDUC. ACTION RES. 79, 80 (2009).

113. See *infra* notes 120–121 and accompanying text.

114. Michael Peters & Viviane Robinson, *The Origins and Status of Action Research*, 20 J. OF APPLIED BEHAV. SCI. 113, 114 (1984).

action research as a triangle, with training as the first component and research and intervention as the remaining two.¹¹⁵ In this approach, Lewin saw a way to “both solve practical problems—e.g., problems of racial prejudice—and to discover ‘general laws of group life’”¹¹⁶ Central to Lewin’s action research was a rejection of the positivist perspective that scientific research was objective and value-free.¹¹⁷ In addition to influencing other social psychologists, Lewin’s action research was very influential in the field of education in the late 1940s and early 1950s.

Despite sharing a name with Lewin’s action research, South American action research (sometimes referred to as Community Action Research) has distinct origins and aims. Emphasizing his resistance to an overemphasis on action research’s Eurocentric roots, Fals Borda queries, “where are the Maya Aristotles who discovered the Zero and taught how to build the wonderful pyramids in Yucatán? How are their intellectual and technical contributions taken into account in our discourses and narratives?”¹¹⁸ Combined with a commitment to indigenous influences, South American action research is notable for the *praxis* aspect of research closely associated with Paulo Freire, the Brazilian educator and philosopher best known for establishing “popular education” (or “education for critical consciousness”) and his influential monograph *Pedagogy of the Oppressed*.¹¹⁹

As noted above, Fals Borda describes the first wave of PAR as heavily influenced by the work of action researchers in the South, including Freire and himself. Fals Borda also, however, identifies the North American Myles Horton as an important figure in the first wave of PAR. Horton, a self-described “radical hillbilly” who was influenced by democratic, socialist, and humanist thinkers such as Marx, Dewey, Lenin, and Addams, placed action before ideology and believed that learning must begin with action and move towards theory.¹²⁰ Towards that end, Horton founded the Highlander Folk School in Monteagle, Tennessee, in 1932. He did so to foster a space where individuals could teach each other based on their life experiences, and where, more specifically, they could train to work in the

115. *Id.* at 115.

116. *Id.* at 114.

117. *See supra* notes 25–26 and accompanying text.

118. Hillary Bradbury & Peter Reason, *Introduction: Inquiry and Participation in Search of a World Worthy of Human Aspiration*, in *HANDBOOK OF ACTION RESEARCH PARTICIPATIVE INQUIRY AND PRACTICE* 1, 3 (Peter Reason & Hilary Bradbury eds., 2001).

119. PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (Myra Bergman Ramos trans., Bloomsbury Academic 30th Anniversary ed. 2000) (1970). Freire resisted what he referred to as the “banking model” of education, which treats students as empty vessels and teachers as depositors of knowledge. In his work with adult learners, Freire developed an alternative *praxis* that encouraged students to think critically by drawing on their personal histories to develop critiques of dominant society. *Id.* at 71–86.

120. *See generally* Barbara Thayer-Bacon, *Democratic Praxis: Highlander Folk School*, 18 *EDUCATIONAL FOUNDATIONS* 2, 5 (2004). *See also* Shadi Rahimi, *Peace Profile: Myles Horton*, 14 *PEACE REVIEW* 343, 343–48 (2002).

labor movement as union activists.¹²¹ By the 1950s, Highlander's mission had also become explicitly anti-racist as a result of the many civil rights leaders who attended the school. In fact, notable visitors during that era included Martin Luther King, Jr., Rosa Parks, Septima Clark, and Andrew Young.¹²²

3. PAR: Coming of Age and Forging Its Own Identity

While it is difficult to provide any one coherent history of PAR, its "founders," or the action research movements from which it developed, it is possible to locate distinct strands of this work in various geographical and historical locations. Moreover, emerging from these various strands are several unifying characteristics. First, the literature consistently identifies action research/PAR as a critique of and response to the positivist tradition that assumes social science research is objective and value-free.¹²³ Reflective of this stance, it is not surprising that most forms of this research draw upon the work of theorists such as Marx, Dewey, Fanon, Habermas, Gramsci, Kuhn, and Durkheim.¹²⁴ Additionally, Brydon-Miller, Greenwood, and Maguire assert that the various streams of action research/PAR are united by "[a] respect for people and for the knowledge and experience they bring to the research process, a belief in the ability of democratic processes to achieve positive social change, and a commitment to action."¹²⁵ These values represent common threads throughout the narrative of the history of PAR.

B. *Critical Developments in Participatory Action Research*

1. Feminist Revision

In the late 1970s and early 1980s, explicit connections were made between the principles of feminism and PAR. As in most fields, this was a time when the mainstream feminist movement was highlighting the dearth of women's voices and the fact that, for the most part, human experience

121. Horton conceived of Highlander on a trip to Denmark during which he learned about the Danish folk school model. At its inception, Highlander served as a training ground for union activists. For more information on the origins of the Highlander School, see Thayer-Bacon, *supra* note 120, at 5–23.

122. For information on the connections between Highlander and the Civil Rights Movement, see Kenneth Torquil MacLean, *Origins of the Southern Civil Rights Movement: Myles Horton and the Highlander Folk School*, 47 THE PHI DELTA KAPPAN, 487, 487–89 (1966).

123. For Lewin's critique of positivism, see Kurt Lewin, *Action Research and Minority Problems*, 2 J. SOC. ISSUES 34 (1946). For Freire's critique, see Tyson E. Lewis, *Teaching with Pensive Images: Rethinking Curiosity in Paulo Freire's Pedagogy of the Oppressed*, 46 J. AESTHETIC EDUC. 27 (2012). For Fals Borda's critique, see Lola Cendales, Fernando Torres & Alfonso Torres, "One Sows the Seed but it Has its own Dynamics": An Interview with Orlando Fals Borda, 1 INT'L J. OF ACTION RES. 9 (2005).

124. Brydon-Miller et al., *supra* note 23, at 11.

125. *Id.* at 15.

was studied, defined, and explained based upon a male norm. For instance, in 1978, Dale Spender urged women to create “our own means of producing and validating knowledge which is consistent with our own personal experience.”¹²⁶ She argued for the “need to formulate our own yardsticks, for we are doomed to deviancy if we persist in measuring ourselves against the male standard.”¹²⁷ Similarly, Helen Callaway characterized the social sciences as not only science of male society, but as *male* science of society.¹²⁸ PAR, in sync philosophically with feminism in so many respects, also puts a high value on lived experiences as a source of knowledge:

PAR draws on the work of phenomenologists who expand the breadth and importance of experience . . . Experiences are not from a sphere of subjective reality separate from an external, objective world. Rather they enable humans to engage with their world and unite subject and object.¹²⁹

Despite these obvious synergies, by 1987 it was clear that the feminist perspective was distinctly missing from most participatory research discourse. In *Doing Participatory Research: A Feminist Approach*,¹³⁰ Patricia Maguire explained:

The movements which influenced the emergence of participatory research have been male centered and male dominated. It is not surprising that participatory research mirrors their male bias. As a result, women are marginalized in the majority of participatory research practice and theory. Participatory research may challenge the class biases of dominant social science research, but to date, much participatory research leaves its patriarchal filter in place.¹³¹

To address what she termed the “androcentric filter”¹³² in PAR, Maguire proposed a nine-part framework for feminist PAR that would “provide a planning and evaluation tool to help create participatory research projects more likely to recognize and meet women’s emancipatory needs” and “to stimulate dialogue among participatory researchers and feminists.”¹³³

126. Dale Spender, *Editorial*, 1 *WOMEN’S STUD. INT’L Q.* 1, 1 (1978).

127. *Id.*

128. Helen Callaway, *Women’s Perspectives: Research as Re-vision*, in *HUMAN INQUIRY: A SOURCE BOOK OF NEW PARADIGM RESEARCH* 457 (Peter Reagan & John Rowan eds., 1981).

129. Baum et al., *supra* note 104, at 856.

130. PATRICIA MAGUIRE, *DOING PARTICIPATORY RESEARCH: A FEMINIST APPROACH* (1987).

131. PATRICIA MAGUIRE, *DOING PARTICIPATORY RESEARCH: A FEMINIST APPROACH* 76 (2d ed. 2000).

132. *Id.* at 50.

133. *Id.* at 110.

Illustrative of PAR, Maguire's framework sets out not only a theory, but also a blueprint for action.¹³⁴ At the outset, she presents first principles of feminist PAR that highlight the ways in which PAR has failed to adhere to its own foundational principles by ignoring issues of gender and other forms of identity-based oppression. Specifically, she advocates that feminist PAR (1) "be built on a critique of both the positivist *and* androcentric underpinnings of dominant paradigm social science research," and (2) "expand the discussion from exclusive focus on the class interests and differences of the researcher to an inclusive focus on gender, race, culture, and class."¹³⁵ Maguire's expansion of the issues to be considered beyond gender represents an understanding that feminism, if true to its underlying tenets, can be, as Angela Harris wrote in 1990 in her pivotal critique of essentialism in feminist legal theory, "a unified theory of oppression."¹³⁶ It is this "inclusive feminism" that Maguire argues should be "the central theoretical basis" of PAR.¹³⁷

Maguire's framework then presents specific ways to technically execute these feminist principles by, for example, paying attention to how language is used and to the "composition . . . of the research team, equally including gender, class, race, and culture."¹³⁸ Finally, Maguire's framework calls for reflection on both a micro and macro level. For individual PAR projects, gender should be a specific "factor to consider in overall project evaluation."¹³⁹ For the larger field of PAR, there must be review and tracking by the research community of "all participatory research projects with gender in mind."¹⁴⁰ With this nine-part framework, Maguire presented both theory and practice. Importantly, she also included as a necessary part of the participatory action research formula the need to constantly reflect upon and assess the effectiveness of efforts to integrate the two.

While Maguire's interventions profoundly changed much PAR work, with Greenwood going so far as to suggest that PAR's connections with feminism saved action research from again falling into obscurity,¹⁴¹ Maguire reiterated in 2000 that "feminism and feminists are still quite

134. See *id.* at 110–13.

135. *Id.* at 110.

136. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 612 (1990).

137. MAGUIRE, *supra* note 131, at 111.

138. *Id.* at 113.

139. *Id.*

140. *Id.*

141. See Davydd J. Greenwood, *Foreword* to MAGUIRE, *supra* note 131, at ix, xi–xii (2000) ("In the 1970's and 1980's . . . [b]etween the ongoing battles between the positivists, constructivists, deconstructivists, and postmodernists, one could barely hear the voice of action research at all. What changed this picture? In my view, it was feminism. When feminism entered the scene, among its many impacts, it reopened the space for action research.").

marginalized in action research” and, on the other hand, that “feminists have not wholeheartedly embraced the action of participatory action research.”¹⁴² In a call to action, she declared that “[o]vercoming the resistance of action research to feminisms and of feminists to action research is work that needs you.”¹⁴³ In the context of critical race and feminist legal scholarship, we are taking up that call in this Article.

2. Participatory Action Research and Critical Race Theory: Intersections to Explore

As with feminism, connections between PAR and CRT are clear. Both are informed by a deep understanding of the political nature of knowledge-production and the impact such production has on the organization of society, as well as a commitment to addressing sociopolitical inequality by challenging conventional modes of research and action. They both embrace characterization as political, overtly acknowledging their social justice agenda. With its focus on localized research and community-based solutions, PAR also shares with CRT the central tenet that history and context *matter*.

Yet, in 2001, Ella Edmondson Bell wrote about the invisibility of race in the field of action research.¹⁴⁴ With the very notable exceptions of those associated with the Highlander School,¹⁴⁵ she states that “in the USA where the fight for racial equality has historically dominated the landscape, an eerie silence lurks when it comes to discussing action research techniques to dismantle racial oppression.”¹⁴⁶ While in the 1970s and 80s the action research literature did not make much of the connections between PAR, CRT, Black activism, and research, Bell traces a rich history of participatory research in the Black liberation social science movement.¹⁴⁷

In response to studies by White researchers on “the minority experience in America” such as the 1965 Moynihan report, which characterized

142. See MAGUIRE, *supra* note 131, at xv.

143. *Id.*; see also TRAVELING COMPANIONS: FEMINISM, TEACHING, AND ACTION RESEARCH (Mary Brydon-Miller, Patricia Maguire & Alice McIntyre eds., 2004) [hereinafter TRAVELING COMPANIONS] for a compilation of essays exploring the “issues that continue to mediate, complicate, enliven, and frustrate action-based feminist-inspired research aimed at eradicating social injustices.” *Id.* at xi. This collection analyzes the intersections of feminism and PAR “to contribute new perspectives and energy to both.” *Id.*

144. Ella Edmondson Bell, *Infusing Race into the U.S. Discourse on Action Research*, THE SAGE HANDBOOK OF ACTION RESEARCH: PARTICIPATIVE INQUIRY AND PRACTICE 48 (Peter Reason & Hilary Bradbury eds., 1st ed. 2001).

145. See *supra* notes 120–122 and accompanying text.

146. Bell, *supra* note 144, at 49.

147. See, e.g., K.B. CLARK, DARK GHETTO: DILEMMAS OF SOCIAL POWER (1965); THE DEATH OF WHITE SOCIOLOGY (Joyce A. Ladner ed., 1973); JOYCE A. LADNER, TOMORROW'S TOMORROW: THE BLACK WOMAN (1971).

the Black family as a “tangle of pathologies,”¹⁴⁸ progressive Black sociologists developed a liberation approach to research, using it to “dismantle the master’s house, and to achieve social justice.”¹⁴⁹ The basic tenets underlying this work were “(1) to move beyond traditional methods, by (2) creating knowledge for the sake of economic, political and social change in the Black community, and (3) without forsaking rigorous social investigation.”¹⁵⁰ A key shift from traditional research for this movement was to engage the community in the research process and to work with them on identifying problems and solutions.¹⁵¹ Bell writes that the stance of these Black social scientists was that “the historically exploitative, oppressive position that a majority of White social scientists held toward minority groups would no longer be tolerated.”¹⁵² Thus, Black liberation social scientists made important contributions to the field of action research, which scholars like Bell are working to bring to light.

The 1990s brought the need for an intersectional approach to the forefront of political activism in the Black community. Highlighting the racialized sexism of the nation’s response to Anita Hill’s testimony during the Clarence Thomas confirmation hearings, Bell describes efforts by Black women to expand the fight for racial equality by taking into account issues of gender and class.¹⁵³ In 2001, Bell identified PAR techniques as particularly well-suited “to dismantle both systemic and social dimensions of racial oppression, while at the same time addressing the interlocking forces of class, gender and sexual preference.”¹⁵⁴

In the last ten years, there is evidence of the “infusion” of CRT and CRF into action research discourse and practice that Bell’s article identified as important and necessary.¹⁵⁵ For instance, intersectionality has become increasingly integral to the PAR process. In the second edition of

148. Bell, *supra* note 144, at 50. For a discussion of the Moynihan report in the context of the rise of Black nationalistic pride, see ELMER P. MARTIN & JOANNE MITCHELL MARTIN, *THE BLACK EXTENDED FAMILY* (1978).

149. Bell, *supra* note 144, at 51.

150. *Id.* at 51.

151. See, e.g., Jerome Harris & William D. McCullough, *Quantitative Methods and Black Community Studies*, in *THE DEATH OF WHITE SOCIOLOGY* 331 (Joyce A. Ladner ed., 1973); Ronald W. Walters, *Toward a Definition of Black Social Science*, in *THE DEATH OF WHITE SOCIOLOGY* 190 (Joyce A. Ladner ed., 1973).

152. Bell, *supra* note 144, at 51.

153. *Id.* at 51; see also E.L. Bell, *Myths, Stereotypes, and Realities of Black Women: A Personal Reflection*, 28 *J. OF APPLIED BEHAV. SCI.* 363 (1992); Elsa Barkley Brown, *Imaging Lynching: African American Women Communities of Struggle and Collective Memory*, in *AFRICAN AMERICAN WOMEN SPEAK OUT ON ANITA HILL-CLARENCE THOMAS* 100 (Geneva Smitherman ed., 1995); Barbara Ransby, *A Righteous Rage and a Grassroots Mobilization*, in *AFRICAN AMERICAN WOMEN SPEAK OUT* 45 (Geneva Smitherman ed., 1995).

154. Bell, *supra* note 144, at 56.

155. Bell calls for analysis that takes into account “an interlocking complexity of social relations, social issues, and social justice all infused with race, class, and gender.” *Id.* at 48.

the *Action Research Handbook*, for example, Colleen Reid and Wendy Frisby explain why intersectionality should be taken into account at each step in a project, “when deciding on research questions, collecting and analyzing data, and deciding upon action plans.”¹⁵⁶ They also emphasize the importance of building relationships and collaborating “across differences in gender, class, race, culture, sexuality, ablebodiedness and other markers of difference.”¹⁵⁷ Moreover, Maguire—whose feminist intervention stressed the need to analyze interlocking oppressions from the beginning—and researchers steeped in the Highlander tradition like Brydon-Miller continue their advocacy for the “need to imagine ourselves as existing at the intersection of multiple identities, all of which influence one another and together shape our continually changing experience and interactions.”¹⁵⁸

Other positive signs that race is no longer invisible in PAR include the fact that one of us (Houh) was recently invited to write a substantial entry on CRT and CRF in the forthcoming *Encyclopedia of Action Research*. This entry emphasizes how and why CRT/CRF and action research are “natural bedfellows.”¹⁵⁹ More generally, collections such as *Interrogating Racism In Qualitative Research Methodology* move issues that are central to CRT and CRF to the center of the analysis of the research itself.¹⁶⁰

Just as PAR is recognizing all that CRT and CRF have to offer to its activist work, we hope to raise consciousness with this Article of all that PAR has to offer to critical legal theorists. In addition to providing the methodological tools for putting theory into action discussed in the following section, PAR can also foster a more sophisticated understanding of various forms of intersections, including the privilege associated with the position of researcher: “Through open dialogues with both our participants and ourselves, we can begin to understand the nature of oppression, domination, and exploitation as they intersect and interrelate with gender, race, class and other forms of advantage and disadvantage.”¹⁶¹ In this way,

156. Colleen Reid & Wendy Frisby, *Continuing the Journey: Articulating Dimensions of Feminist Participatory Research (FPAR)*, in *THE SAGE HANDBOOK OF ACTION RESEARCH: PARTICIPATORY INQUIRY AND PRACTICE* 98 (Peter Reason & Hilary Bradbury eds., 2nd ed. 2008).

157. *Id.* at 98.

158. Mary Brydon-Miller, *The Terrifying Truth: Interrogating Systems of Power and Privilege and Choosing To Act*, in *TRAVELING COMPANIONS*, *supra* note 143, at 9.

159. Emily M.S. Houh, *Critical Race Theory*, in *SAGE ENCYCLOPEDIA OF ACTION RESEARCH* (Mary Brydon-Miller & David Coghlan eds.) (forthcoming 2014).

160. *INTERROGATING RACISM IN QUALITATIVE RESEARCH METHODOLOGY* (Gerardo R. Lopez & Laurence Parker eds., 2003). While no article in this collection is specific to PAR, for discussions of research that values community participation, see, e.g., Melanie Carter, “Telling Tales Out of School: ‘What’s the Fate of a Black Story in a White World of White Stories?’” in *INTERROGATING RACISM IN QUALITATIVE RESEARCH METHODOLOGY* 29; Cynthia Tyson, *Research, Race, and an Epistemology of Emancipation*, in *INTERROGATING RACISM IN QUALITATIVE RESEARCH METHODOLOGY* 19.

161. Reid & Frisby, *supra* note 156, at 98.

PAR not only offers opportunities for action; it also deepens the theoretical analysis of CRT and CRF.

C. Methodologies of Participatory Action Research

The specific context orientation of PAR means that the identification of issues and actions, as well as the methods for determining what those might be, are community-generated. Thus, the concept of methodologies must be fluid and adaptable.¹⁶² There are many examples of methods that have been used “for drawing out knowledge and analysis in a social and collective way.”¹⁶³ Bev Gatenby and Maria Humphries identify as favored those methods that “emphasize collaboration and dialogue.”¹⁶⁴

In this Subpart, before discussing our own project and methodologies, we briefly discuss a specifically law-related PAR project, a long-term gender-focused study, and, in greater detail, a project that addresses issues of intersectionality. This sampling represents a range of topics, geographies, group sizes, and time lengths and illustrates the ways in which the methodological tools dynamically adapt to the research itself.

1. Multiple Oppressions/Multiple Solutions: Exemplary PAR

The Community Accessibility Project evolved from initial interviews that researcher Mary Brydon-Miller conducted with fourteen individuals who, several years before passage of the Americans with Disabilities Act,¹⁶⁵ expressed interest in discussing issues of accessibility for persons with disabilities in their small Massachusetts community.¹⁶⁶ These interviews not only generated a significant amount of information about architectural accessibility in the community and strategies for addressing accessibility barriers, but also illuminated the “psychological and social importance of accessibility.”¹⁶⁷

Of the fourteen original interviewees, twelve participants attended a follow-up workshop.¹⁶⁸ At this workshop session, the group came to a consensus to focus on accessibility issues they had collectively identified at

162. Brydon-Miller et al., *supra* note 26, at 4 (“PAR draws on both quantitative . . . and qualitative approaches, adhering to the belief that the issues facing the community and the research questions they generate to address these issues should drive the method.”).

163. See generally Hall, *supra* note 107.

164. Bev Gatenby & Maria Humphries, *Feminist Participatory Action Research: Methodological and Ethical Issues*, 23 WOMEN’S STUD. INT’L F. 89, 90 (2000) [hereinafter Gatenby & Humphries, *Feminist Participatory Action Research*].

165. See Americans with Disabilities Act, 42 U.S.C. §§ 12101–12213 (1990).

166. See Mary Brydon-Miller, *Breaking Down Barriers: Accessibility Self-Advocacy in the Disabled Community*, in VOICES OF CHANGE: PARTICIPATORY ACTION RESEARCH IN THE UNITED STATES AND CANADA 125, 128 (Peter Park et al. eds., 1993) [hereinafter Brydon-Miller, *Breaking Down Barriers*].

167. Brydon-Miller, *Breaking Down Barriers*, *supra* note 166, at 128.

168. *Id.* at 129.

a local shopping mall.¹⁶⁹ They also named themselves the Community Accessibility Committee and agreed to meet on a monthly basis.¹⁷⁰ Over the next five years, this Committee engaged in activities ranging from gathering measurements and other data at the mall, to writing letters to mall management, to filing a complaint with the Architectural Barriers Board, to testifying at various hearings.¹⁷¹ In the end, this advocacy led to a decision by the Supreme Judicial Court of the Commonwealth of Massachusetts that required the mall to install an elevator, making the second floor accessible to all.¹⁷²

In the course of this project, community members acquired valuable knowledge about the laws and regulations that affected accessibility in their community,¹⁷³ learned and developed a variety of advocacy skills,¹⁷⁴ and gained confidence in their own abilities to stand up for their rights and fight for meaningful change.¹⁷⁵ They also realized that they were experts on disability; they had valuable contributions to make on disability issues based on their personal experiences.¹⁷⁶ In the end, this community-based effort resulted in a victory in the first accessibility-related case to appear before the Massachusetts Supreme Court.¹⁷⁷ The commitment of a small group of community stakeholders, researchers, and problem-solvers ultimately led to substantial positive change.

Whereas the Community Accessibility Project came about because of initial interviews conducted by an academic researcher, a project regarding women and career development began in a “Women and Management” class offered in 1989 at the University of Waikato in New Zealand.¹⁷⁸ Students in the class expressed a desire to participate in a project that would continue to investigate the meanings of “career development” for women after the class had concluded.¹⁷⁹ Two of the professors (Bev Gatenby and Maria Humphries) were “looking for ways to extend the feminist discussion begun in the course beyond the classroom, indeed beyond the university.”¹⁸⁰ They wanted to help facilitate “continuing reflection on feminist analysis of work, economics, management and career

169. *Id.*

170. *Id.* at 130.

171. *Id.* at 130–32.

172. *Id.* at 131–32.

173. *See id.* at 133.

174. *Id.*

175. *Id.* at 136–37.

176. *Id.* at 134.

177. *Id.* at 132.

178. Bev Gatenby & Maria Humphries, *Exploring Gender, Management Education and Careers: Speaking in the Silences*, 11 GENDER AND EDUCATION, 281, 284 (1999) [hereinafter Gatenby & Humphries, *Exploring Gender*].

179. *Id.*

180. *Id.*

theory” with women who aspired to attain leadership positions within organizations.¹⁸¹ The students in the original course, as well as students from the four following years, joined the research, which ultimately involved over one hundred graduates.¹⁸² Eleven years later, over seventy participants were still active in the project.¹⁸³

Discussing the methods used in this project, Gatenby and Humphries explain that “[c]hoosing a methodology consistent with feminist commitments has in this project meant developing a range of methods which allow a variety of issues to be worked with.”¹⁸⁴ Initially, the primary method involved a questionnaire that was sent out to participants every six months.¹⁸⁵ The project facilitators developed the questionnaire, but included open-ended questions and plenty of space to enable research participants to respond and reflect in their own ways.¹⁸⁶ For example, at one point, the participants requested that questions about paid employment be moved from the first page of the questionnaire because they objected to the priority that seemed to give to that kind of work.¹⁸⁷

These questionnaire responses formed part of a file that was kept for each research participant, which after a decade also included other items such as lengthy letters about changes and challenges in participants’ lives.¹⁸⁸ Photographs also served as data, with Gatenby and Humphries noting, “[i]t is significant that participants choose to send certain photos and not others. It is also important that we think about the meanings we attach to those photographs as viewers We choose to make certain meanings from the photographs sent to us, as do the participants when they later reflect on their own files of information.”¹⁸⁹

The contents of these files became topics for career workshops, held every other year.¹⁹⁰ These workshops involved everything from role-playing exercises to thought-provoking discussions of recent articles on feminist theory.¹⁹¹ Exemplary of the cycles of action and reflection in PAR, these workshops offered “an opportunity to do some specific career exercises, sometimes with a career counselor or consultant, to revise the research process, to hear about and contribute to the development of themes

181. *Id.*

182. Gatenby & Humphries, *Feminist Participatory Action Research*, *supra* note 164, at 91.

183. *Id.*

184. *Id.* at 95.

185. *Id.* at 92.

186. *Id.*

187. *Id.*

188. *Id.* at 94.

189. *Id.*

190. *Id.* at 96.

191. *Id.* at 96–98.

in the research, to review the personal files, to discuss feminist issues, and to meet and talk with other participants.”¹⁹²

Thus, this project worked on both a micro and macro level. Some of the goals focused on the actual participants in the group, helping them with their own individual career development. Other project goals, such as “us[ing] career development as a lens through which we might enhance our understanding of gender and sexism in New Zealand organizations and women’s lives” and “develop[ing] and encourag[ing] some feminist leaders for the future[,]” aimed to address systemic societal issues.¹⁹³

In this study, PAR created knowledge about the meanings of “career” in women’s lives that more traditional research methods would likely not have illuminated. For example, it was clear that “things women, and researchers, are not supposed to talk about in the same sentences as topics such as ‘management’, ‘leadership’, or even ‘career’”—such topics as “[a]bortion, infertility, bulimia and pregnancy,” as well as “issues of health, childbearing, grief, sexuality, community and family commitments”—profoundly affect the meanings of “career” for both women and men.¹⁹⁴ This research demonstrates why it is important that these “unspeakable issues” be acknowledged: “It is clear from the experiences participants describe that these experiences have serious implications for the very definitions of career, their personal and private aspirations and opportunities.”¹⁹⁵ This knowledge helped individual project participants and new groups that they helped form in their own communities to strategize actions in light of how gender matters in the context of the meanings and realities of career development.¹⁹⁶

A third study, the Makes Me Mad: Stereotypes of Young Urban Woman of Color project, illustrates intersectionality at work in PAR. This project started in 2002 when researcher and graduate student Caitlin Cahill wanted to explore the everyday lives and concerns of young women of color living in the Lower East Side neighborhood of New York City and to train them in social research methods, making them researchers themselves.¹⁹⁷ Cahill made presentations at schools and community centers to

192. *Id.* at 96.

193. *Id.* at 91.

194. *Id.* at 95.

195. *Id.* at 95–96.

196. For more information on this women in management project, including more specifics on the methodologies employed, see, e.g., Gatenby & Humphries, *Feminist Participatory Action Research*, *supra* note 164; Gatenby & Humphries, *Exploring Gender*, *supra* note 178; Bev Gatenby & Maria Humphries, *Feminist Commitments in Organisational Communication: Participatory Action Research as Feminist Praxis*, 23 *AUSTL. J. OF COMM.* 73, 73 (1996).

197. Caitlin Cahill, *The Personal is Political: Developing New Subjectivities Through Participatory Action Research*, 14 *J. OF FEMINIST GEOGRAPHY* 267, 270–71 (2007) [hereinafter Cahill, *Personal is Political*].

recruit young women to participate in a four-week-long program.¹⁹⁸ Following an application and interview process, a six-person research team was assembled.¹⁹⁹ They named themselves the Fed Up Honeys.²⁰⁰

As a PAR project, the young women were involved in each step of the research. Cahill described the project as following the Freirian model, which is a three-phased process involving (1) naming and prioritizing community problems; (2) reflecting upon those problems and why they exist; and (3) taking action to address them.²⁰¹ In this way, the researchers are able to make important connections between issues and solutions.

Early on, the group identified harmful stereotypes as a community problem and a priority concern.²⁰² This issue took center stage when their own research on their neighborhood unearthed a report published by a social services organization which featured “a hypothetical profile of a young woman of color which was a composite of ‘at risk’ stereotypes of young working-class women of color: she shoplifted, had asthma, dropped out of school, her mother was on welfare, she contracted HIV, got pregnant, and eventually ended up on welfare.”²⁰³ It is interesting that while the *Makes Me Mad* project began as a way to “speak back” to this report and to those who misrepresented their life experiences, in the end the researchers decided that they wanted their primary audience to be other women of color like themselves. As one member of the group explained:

[O]ver the course of our discussions we came to the very difficult realization that we too were consumers of these negative stereotypes, so we decided that our primary audience should be our peers. If we only communicated with outsiders that presumes that our peers (and ourselves) don't have the level of agency needed to make change to the predominant perceptions of us and we strongly disagree with that belief.²⁰⁴

198. *Id.* at 271.

199. *Id.*

200. *Id.*

201. *Id.* at 271. See generally Melinda J. Ickes, *The Freirian Model: A Place in Health Promotion and Education* 26 AM. J. OF HEALTH STUD. 18, 20 (2011) (“The approach to the Freirian model [is a] three-phased process. First, the naming phase attempts to identify the community problems and determine priorities. It has also been designated as the listening phase, since conducted as an ‘equal partnership’ with the community members In the second phase, also known as the reflection phase, questions are raised in an attempt to answer why the problem(s) exist. The third phase is the action phase, which emerges directly from the problem-posing discussion. Community members attempt to figure out what options exist and what could be done to change the situation(s).”).

202. Cahill, *Personal is Political*, *supra* note 197, at 271.

203. *Id.*

204. *Id.* at 272.

These realizations came from conducting research on their everyday geographies—where they lived their lives—using multiple PAR methodologies.²⁰⁵ For example, they toured their neighborhood taking careful note of details that they would not typically have noticed.²⁰⁶ They also engaged in behavior mapping, which involves tracking a participant's physical locations at various times throughout the day and categorizing the activities they engage in.²⁰⁷ Through these and other methods, the research group was able to identify various issues and also conduct a “critical investigation of their social contexts.”²⁰⁸

Freire's concept of *conscientizacao* was also key to this project. Freire describes this as “coming to terms with the roots of your oppression as you come into your subjecthood.”²⁰⁹ Cahill identifies the PAR process as a “site for consciously negotiating multiply-situated positionalities and the development of new subjectivities,” and explains how the Fed Up Honeys, through personal storytelling, dialogue, and listening, “reworked and redefined their subjectivities as young working-class women of color.”²¹⁰ In the reflection phase, the following research questions emerged:

1. What is the relationship between the lack of resources (for example, education) in a community and stereotypes of young urban womyn of color? What are the impacts of stereotyping on young womyn's well-being?
2. How do stereotypes affect and reinforce your self-image? Your understanding of your peers? And your community?²¹¹

The Makes Me Mad project involved much personal transformation on the part of the young women involved. Sharing stories and questioning each other's language and assumptions opened up opportunities to com-

205. See Caitlin Cahill, *Doing Research with Young People: Participatory Research and the Rituals of Collective Work*, 5 CHILDREN'S GEOGRAPHIES 297 (2007) (describing the methodologies used in the Makes Me Mad Project).

206. See Caitlin Cahill, *Including Excluded Perspectives in Participatory Action Research*, 28 DESIGN STUDIES 325, 328 (2007) (summarizing the walking tour).

207. For more information on behavior mapping, see Nilda Cosco, Robin C. Moore & Mohammed Z. Islam, *Behavior Mapping: A Method for Linking Preschool Physical Activity and Outdoor Design*, 42 J. MED. & SCI. SPORTS & EXERCISE 513 (2010) (“Behavior mapping is an unobtrusive direct observational method for recording the location of subjects and measuring their activity levels simultaneously. Results help researchers understand the behavioral dynamics of built environment.”).

208. Cahill, *Personal is Political*, *supra* note 197, at 271.

209. FREIRE, *supra* note 119, at 35.

210. Cahill, *Personal is Political*, *supra* note 197, at 273.

211. *Id.* at 281. The Fed Up Honeys explain on their website, “[t]he reason we spell womyn with a ‘Y’ is because the ‘correct’ spelling of woman and women have the words man and men in them.” *Stereotypes*, FED UP HONEYS, <http://www.fed-up-honeys.org/stereotypes/> (last visited Mar. 26, 2014).

municate across what Erika Apfelbaum has identified as “traumatic boundaries.”²¹² This is key to such a project focusing on “stereotyping, and the material and psychological impacts of structural racism and poverty.”²¹³ As Cahill explains, “[i]n the PAR project the telling and the knowing is a collective enterprise of developing a social analysis connecting discrimination, privilege, and race based on interpretations of personal experiences.”²¹⁴

However, as Freire emphasized, PAR does not involve only intellectual discoveries; it must involve action. This project entailed several sites of action. A very localized, attention-grabbing result of this project was a sticker campaign. The Fed Up Honeys printed stickers that depicted negative stereotypes about women of color: “Young Urban Womyn of Color are . . . Lazy and on Welfare” or “Young Urban Womyn of Color are . . . Promiscuous” and then posted them all over the community. As they explain on their website (another “action” piece of their project):

By now we are assuming, or at least hoping, that most of you have come across one or more of our “Stereotype Stickers” which are up around the entire Lower East Side and other parts of the city. Most advertisements seen on public transportation and around the city are discriminatory and sexist, so what we created is something mocking those ads but instead of selling you sex, we’re making you think. Those of you who have spotted them must be wondering exactly what our motive is with these “Stereotype Stickers.” That’s simple. We are looking to plant a seed in the minds of society. We wanted our stickers to upset you to the point of inspiration. We want our beautiful, young, urban womyn of color to realize what it is we have against us and we hope it will give you all the motivation to go against the grain; to prove everyone wrong.²¹⁵

In addition to the sticker campaign and the website, the Fed Up Honeys have also compiled a detailed research report and presented their findings and conducted workshops in a wide array of fora, ranging from schools and community-based organizations to national academic conferences.

Like feminist consciousness-raising and the use of narrative that is so central to CRT and CRF, the PAR process brought the Fed Up Honeys to “political understandings” that were “developed through an analysis of

212. Erika Apfelbaum, *Against the Tide: Making Waves and Breaking Silences*, in *HIST. OF PSYCH. IN AUTOBIOGRAPHY* 1, 23 (Leendert P. Mos ed., 2009).

213. Cahill, *Personal is Political*, *supra* note 197, at 280.

214. *Id.*

215. See FED UP HONEYS, *supra* note 211.

personal experiences.”²¹⁶ Then they took action, literally taking their efforts to address “deficit representations which pathologize young working-class women of color and erase the complexities of their everyday lives”²¹⁷ to the streets of their community.

2. Our Own Project: Fringe Banking and Intersectionality

About a year after the FDIC published the results of its first (2009) survey on the unbanked and underbanked, we became aware of and fascinated with work that was being conducted out of the Action Research Center (ARC) at the University of Cincinnati.²¹⁸ The ARC, under the direction of leading light Mary Brydon-Miller, was launched in 2006. Its mission—“to promote social justice and strengthen communities, locally and globally, by advancing research, education, and action through participatory and reflective practices”—is being carried out through various local projects, such as initiatives for “growing healthy girls” in urban Cincinnati and a Ph.D project on the art and stories of victims of sexual abuse. Its mission is further being promoted globally through partnerships; for example, ARC partners with the University of Puerto Rico to recruit and retain students from low-income families.

Around the same time as the initial FDIC report was published, Brydon-Miller became aware of the article *Social Justice Feminism*, which sets out the guiding philosophy of the Center for Race, Gender, and Social Justice (RGSJ Center) that we co-founded and co-direct with our colleague, Verna Williams.²¹⁹ The convergences between the work of the ARC and the RGSJ Center were many and our shared philosophies and goals became increasingly clear the more we learned about PAR. We collectively decided that a PAR process might be just what we needed to begin to address our nagging concerns about the findings of the 2009 FDIC survey.

While we understood the primary scope and purpose of the study, we were still frustrated with the lack of data regarding *why* so many more households of color were unbanked or underbanked. We were also left with many questions about the role of gender.²²⁰ Finally, we wondered whether all of the notice-based initiatives in this area were truly tackling

216. Cahill, *Personal is Political*, *supra* note 197, at 273.

217. *Id.* at 271–72. For more information on the Makes Me Mad Project, see generally Cahill, *Personal is Political*, *supra* note 197.

218. For more information about the Action Research Center at the University of Cincinnati, see generally ACTION RESEARCH CTR., <http://cech.uc.edu/centers/arc.html> (last visited Mar. 26, 2014).

219. See generally Kristin Kalsem & Verna Williams, *Social Justice Feminism*, 18 UCLA WOMEN'S L.J. 131 (2010).

220. See *supra* notes 45–51, 62, and accompanying text.

the heart of the problem.²²¹ Perhaps a PAR project could uncover information that, thus far, was missing from the data and research. Most importantly, perhaps it could bring to light what actual users of fringe banking services view as problems and what solutions *they* might propose.

After doing a substantial amount of reading in the field of PAR and becoming active participants in the Action Research community at the University of Cincinnati, we partnered with a local community-based action research organization, Harmony Garden. Harmony Garden had done significant “community based participatory research”—or CBPR, as it is referred to in the context of community health research²²²—addressing the health and well-being of women and girls. Harmony Garden had also trained a community research team from the predominantly Black and low-income West End community in Cincinnati.²²³

We held an initial focus group with five members of the Harmony Garden research team in the fall of 2010. For the women in this focus group, lack of notice about loan terms was not the problem. The women who had used payday lenders knew down to the penny the difference between charges at various locations, as well as when and how they would be charged. They did not, however, anticipate how easy it would be to keep borrowing money and how that would result in the rolling over of debt (that is, incurring more debt to pay off existing debt). They also knew payday loan charges, whether they understood them as interest or fees, were very high. But these terms were not the only things that mattered. More important to them were issues such as the length of the lines, who might see them, and transportation.

Our goal at this initial session was not to identify specific problems with payday lending or discuss possible solutions. Instead, we sought to find out what was on the minds of users of fringe banking services by

221. For examples of notice as a legislative strategy, see, e.g., MICH. COMP. LAWS § 487.2152(2) (2005) (“A licensee shall include all of the following in the . . . service agreement: . . . A calculation of the cost of the fees and charges to the customer expressed as a percentage rate per year . . . A Schedule of all fees associated with the . . . service transaction and an example of the amounts the customer would pay based on the amount of the . . . service transaction The following notice [must be] in at least 12-point type.”); OHIO REV. CODE ANN. § 1321.39 (West 2013) (“The loan contract shall disclose . . . all of the following . . . (1) The total amount of fees and charges the borrower will be required to pay . . . (2) The total amount of each payment . . . (3) A statement, printed in boldface type of the minimum size of ten points, as follows: WARNING: The cost of this loan is higher than the average cost charged by financial institutions on substantially similar loans.”).

222. See BARBARA A. ISRAEL ET AL., METHODS IN COMMUNITY-BASED PARTICIPATORY RESEARCH FOR HEALTH 4 (2005) (“[M]ore comprehensive and participatory approaches to research and interventions are needed to address the complex set of determinants associated with public health problems that affect populations generally and those factors associated more specifically with racial and ethnic disparities in health”) (internal citations omitted).

223. See Elissa Yancey, *Harmony Garden Research Academy Trains Residents to Lead*, SOAPBOX CINCINNATI (May 17, 2011), <http://www.soapboxmedia.com/forgood/051711harmonygarden.aspx>.

engaging in conversation with a group of stakeholders who were already comfortable speaking within a PAR setting. Unfortunately, we did not have another opportunity to talk with the women from this initial focus group. In fact, it would be almost two years before we took steps to start an ongoing community conversation on this topic.

In the fall of 2012, we applied through the RGSJ Center to Public Allies Cincinnati, seeking to sponsor one of its team service projects. Public Allies, an AmeriCorps project, is a leadership development program designed for individuals between the ages of eighteen and thirty, with a central goal of “developing a new generation of diverse leaders.”²²⁴ The main component of the program is a ten-month apprenticeship during which each ally works full-time (Monday through Thursday) at a partnering community nonprofit organization. Fridays are reserved for allies to work together in groups of ten to fourteen on a “Team Service Project” (TSP).²²⁵ The TSP requires each team to partner with a community-based organization to bring to fruition a project that the organization might not otherwise have the capacity to execute.²²⁶ Through the TSP, the allies gain project development and management skills, as well as exposure to an area of community-based work that might be different from what they experience in their full-time placements.²²⁷ Potential community TSP partners are solicited through a request-for-proposals (RFP) circulated by Public Allies, usually in the late summer or early fall of each year.²²⁸

After submitting our proposal in response to the 2012 RFP, we were thrilled when one of the teams, which had named themselves Powershift, selected our fringe banking/PAR project in October 2012. We worked together with Powershift on our TSP for the next nine months. Very shortly after Powershift chose to be our research partner, Public Allies hosted a preliminary meeting where we met the team allies, provided a more detailed explanation of PAR, talked about issues identified (and not) in the 2009 and 2011 FDIC surveys, and discussed expectations together.

Once we were past the early planning stages, the substantive work began. Powershift indicated that they would like to do more initial reading on fringe banking services and PAR. We provided some key articles on both and then planned a PAR training session led by Brydon-Miller of the ARC. In November 2012, Brydon-Miller conducted a two-hour practical workshop entitled “Action Research: Developing Strategies for Positive Change,” during which the allies were taught four specific PAR method-

224. *Public Allies About Us*, PUBLIC ALLIES, http://www.publicallies.org/site/c.liKUL3PNLvF/b.2775807/k.C8B5/About_Us.htm (last visited Mar. 26, 2014).

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

ologies;²²⁹ concept mapping,²³⁰ appreciative inquiry²³¹ and asset mapping,²³² fishbone diagrams,²³³ and photovoice.²³⁴

Over the next few months, Powershift allies used these four methods, other methods they read about, and variations they came up with themselves to research the use of fringe banking services, particularly payday lending, primarily in the downtown area of Cincinnati. In Part III, we discuss our work with Powershift, focusing on the challenges and benefits of doing PAR together. To conclude this Part, however, we will first describe the “deliverables” that resulted from the TSP, as well as what we know now about the next stages of this research project.

The most comprehensive deliverable Powershift produced is a detailed manual setting out the research methods that the allies used, as well as the substantive results of the study. The manual also includes evaluative sections in which the allies share their thoughts and opinions on which aspects of the project worked well and which did not. This manual not only provided us (Houh and Kalsem) with terrific insight into how the process worked for the allies themselves, but will also be invaluable to new coresearchers as they join the ongoing project.

Powershift also produced several lengthy recorded interviews with community members who use payday lending and other short-term loan services.²³⁵ Over the course of the few weeks during which these interviews were conducted, several of the Powershift team members themselves disclosed that they had used or were currently users of payday lending services and subsequently agreed to be interviewed for the project.²³⁶ Some of the interviews were so compelling that they inspired some of the more artistically inclined Powershift allies to create yet another type of “deliverable” in the form of a “zine.”²³⁷ The authors of the zine, which

229. Brief summaries of each of these methods, set within the context of our project with Powershift, are set forth in the Appendix to this Article.

230. For more information on concept mapping, see Valerie Louis, *Concept Mapping*, in SAGE ENCYCLOPEDIA OF ACTION RESEARCH (Mary Brydon-Miller & David Coghlan eds., forthcoming 2014).

231. For more information on appreciative inquiry, see Ronald Fry, *Appreciative Inquiry*, in SAGE ENCYCLOPEDIA OF ACTION RESEARCH, *supra* note 230.

232. For more information on asset mapping, see Deborah Punttenney, *Asset Mapping*, in SAGE ENCYCLOPEDIA OF ACTION RESEARCH, *supra* note 230.

233. For more information on fishbone diagrams, see Dusty Columbia Embury, *Fishbone Diagrams*, in SAGE ENCYCLOPEDIA OF ACTION RESEARCH, *supra* note 230.

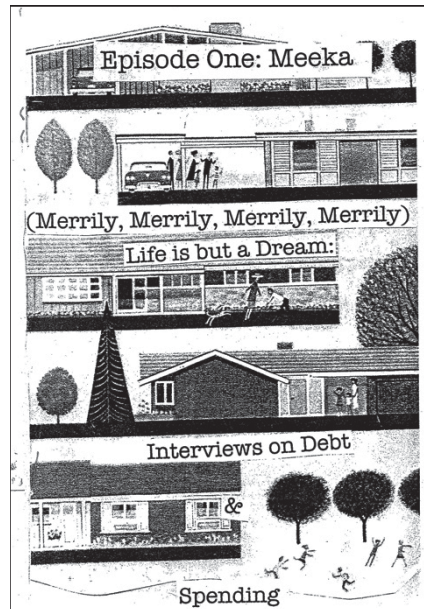
234. For more information on photovoice, see Deborah Barndt, *Photovoice*, in SAGE ENCYCLOPEDIA OF ACTION RESEARCH, *supra* note 230.

235. See *Sights and Sounds*, PUBLIC ALLIES CINCINNATI: POWERSHIFT TEAM SERVICE PROJECT, <http://sites.google.com/site/powershiftsproject/> (last visited Feb. 17, 2014) [hereinafter POWERSHIFT].

236. See *id.*

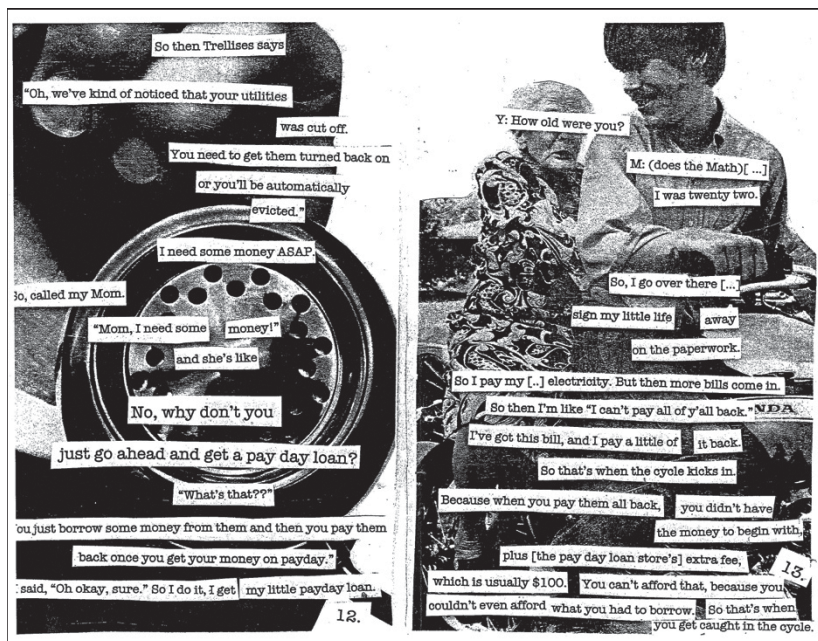
237. Nick_V, *Definition of Zine*, URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=zine> (last visited Mar. 26, 2014) (“Zine is short for fanzine [A] zine is a

translated the story of one of the allies into visual form, created a comic book-like background on which they pasted and arranged the interviewee's words and story. It makes for a fascinating and thought-provoking read as the zine's words and images draw readers into the personal experiences recounted on its pages. Powershift later distributed the zine at a community art show, where it sparked lively dialogue and where Powershift received much positive feedback. Although the TSP concluded in June 2013, the zine authors intend to create and publish more issues of the zine based on Powershift's interviews with individual community stakeholders.²³⁸ It is our plan to use this zine in future community-building sessions to springboard discussion on payday loans. We also plan to help circulate the first and subsequent issues of the zine more broadly as a form of grassroots financial literacy outreach. A few pages of the zine are reproduced here:



cheaply-made, cheaply-priced publication, often in black and white, which is mass produced via a photocopier and bound with staples.”).

238. See POWERSHIFT, *supra* note 235.



Other deliverables that Powershift developed to help with the continuation of this project include a website (on which all of the interviews are posted),²³⁹ a map of the locations of payday lending facilities in the Greater Cincinnati area (showing, not surprisingly, particularly high concentrations in communities of color), and a “visual dropcloth.” Powershift took a dropcloth (a large piece of blank canvas) to several parks and outdoor venues and asked people to illustrate, using crayons and markers, their thoughts on and relationships to various topics, including “money” generally and “payday lending” specifically. Powershift also designed several types of flyers and posters to publicize the visual dropcloth project.

Because PAR happens in cycles, with much reflection and adaptation based on what has come before, the next stage of our research will likely draw on much of the community-building work described above. But before doing so and following the “completion” of the TSP with Public Allies in June 2013, we shifted into our own reflection mode, the partial result of which is the completion of this Article. The next phase of our work involves (re)connecting with a small handful of Powershift team members who have expressed interest in continuing to work together on the project, as well as reaching out to community members that Powershift met during the course of the TSP who likewise expressed interest in participating in more long-term community-based research on the problems associated with payday lending and other increasingly popular AFS products, such as car title loans. Additionally, we plan on reaching out to orga-

239. *Id.*

nizations like Policy Matters Ohio, discussed *supra* Part I.C.3, about possible community collaborations and outreach in our local and statewide communities, as well as to the CFPB to see if they might be interested in learning about how we too are trying to “get out of [the ivory tower]” by doing legal PAR on consumer finance issues. To close the loop on why this type of work should matter to law teachers, scholars, and students, we elaborate in the next Part of this Article on why we, as critical race/feminist scholars, see so much promise in legal PAR, and what we as legal scholars can bring to the PAR table.

III. WHAT PAR HAS TO OFFER LEGAL SCHOLARSHIP AND ACTIVISM

CRT, CRF, and feminist legal theory have proven to be powerful tools to uncover the law’s subordinating structures and effects. But a foundational tenet of these theoretical frameworks is that theory must be put into action. The deconstruction that illuminates problematic histories, power structures, and inequalities must be followed by the reconstruction of a more just society. The problem is that much of the best critical work falls short on community-based “action.” As we have discovered since we entered the academy, there is good reason for this—bridging the theory-practice gap is extraordinarily difficult work.

One of us (Kalsem), along with our colleague Verna Williams, in their article *Social Justice Feminism*, took steps toward addressing the challenge of connecting theory and practice by looking first to what activists on the ground were doing. These activists, they found, had identified “social justice feminism (SJF)” as work that they could relate to and be inspired by. Kalsem and Williams’s article both explores how the concept of SJF fits in with current critical race/feminist scholarship and further develops three related methodologies for doing SJF work: (1) looking to history to understand subordinating structures; (2) examining the relationships between interlocking oppressions; and (3) developing solutions informed by a bottom-up approach.²⁴⁰ This third methodology envisions getting those directly affected by problems integrally involved in efforts to bring about change. It was not until after *Social Justice Feminism* was published, however, that Kalsem and Williams learned about PAR, a field dedicated to the “action” contemplated by this third methodology.

While the benefits of incorporating PAR methods into our work as critical race/feminists are clear to us, PAR is not without its challenges from without and within. Its position that positivist research is untenable makes it “radical” within the social science field.²⁴¹ Its defining feature—

240. See Kalsem & Williams, *supra* note 219, at 175–84.

241. See Brydon-Miller et al., *supra* note 26, at 2 (“[C]ritiques of positivist social science research exposed claims to values-free knowledge production to be untenable and challenged the basic tenets of objectivity and generalizability as false.”).

being transparently political—makes its findings more than questionable to many traditionally-trained researchers.²⁴² The community stakeholders' involvement in all aspects of the research, including development of the research agenda itself, is not typical of contemporary empirical *legal* research, which is generally quantitative in nature and oftentimes starts with the testing of an already established hypothesis. Moreover, as discussed *supra* in Part I.B, even qualitative empirical legal research, such as the work being done by Angela Littwin on low-income credit card users, employs traditional qualitative methods. To be clear, while we have in this Article critiqued the positivist assumptions undergirding traditional empirical research, we do not believe that such work is not valuable, nor that it should not be done—it is, indeed, important work. Rather, the project described in this Article is a counterpoint to the dominant empirical methods used in current legal research, and it seeks to engage in a different kind of qualitative research that is in line with the theoretical commitments of critical race/feminist scholars.

In the following Subpart, we describe some of the challenges that we faced as legal academics engaging for the first time in a sustained PAR project, as well as some of the obstacles that our growing community of researchers faced during the past year. As we reflect on these experiences, we also see many benefits that were a direct result of determining how to productively work through the challenges. Also, importantly, the best data we gathered could only have become available through community building, which required hard work and patience and, ultimately, led to trust and commitment.

A. *Challenges and Benefits of PAR*

On an individual level, participatory action researchers grapple with disorienting but necessary questions regarding their own positionality and relationships within the community. For example, in our work with Powershift and our ongoing project, we continue to constantly ask ourselves: when engaged in PAR, what is our role when, as is often the case, we are “outsiders” in some respects to the community with which we are partnering? If and when we write up our findings for purposes of publication in an academic journal, how do we do so without exploiting our community partners? What is and is not the role of researcher?

Those who engage in PAR have developed strategies for constructively addressing these difficult issues. Moreover, they continue to explicitly incorporate those strategies into their own reflective research

242. See Peter Reason & Hilary Bradbury, *Introduction: Inquiry and Participation in Search of a World Worthy of Human Aspiration*, in *THE SAGE HANDBOOK OF ACTION RESEARCH: PARTICIPATIVE INQUIRY AND PRACTICE* 2–3 (Peter Reason & Hilary Bradbury eds., 1st ed. 2001) [hereinafter Reason & Bradbury, *Introduction*]

journeys.²⁴³ In that spirit, we reflect in this Subpart on our journeys as nascent participatory action researchers by identifying specific challenges that we experienced, and that might, at first, seem daunting to those interested in doing legal PAR. In so doing, we continue to discover how working through these challenges yields deeply rewarding and meaningful benefits and how doing legal PAR has made us better thinkers, listeners, researchers, teachers, and community members in ways we never could have anticipated.

1. Finding and Building Community

It was not clear when we began our collaboration with Powershift how any one of us, let alone the collective group, conceived of “community” for purposes of our PAR project. While we referred to our weekly time together as “being in community,” we did not, at least at the outset, assume (for example) that our group would be studying some of our own members’ experiences. As the “academic research” team members, we (Houh and Kalsem) admittedly had some hopes and expectations about how community might be formed—that is, through each Powershift ally’s organizational placement connections—but as hopeful action researchers, we did not want to impose that expectation on the team. That instinct, we discovered, turned out to be a wise one as it came out in one of our meetings that several Powershift allies felt uncomfortable about using and potentially exploiting their organizational placements for purposes of “populating” community for the TSP.

But how, then, could we form a community with whom we were going initially to discuss the “problem” of fringe banking? Some allies wanted to target communities according to geography, given the way Cincinnatians have always strongly identified with the neighborhood they are from, while others suggested that the focus should be on certain class and race demographics in less geographically concentrated ways. Discussions at our weekly meetings about “community” continued for several weeks without satisfactory resolution. This started to create a lot of tension as many in the group (ourselves included) became increasingly anxious about what we perceived as a “lack of progress.” When was the *action* going to start?

But, it turns out, it already had. In trying to figure out where to find community, several of the allies had reached out to friends, colleagues, and family members who had used payday lenders themselves. These people became very interested in the project and were willing to participate.

243. See Laura Smith, et al., *Between idealism and reality: Meeting the challenges of participatory action research*, 8 ACTION RESEARCH 407, 409 (2010) (discussing challenges of navigating insider/outsider tensions); see also Sean A. Kidd & Michael J. Kral, *Practicing Participatory Action Research*, 52 J. COUNSELING PSYCHOL. 187 (2005) (describing negotiation of power dynamics and disagreement between the researcher and the participants, as well as between the participants themselves).

Moreover, as the Powershift team worked through differences of opinion on the proper approach, members began to feel that their voices counted and that their contributions were being heard. As trust was built, several team members became comfortable enough to disclose that they themselves had used or currently were using payday lending services. It started to make a lot of sense why this group had selected our TSP project in the first place. Moreover, these members by this time were so passionate and committed to the project that they readily made public their very personal stories in videotaped interviews, providing data for the project as well as tools to further community discussions on fringe banking.

None of this might have come about if we had interfered with or disrupted the community-building process (as we were so tempted to do at various points). Instead, we adapted our expectations to the process rather than the other way around. The result of this PAR process was a community, founded and formed “in community,” that includes those people who became interested in participating because of Powershift’s organized outreach efforts, as well as Powershift members themselves.

2. Issues of Power

A first principle of PAR is that research should empower its participants and stakeholders.²⁴⁴ PAR actively seeks to examine and break down the power differentials that characterize traditional positivist research, that is, between those doing the studying and those “being studied.”²⁴⁵ Drawing on the work of Michel Foucault on power and knowledge, Baum, MacDougall, and Smith explain that “[t]he PAR movement challenges the system of surveillance and knowledge control established through mainstream research. *When communities seek control of research agendas, and seek to be active in research, they are establishing themselves as more powerful agents.*”²⁴⁶ Moreover, Francisco Vio Grossi, a Chilean action researcher, describes the work of participatory research as “initiating a process of disindoctrination that allows people to detach themselves from the myths imposed on them by the power structure and that have prevented them from seeing their own oppression or from seeing possibilities for breaking free.”²⁴⁷

Specifically with respect to academic researchers, it is imperative that they constantly reflect upon and interrogate their roles in the project as the project develops. Intersectionality plays an important role in this regard, as the legal participatory action researcher “must be willing to embrace the hard work of examining how his or her multiple identities shape and inform engagement with community members. This critical examination of

244. Reason & Bradbury, *Introduction*, *supra* note 242, at 2.

245. *See id.* at 1–2.

246. Baum et al., *supra* note 104, at 855 (emphasis added).

247. Hall, *supra* note 107, at 23.

issues of identity requires an analysis of the dynamics of power and privilege.”²⁴⁸

During our weekly meetings with Powershift, for example, the allies knew we were law professors and thus tended (especially in the beginning stages of the project) to interact with us as if they were students in our classroom rather than coresearchers. As referenced above, we often had to restrain ourselves from intervening in group conversations (over a wide range of topics, from how to collect narratives about fringe borrowing to which segments of the community such outreach should be directed toward) as our “teacher” selves. Also, the age difference between the Powershift allies and us required us to think carefully about how to participate and dialogue together. There were times, for example, when we felt strong urges to assert control based on our simply having lived longer and experienced more than most of the team members. Power issues among the allies themselves also arose. Community efforts to make explicit these power dynamics and issues resulted in deeper and more substantive interactions within the group, which, very significantly, helped build trust.

The diverse race, gender, sexuality, and class makeup of our community—the Powershift members, as well as the other community members recruited to the project—required us to remain vigilantly self-aware and sensitive to our own highly privileged status. Neither of us, for example, has ever used payday lenders or other AFS products, making us “outsiders” in a very key way to this community. But we remind ourselves that we are interested in building this community because we want the insiders to have their say on these issues and because we have other types of knowledge and skills that can contribute to ensuring the insiders’ voices are heard. At the same time, we remain vigilant about listening well (and always working to improve our listening skills) and being mindful of our power and privilege, which are baseline requirements for making the research democratic, dynamic, and meaningful to all involved.

3. Questions About “Objectivity”

PAR aims to bring about social change. It is thus overtly political and openly acknowledges that it is “biased in favor of dominated, exploited, poor and otherwise ignored women and men and groups.”²⁴⁹ As Hall explains, PAR “sees no contradiction between goals of collective empowerment and the deepening of social knowledge.”²⁵⁰ In PAR, “researchers are not separate, neutral academics theorizing about others, but coresearchers or collaborators with people working towards social equality.”²⁵¹

248. Brydon-Miller et al., *supra* note 26, at 3.

249. Budd L. Hall, *From Margins to Center? The Development and Purpose of Participatory Research*, AM. SOCIOLOGIST 15–16 (1992).

250. *Id.* at 16.

251. Gatenby & Humphries, *Feminist Participatory Action Research*, *supra* note 164, at 90.

Already steeped in the study of PAR, we were fairly comfortable with this overtly political stance when we started working with Powershift. We initially speculated—and were indeed hopeful—that the data we would collect would be narrative, specific, and individualized. We were thus unprepared for the resistance some Powershift team members showed, at the outset, toward PAR's anti-positivist approach. Some members of the team had experience, through school or other community work, conducting traditional social science research. Some of them had, for example, helped develop, administer, and analyze both qualitative and quantitative “objective” surveys and their results. This created a certain amount of conflict and frustration about the kinds of questions we wanted to ask people.

It also caused us to ask ourselves why we had not anticipated this resistance, given the dominance of traditional empirical research methods. We were forced to examine what assumptions we had made about each ally's sociopolitical commitments. This constant interrogation of our own lack of objectivity showed us how questions about “objectivity” in PAR are naturally tied to issues of power and, we believe, ultimately moved us toward a more egalitarian PAR process.

4. Letting Go of Outcomes

One of the biggest challenges we continue to face—given our identities as law teachers, scholars, and *lawyers*—is how to respond to the following types of questions posed by our faculty colleagues: I understand that you are trying to do something about predatory lending, but what *legal* problem are you trying to solve or address? What, exactly, are the desired outcomes of this project, and how will you assess and measure them? And—last but not least—what, exactly, does this have to do with law?

Answering these questions in the context of an academic presentation was not easy, not only because they were traditional types of questions about a nontraditional type of research project, but because we ourselves had puzzled through these same questions. Moreover, our most honest answer—that their questions largely missed the point, because doing legal PAR requires relinquishment of a certain degree of power and control over the project and a willingness to let go of anticipated outcomes—is unsettling. Though not a legal researcher, Brydon-Miller eloquently captures the difficulties of letting go, so we quote her at length:

The most dramatic, and most difficult, change from traditional research has for me been the relinquishing of control over the research process. Experimental control is the very bedrock of traditional research methodology; turning this control over to the participants generated a great deal of anxiety on my part This is not to imply that I now feel absolutely no responsibility for the research at all, but rather that I have attempted to define this responsibility as a process- rather than

product-oriented role. My tasks as researcher are to listen, to explore ideas and concerns with participants, to provide resources and references, to contribute to a shared educational process, and to assist in making opportunities for communication and action available to participants. My primary goal as a researcher is to enable participants to examine their situation and to take action to achieve change. I am responsible for these tasks; I am not responsible for the actions and decisions of the participants.²⁵²

That is, when the research process is reconceptualized as a dynamic, equalizing, and shared process, concerns about outcomes and assessment recede. As we have discovered, the academic researcher is no longer primarily driven by the desire to find results that she can present for assessment and judgment by some “neutral” body (be it academic peers, judges, lawyers, or policymakers). Nor is she driven by the desire to prove an abstract principle or hypothesis through her data. Rather, she is driven primarily by the desire to bring her own expertise and training to the table in hopes of enabling others, as Brydon-Miller put it, “to examine their situation and to take action to achieve change.”²⁵³

In other words, and again to paraphrase Brydon-Miller, “[i]t’s not about what the community is doing for you [the academic researcher], but what *you* are doing for the community.”²⁵⁴ And it is what *we* can do for community that also provides the answer to the question of what law has to do with this work, which we discuss further in the Article’s conclusion.

B. *Margin to Center: Critical Race/Feminism*

Rather unexpectedly, one of the most challenging aspects of our work with Powershift was determining how to bring race and gender to the center of our collective thinking about the impact of fringe banking on our local communities. We thought that the data we had reviewed and presented to Powershift spoke for itself,²⁵⁵ that the question of *why* the unbanked and underbanked were disproportionately Black, Brown, and female would be a central one. But for much of our time together, this knowledge remained strangely submerged, overtaken perhaps by the more immediate concerns about what exactly Powershift was supposed to do and produce and, in particular, how they were supposed to find “a community.”

252. Brydon-Miller, *Breaking Down Barriers*, *supra* note 166, at 138.

253. *Id.*

254. *Id.*

255. *See supra* Part I.

We, too, felt the urgency of these concerns, and because we did not want to dictate the terms of the team's work, we refrained from pushing questions about race and gender to the forefront. When the allies initially asked us for more reading about the state of research on fringe banking, for example, we provided it without also providing foundational readings on feminist legal theory, CRT, or CRF. We thought at the time that race and gender would eventually surface as important issues for the team to explicitly interrogate and that we could begin to read and engage in critical conversations at that point. We were wrong.

It was not the case that race and gender *never* surfaced as issues in our work together. Powershift's compositional diversity was a fairly specific one—including ourselves, it comprised four Black women, five White women, one Asian American woman, two White men, no Black men, and no Latinas/os.²⁵⁶ In retrospect, we likely assumed that our team's intersectional diversity would result in an explicitly intersectional approach to the work from the start. But this was not the case. It was not until several weeks into our work together, after Powershift had recorded and compiled several interviews with stakeholders about their financial lives, that race and gender began to surface in our weekly meetings due to the fact that everyone who told stories about their use of payday lenders and other AFS products, with the exception of one Black male, were women of color. Nor did the stakeholders and allies tend to explicitly discuss race or gender during their recorded conversations about their experiences with fringe borrowing, or in our many team conversations about community. That most of the stakeholders were people of color, and more specifically women of color, was just a *fact*.

By the time we in community began to realize the significance of this—that is, not just as reflected in the hard data we all had read at the start of the TSP but in *reality*—our time together was almost at an end. We (Houh and Kalsem) realized that we should have provided readings on critical race/feminism and intersectionality early on, alongside the materials on fringe banking, and that perhaps we should have arranged not only a training on how to do PAR, but also one on the meaning of “intersectionality” and “intersectional” analysis. However, we only came to this understanding after weeks of doing PAR, and honest self-reflection taught us that doing so would not have been “imposing” our will on our team; rather, it would have been just one more way of bringing our legal and “theoretical” expertise to the table.

As mentioned above, we will continue to work on this project with several Powershift allies who have expressed an interest in continuing their

256. The only Black male who had been a Powershift ally dropped out of Public Allies in late October 2012. A few weeks later, a White male also dropped out. The absence of Latina/o team members and Asian American allies is unfortunate, but also representative of what “diversity” means, even to community activists, in Cincinnati. That issue is beyond the scope of this project, unfortunately, and deserves a deeper and more thoughtful treatment on its own.

work with us, along with other community stakeholders and some of our interested law students. Going forward, we will prioritize bringing intersectional questions about race, gender, class, and sexuality to the fore, and we will work on developing effective ways of doing so. As equal research partners, our specialized knowledge and expertise about critical race/feminism, in addition to our legal expertise on the state of the fringe economy, is what we can give to the community.

CONCLUSION

To conclude, we circle back to the question: what does law have to do with any of this, that is, with developing a PAR praxis? We hope that this Article has begun to answer that question at some length. But the short answer flows from the parallel question constantly posed to us by Brydon-Miller: what do *you* as legal researchers have to give to the community with whom you are working?

The answer is simply that law—our legal expertise—is what we bring to the table. In the context of this project, our knowledge about fringe banking, critical race/feminism, and how the law works in society, is what we, as research partners and community stakeholders ourselves, have to share with our partners.

We fully understand that this answer can be disorienting for lawyers, law students, and legal scholars and teachers who are used to approaching problems from the top-down and—usually because we are asked and hired to do so—by taking control of difficult situations. But for those of us who are interested in the different ways in which law can be used to generate community empowerment and transformation, both big and small, legal PAR provides a tool with which community stakeholders can more carefully examine their situations and more systematically generate their own action agendas. Law is a tool that need not be wielded by lawyers or pro se litigants alone; it is also a tool that can reach beyond the courtroom, legislative session, and classroom. Everyone should have access to law for the purposes of self-empowerment and action, and legal PAR provides a democratic process by which to gain that access.

Finally, the tools that legal PAR can provide to the community also enable us—as trained legal researchers and teachers—to put the critical race/feminist values to which we are so committed into practice in local and specific ways. That is, in Patricia Maguire's words, legal PAR enables us to “dig where [we] stand.”²⁵⁷ For, as she eloquently writes:

The long haul work to transform reality, to change the world, to empower and liberate starts with ‘modifying the near environment’ This means the organizations, institutions, and relationships in which we live and work on a daily basis. It in-

257. See MAGUIRE, *supra* note 131, at xv.

cludes the struggle to change ourselves in those near environments. In the face of deepening human poverty, widening economic and digital gaps, and numbing interpersonal violence, focusing on the 'near environment' is not narcissistic luxury, but urgent necessity.²⁵⁸

Indeed, working to transform our near environments is an urgent necessity, so much so that paralysis can sometimes occur, especially for the academic researcher, over the "how," "why," and "when." But through this work, we are discovering that theoretically-grounded transformation, which requires "a way of being in the world that intimately connects theory and practice in everyday life,"²⁵⁹ is a slow and steady struggle that is nevertheless viable for the legal academic and, best of all, is richly rewarding.

As legal researchers, the two of us "stand" locally in the city of Cincinnati, and our ongoing community work on the fringe economy gives us a way to dig where we stand. But, just as importantly, we also "stand" within the legal academy, and this Article represents our efforts to "dig" there. Legal PAR can help us "be" critical race/feminists in a way that "intimately connects theory and practice in everyday life." Moreover, it can help us develop a "way of being" that *always* asks what we are giving back and how we are using our legal knowledge to further a bottom-up approach to creating a more just world. And that, we hope, will be legal PAR's biggest contribution of all.

258. *Id.* (quoting Jill Morawski, *The Science Behind Feminist Research Methods*, 53 J. Soc. Issues 667, 667 (1997)).

259. *Id.*

APPENDIX

Four Participatory Action Research Methods²⁶⁰**Concept Mapping**

Concept mapping involves private and then public brainstorming about how and what the group thinks about certain topics and ideas. Oftentimes these exercises start with general concepts, with the data gathered determining what concepts it might make sense to “investigate” or map next.

In our workshop, Brydon-Miller had Powershift map the ideas of the group relating to the query, “A Public Ally is” Participants were given a packet of post-it notes and asked to write down as many responses to this query as they would like. After a two- or three- minute period, the writing stopped and everyone was asked to place their post-its on a board in the front of the room. Three volunteers then went up to the board and “organized” the post-its, placing similar ideas or words together. After these volunteers were done, they described the process, including, for example, the different groupings, how they selected categories, and which post-it note messages were identified as “outliers.” A group discussion followed that led to fascinating insights into how the group viewed itself—what was important to some and not others, how they interpreted their own roles as Public Allies, concepts around which to build group solidarity, and differences for the group to negotiate.

In later sessions that Powershift facilitated, concept mapping was performed around broad concepts of “money” and “loans” and “payday loans” to identify the various interpretations and experiences of the community participants.

Appreciative Inquiry and Asset Mapping

In order to find workable solutions, it is important for a group to identify its strengths and talents (assets) and to consider what each of the participants individually and as a group have to contribute to the problem-solving mission at hand. The PAR methods of appreciative inquiry and asset mapping are designed to help the participants think in these productive and affirming terms.

For Powershift, Brydon-Miller asked the allies to think about what assets they had individually and as a group to begin research in Cincinnati on issues of fringe banking. They were to think of assets in broad terms, including physical, social, cultural, and economic resources. Through this process, the allies began to identify different people, organizations, and groups (both formal and informal) in the community with which they already had contacts, places where community building had already started.

260. Brydon-Miller, Dir., Univ. of Cincinnati Action Research Ctr., Workshop to the Public Allies Cincinnati Team POWERSHIFT (Nov. 30, 2012). *See also supra* notes 230–34 and accompanying text.

One member, for instance, noted a contact that he had with a professor in the Geography Department at the University of Cincinnati who had research tools from a project conducted on food deserts in Cincinnati that might prove useful. Another team member identified herself and several of her family members as having some expertise as users of different alternative financial services. Other members who had experience with writing and the digital arts were identified as potentially useful in spring boarding community conversations.

While there was not time at this initial session to actually create an asset map, the next step in the process would be to create a visual representation or map that locates the various resources or assets of the group within the applicable setting. After a map is created, appreciative inquiry continues with conversations on questions such as, "How do you understand the issue differently when focusing on the assets of the community?" and "How might these assets be used to address these problems in the community?"

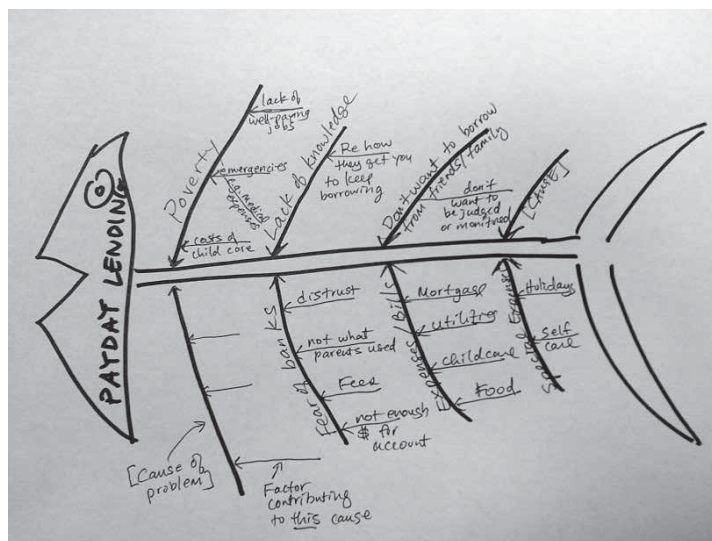
These types of exercises also help to keep the group from becoming overwhelmed by the breadth of a problem. Instead of focusing on the obstacles, it creates space to consider *how* this group can move toward positive change.

Fishbone Diagrams

These diagrams, in the shape of a fish (see below), are tools for honing in on an issue, moving from generalization to specificity. At the same time, they can generate very helpful contextual data. Brydon-Miller explained to the team members that the head of the first fish might be a general description of a problem/issue that the group has identified as worth investigating. Powershift later led a session, for example, in which "payday lending" was the head of the fish.

Each of the bones are then labeled with factors that the group identifies as contributing to the issue or problem. Bones in the payday lending fish were labeled with factors such as "poverty," "fear of banks," and "lack of knowledge." The group can then discuss each of these factors and choose one to be the head of a new fish. Powershift decided after one session that useful information also might be generated if individuals drew their own fish diagrams and then shared these with the group, making a "school" of fish. They thought that this might work especially well in the early stages of community building, when individuals may not yet be comfortable speaking up about their ideas or engaging in a session in which some participants seem to be dominating the conversation.

At the end of these exercises, the group can consider what they have learned about the problem and the broader context in which it exists. This also can be a time to begin considering what might be a good starting place for action.



Photovoice

This method was explained at the workshop, but it would require multiple sessions to actually complete. Photovoice involves giving each of the participants in the group a camera with the assignment to take photographs that in some way illustrate the problem that the group is addressing. Once the photos have been developed (or compiled digitally), they can be used in several different ways. For example, the group might collectively choose which image best illustrates the issue and why. The discussion that accompanies the process of reaching consensus on the choice of photograph can provide valuable insights into various aspects of the issue.

In addition, the group can engage in interpretive activities relating to the photographs. For example, the group might consider what insights can be gained about the issue through reflection on the particular image. Brydon-Miller worked through a couple of examples, asking the following five questions about each image (the acronym for this analysis being SHOWeD):

- What do you See here? (Observation)
- What do you think is really Happening here? (Interpretation)
- How does this relate to Our lives? (Contextualization)
- Why does this situation, concern, or strength exist? (Politicization)
- What can we Do to improve the situation or enhance the strengths? (Action)

The results of Photovoice can also serve as tools for disseminating research findings and connecting with the community, whether by using one of the pictures to start a conversation at a community-building session or posting pictures or collages around the community (similar to The Fed

Up Honeys' sticker campaign) to build interest and awareness around the issue. Photovoice is just one of many examples of PAR methods that involve the arts.

