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## Community Lawyering in Resistance to Neoliberalism

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# COMMUNITY LAWYERING IN RESISTANCE TO NEOLIBERALISM

*Jeena Shah\**

AN EQUAL PLACE: LAWYERS IN THE STRUGGLE FOR LOS ANGELES. By  
*Scott L. Cummings*. New York: Oxford University Press. 2021.  
Pp. xxi, 661. \$44.95.

## INTRODUCTION

1.

... .

This is a multi-layered city,  
unceremoniously built on hills,  
valleys, ravines.  
Flying into Burbank airport in the day,  
you observe gradations of trees and earth.  
A “city” seems to be an afterthought,  
skyscrapers popping up from the greenery,  
guarded by the mighty San Gabriels.

2.

Layers of history reach deep,  
run red, scarring the soul of the city,  
a land where Chinese were lynched,  
Mexican resistance fighters hounded,  
workers and immigrants exploited,  
Japanese removed to concentration camps,  
blacks forced from farmlands in the South,  
then segregated, diminished.

—*Luis J. Rodriguez*, *Love Poems to Los Angeles*<sup>1</sup>

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\* Associate Professor of Law, City University of New York (CUNY) School of Law. I am grateful for the editors of the *Michigan Law Review*, Brooke Simone and Aditya Vedapudi, for bringing my attention to Scott Cummings’s immense contribution to the literature on community lawyering, as well as their incredibly insightful feedback on this Review. I would also like to thank John Whitlow for his valuable comments.

1. Luis J. Rodriguez, *Love Poem to Los Angeles*, RATTLE (Aug. 17, 2016), <https://www.rattle.com/love-poem-to-los-angeles-by-luis-j-rodriguez> [perma.cc/XG7W-BAW6].

Like Luis J. Rodriguez’s “Love Poem to Los Angeles,” Scott Cummings’s *An Equal Place: Lawyers in the Struggle for Los Angeles*<sup>2</sup> is equal parts a snapshot of Los Angeles history and a story of the resistance that makes up this piece of history.

The book captures the era that begins soon after the 1992 Rebellion,<sup>3</sup> considered the nation’s “first ‘multiethnic’ riots”<sup>4</sup>—foreshadowing the city’s struggles to come—and ends with the 2008 financial crisis. *An Equal Place* illustrates how the rebellion left the city in general and its labor movement in particular to confront critical questions about the future of Los Angeles. While capital<sup>5</sup> sought to profit from the 1992 Rebellion’s aftermath—which had left “behind a repair bill of nearly \$1 billion”<sup>6</sup>—organizers, community lawyers, and labor unions resisted the otherwise inevitable skyrocketing of inequality. *An Equal Place* tells the stories that made up their fight.

Cummings shares five stories, all told from the perspective of workers: workers qua workers, workers as people who live in gentrifying communities in need of affordable housing, and workers as people living in neglected communities in need of clean air and access to affordable food. Their stories demonstrate not only how labor is a constant site of struggle but also reveal the struggle between capital and labor over who has “the right to the city.”<sup>7</sup> Cummings opens a window into the struggle for this right.

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3. The rebellion followed the acquittal of four white police officers accused of beating Black motorist Rodney King. The roots of the rebellion have been traced to decades of abuse by the police, growth of the carceral state, austerity, increasing economic inequality along racial lines, and interracial tensions among communities of color. See, e.g., James H. Johnson, Jr. & Walter C. Farrell, Jr., *The Fire This Time: The Genesis of the Los Angeles Rebellion of 1992*, 71 N.C. L. REV. 1403 (1993).

4. E. Tammy Kim, *South L.A., Twenty Years Later*, GUERNICA (Apr. 15, 2012), <https://www.guernicamag.com/south-l-a-twenty-years-later> [perma.cc/3PK5-AL4C].

5. I am using “capital” here to refer to the holders of capital as one of two units required to produce a good (the two units being capital and labor) within the political economic system of capitalism. See, e.g., ROBIN HAHNEL, ABCS OF POLITICAL ECONOMY: A MODERN APPROACH 54–55 (rev. & expanded ed. 2014). Capital itself consists of those instruments that are inherently valuable to the production process (land and natural materials) and those backed by such value or legally constructed as valuable (financial instruments and intellectual property protections). By “capitalism,” I am referring to a system designed to serve the imperatives of capital accumulation. See Jesse A. Myerson, *Markets in the Next System*, THE NEXT SYS. PROJECT (Jan. 21, 2016), <https://thenextsystem.org/markets-in-the-next-system> [perma.cc/R8NM-GEBB]. Simply put, my use of these terms is based on the view that the central concern of a capitalist political economy is for holders of capital to generate more capital.

6. Melissa Chadburn, *The Destructive Force of Rebuild LA*, CURBED L.A. (Apr. 27, 2017, 10:00 AM), <https://la.curbed.com/2017/4/27/15442350/1992-los-angeles-riots-rebuild-la> [perma.cc/P7GS-CZZL].

7. David Harvey, *The Right to the City*, 53 NEW LEFT REV. 23, 23 (2008) (“The right to the city is far more than the individual liberty to access urban resources: it is a right to change ourselves by changing the city. It is, moreover, a common rather than an individual right since this transformation inevitably depends upon the exercise of a collective power to reshape the processes of urbanization.”).

Separately, yet simultaneously, the stories describe an era that birthed a new approach to social justice lawyering. This approach seeks to provide creative and dynamic legal support to community-based movements that address the harms of neoliberalism. Cummings's stories carefully detail the ways in which this "new generation of lawyers, embedded in local networks and committed to local action" contributed to efforts to ensure "marginalized workers ha[d] greater protections, better wages and benefits, and a larger voice in the workplace and politics" (p. 446). The stories illustrate lawyers' vast toolkit to support workers: across legal fields (labor, employment, environment, civil liberties, and local government), across jurisdictions (local, state, and national), and across legal tactics (litigation, policy advocacy, negotiation, drafting, and education). Readers learn not only about the particularities of the struggle in Los Angeles—and the key role played by lawyers—but also about the origins of nationwide phenomena like the National Day Laborer Organizing Network (NDLON) (chapter 3), which has since supported day-labor organizing in dozens of cities,<sup>8</sup> and community benefits agreements (CBAs) (chapter 4), a tool that has become "standard practice" for urban development projects nationwide.<sup>9</sup>

The stories in *An Equal Place* inspire and instruct. They show that neoliberalism's logic need not be a city's inevitable path. As all-consuming as capital is, community resistance is both meaningful and concrete. The stories also show that lawyers can form a key part of that resistance—that the criticism born from critical legal studies<sup>10</sup> has not done away with actualizing social justice lawyering. For today's justice-minded law students and lawyers schooled in the critiques of the "legal liberal project" (p. 478) and disillusioned with the law, this book offers a detailed account of how their immediate predecessors addressed such concerns through their practice. If, as Angela Y. Davis reminds us, knowledge is built through struggle,<sup>11</sup> then books like *An Equal Place* are critical to a social justice lawyer's education.

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8. See *Our Member Organizations*, NAT'L DAY LABORER ORG. NETWORK, <https://ndlon.org/about-us/members> [perma.cc/E4K3-SV2E].

9. Edward W. De Barbieri, *Do Community Benefits Agreements Benefit Communities?*, 37 CARDOZO L. REV. 1773, 1776 (2016). For a progressive critique of CBAs, see Samikchhya Bhusal, *Reframing Community Benefits Agreements: Accelerated Gentrification, Negotiated Defeats, and Collective Resistance in Los Angeles*, NOLYMPICS L.A. (July 23, 2021), <https://nolympicsla.com/2021/07/23/cba> [perma.cc/3YNR-R4U3].

10. Kimberlé Williams Crenshaw captures a central understanding of the relationship between law and social justice within the framework of critical legal studies as follows: "If law functions to reinforce a world view that things should be the way they are, then law cannot provide an effective means to challenge the present order." Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1352 (1988).

11. See Eve L. Ewing, *Mariame Kaba: Everything Worthwhile Is Done with Other People*, ADI MAG. (2019), <https://adimagazine.com/articles/mariame-kaba-everything-worthwhile-is-done-with-other-people> [perma.cc/U4CN-KZKJ].

This Review seeks to identify the questions the book did not answer. They are questions that today's movements, which resist "single-issue" thinking<sup>12</sup> and conceive of themselves beyond the United States' borders, have forced upon those of us who identify as social justice lawyers. These movements are led by those who were raised in immigrant communities dislocated by trade liberalization and targeted by the so-called War on Terror, came of age amid the rise of Occupy Wall Street and Black Lives Matter, and see their future timed to the accelerating speed of the climate crisis. I view Cummings's analysis as missing two fundamental questions that these movements are asking social justice lawyers to incorporate into our work:

1. How do we incorporate a *radical* analysis into our work? (As Professor Davis has reminded generations of activists, "*radical* simply means 'grasping things at the root.'"<sup>13</sup>) Specifically, how do we see racial capitalism as the root cause of injustices?<sup>14</sup>
2. How do we seek truly *transformative* change, meaning change that shifts power specifically by building the power of oppressed people to dismantle the systems of their oppression?<sup>15</sup>

The newest generations of lawyers who came to law school through resistance movements are often asking these same questions.

This Review explores Cummings's stories through these two questions to offer alternative frameworks within which to assess the struggles recounted. Part I provides a brief overview of Cummings's analyses of the five campaigns for low-wage workers at the heart of *An Equal Place*. Part II offers seeds of a *radical* analysis of the forces that created Los Angeles's "low-wage worker" in this era. Such an analysis roots out the political economic system of racial capitalism, specifically its transnational and carceral dimensions. Part III offers an alternative framework to assess the role of lawyering in the book's stories of resistance, one that addresses critical race scholars' critique of the "legal liberal project" and seeks *transformative* change by understanding organizing as a *theory* of change as opposed to a *tactic* for change.

12. Evoking Audre Lorde: "There is no such thing as a single-issue struggle because we do not live single-issue lives." AUDRE LORDE, *Learning from the 60s*, in *SISTER OUTSIDER* 134, 138 (rev. ed. 2007).

13. ANGELA Y. DAVIS, *Let Us All Rise Together: Radical Perspectives on Empowerment for Afro-American Women*, in *WOMEN, CULTURE, & POLITICS* 3, 14 (Vintage Books ed. 1990).

14. See, e.g., Siddhant Issar, *Listening to Black Lives Matter: Racial Capitalism and the Critique of Neoliberalism*, 20 *CONTEMP. POL. THEORY* 48, 55 (2021) (describing Barbara Ransby's documentation of contemporary Black activists' engagement with racial capitalism).

15. See, e.g., Interview by Frank Barat with Angela Davis, in Paris (Dec. 10, 2014), in ANGELA Y. DAVIS, *FREEDOM IS A CONSTANT STRUGGLE: FERGUSON, PALESTINE, AND THE FOUNDATIONS OF A MOVEMENT* 31, 35 (Frank Barat ed., 2016) ("I don't think we can rely on governments, regardless of who is in power, to do the work that only mass movements can do."); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 *HARV. C.R.-C.L. L. REV.* 323, 348 (1987) ("[T]he very process of struggle—the building of coalitions, the development of a voice, the flexing of organizational muscle—is so important, that at a certain level the choice of optimum issue, time and place is less critical.").

Today's movements learned from the movements of prior eras. So what today's movements teach us now should guide not only how lawyers approach struggle today but also how we assess the work done to support struggles in the past. Ella Baker reminds us that "in order to see where we are going, we not only must *remember* where we have been, but we must *understand* where we have been."<sup>16</sup> In essence, this Review asks: How can those who come after us help us better understand where we have been?

### I. THE CONTRIBUTIONS OF *AN EQUAL PLACE*

In *An Equal Place*, Cummings offers a text that new lawyers, and those who train them, have been searching for in recent years: contemporary stories of how communities resist the inequalities of neoliberalism and, specifically, how lawyers support those communities.

Across five case studies, Cummings traces the types of low-wage workers who formed the "the bedrock of grit and determination" of contemporary Los Angeles prior to the 2008 recession (p. 508): garment workers, toiling away in sweatshop conditions; day laborers, facing the threats of antisolicitation ordinances; retail workers, exploited by large corporate employers upon the expansion of LAX airport and the city's redevelopment projects like the Staples Center and L.A. Live; grocery workers, impacted by the growth of big-box stores like Walmart; and truck drivers, whose polluting trucks form part of the logistics tied to the Los Angeles and Long Beach ports. These workers are not those who make up the American idealization of labor: unionized white workers who are members of large unions that came together in the early twentieth century—like the Teamsters and International Longshore and Warehouse Union. They are instead the workers who were deemed "unorganizable."<sup>17</sup>

These "unorganizable" workers in Cummings's stories came to prominence in the 1990s. They were created by a new iteration of racial capitalism in the United States, characterized by both the decline of manufacturing and

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16. ROBERT P. MOSES & CHARLES E. COBB, JR., *RADICAL EQUATIONS: CIVIL RIGHTS FROM MISSISSIPPI TO THE ALGEBRA PROJECT* 193 (2001) (quoting Ella Baker).

17. P. 474. For a broader understanding of "unorganizable" labor, see, for example, E. Tammy Kim, *Organizing the Unorganizable*, *DISSENT*, Spring 2015, at 59 <https://www.dissent-magazine.org/article/worker-centers-immigrant-organizing> [perma.cc/DW57-V39S]. For a historical understanding of the term, see Charisse Burden-Stelly & Gerald Horne, *From Pan-Africanism to Black Internationalism*, in *ROUTLEDGE HANDBOOK OF PAN-AFRICANISM* 69, 79 (Reiland Rabaka ed., 2020) (discussing Esther V. Cooper's 1940 study on how Black domestic workers were considered "unorganizable" by organized labor, which "reified their superexploitation").

the growth of the service sector,<sup>18</sup> and prefiguring today's gig<sup>19</sup> and "Amazon"<sup>20</sup> economy. This new economy was central in creating precarity not only for workers qua workers but for workers as residents, parents, and racialized bodies.<sup>21</sup> This precariat class<sup>22</sup> was generated as a result of capital's efforts to evade the legal architecture that the labor movement secured in the 1930s, specifically by moving manufacturing to places with fewer legal protections and changing the structure of labor relationships that necessarily remained in the United States. Cummings's stories illustrate four specific mechanisms of the latter: (1) relying on involuntarily part-time, high-turnover workers, who are harder to organize<sup>23</sup> (the retail and big-box store model (chapters 4–5)); (2) contracting out labor to smaller companies—less visible to the law—along the supply chain, which must lower the cost of their labor to remain competitive for these contracts (the sweatshop model (chapter 2)); (3) hiring "independent contractors" in lieu of employees altogether, who are, as a result, not simply left unprotected by labor law but also *prohibited* from organizing under antitrust law (the "owner-operator" model (chapter 6)); and (4) driving workers further into the underground economy through criminalizing racialized immigrant identities<sup>24</sup> (the day-laborer model (chapter 3)).

In each story, organizers and lawyers worked together to develop campaigns that combined legal, advocacy, and mobilizing tactics to call attention to and dismantle this architecture of evasion. Each chapter details the forces that created the struggles of the particular type of low-wage worker that the campaign seeks to protect, as well as the origins and operations of the campaign itself. The narratives are delivered predominantly from the perspectives of the lawyers, carefully documenting the array of tools that lawyers used to support each of the struggles: not simply litigating, but also researching, strategizing, drafting, negotiating, legitimizing, and educating. Lawyers are seen acting in local, state, and federal forums, and across the judicial, legislative, and executive branches at each level, helping campaigns execute dynamic

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18. V.B. Dubal, *Wage Slave or Entrepreneur?: Contesting the Dualism of Legal Worker Identities*, 105 CALIF. L. REV. 65, 121 n.197 (2017).

19. *See id.* at 121.

20. Robert E. Scott, Opinion, *Washington Must Confront the 'Amazon Economy'*, HILL (May 3, 2021, 7:30 AM), <https://thehill.com/opinion/finance/551399-washington-must-confront-the-amazon-economy> [perma.cc/N5VC-LVYT].

21. For a discussion of the concept of racialized bodies, see Sara Ahmed, *Racialized Bodies*, in REAL BODIES 46 (Mary Evans & Ellie Lee eds., 2002).

22. Dubal, *supra* note 18, at 67 (defining the "precariat" as "a class of workers whose relationship to employment is precarious or risky because it lacks stability and the benefits of regulation").

23. *See, e.g.*, Sarah Jaffe, *America's Massive Retail Workforce Is Tired of Being Ignored*, RACKED (June 20, 2017, 10:00 AM), <https://www.racked.com/2017/6/20/15817988/retail-workers-unions-american-jobs> [perma.cc/3U6Z-SRDP].

24. *See generally* Cecilia Menjivar, *The Racialization of "Illegality"*, DÆDALUS, Spring 2021, at 91 (describing how immigration laws in a "post-racial" context render certain immigrant groups illegal in a way that produces the "racialization of illegality").

strategies that require pulling every possible lever of power. The stories document the ways, for example, that lawyers “shepherd policy through administrative agency review” by drafting legal opinions that “provide[] legal legitimacy” necessary for elected officials to enact laws and policies (p. 487). They present how lawyers study and break down complicated government programs and processes in order to help campaigns develop strategies for community intervention and leverage. To the extent that litigation remains a major tool in a lawyer’s arsenal, the stories show how it may be deployed “offensively, as one piece of larger integrated campaigns to win policy, and defensively, as an important tool to resist opponents’ legal challenges to undo those victories” (p. 485) as well as to protect organizers and community members from retaliation for their resistance efforts (p. 487).

The stories also provide a window into the roles that community lawyers can play behind the scenes in creating “new legal knowledge” that drives policy outcomes (p. 485). New legal knowledge is the result of “integrating knowledge across disciplines and institutions in order to create solutions to complex problems” (p. 485; emphasis omitted). The lawyers in Cummings’s stories “had to amass sophisticated knowledge” beyond the labor law traditionally associated with supporting low-wage workers (p. 487). For example, many of the campaigns in the book’s stories “nest[ed] labor policy in local government law frameworks not precisely created for it,” such as “using zoning rules to require economic impact reports or to promote the development of day labor organizing sites,” or by “leveraging legal opportunities in . . . agency-level environmental review” (pp. 485–86). They also “synthesize[d] community knowledge” to better design coalition governance structures and incorporate community members into policymaking (p. 486). These stories depict one of the most integral qualities of a successful social justice lawyer—the ability to identify the need for, and operate successfully within, teams of lawyers with expertise across legal doctrines and jurisdictions. Such an approach ensures that lawyers adapt to campaigns rather than force campaigns to adapt to their expertise.<sup>25</sup>

To offer this kind of legal support, the lawyers in these stories either already were or became, through their work, deeply familiar with the nature of advocacy campaigns. Each of the stories in *An Equal Place* provides detailed understandings of the structures, processes, and operations of campaigns. Such stories are all too often left out of legal education, leaving lawyers who are without prior advocacy or organizing experience with little understanding of the dynamic nature of advocacy campaigns until they are thrown into the hot seat.<sup>26</sup> *An Equal Place* helps address this lacuna.

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25. Charles Elsesser, *Community Lawyering—the Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375, 391–92 (2013).

26. See *id.* at 386 (“[I]t is . . . vitally important that the lawyers have a clear sense of how organizing campaigns work.”).

Cummings situates the approach to lawyering recounted in these stories as part of the ongoing legacy of the “legal liberal project,” most closely associated with the civil rights-era law reform efforts of the NAACP Legal Defense Fund and the ACLU (p. 478). But whereas this earlier era focused on rights litigation in federal courts, the lawyering born in 1990s Los Angeles rejected the centrality of rights-based law reform and instead focused on economic equality through local policy development (p. 2). To Cummings, this new form of lawyering addressed the critiques leveled against legal liberalism beginning in the 1970s and 1980s that “assert[ed] that lawyer control and overinvestment in legal tactics had worked against grassroots activism” (p. 5). As Cummings frames it, critics charged that lawyers of the civil rights era were unaccountable to oppressed communities by prioritizing their ideological commitments over the stated interests of communities and ineffective in producing sustainable social change by demobilizing movements and provoking countermobilizations from conservatives (p. 5). Law students schooled in these critiques came to be skeptical “about what lawyers can do ‘for and to’ social movements” (pp. xi, 5). Cummings employs *An Equal Place*’s stories to offer “a counter-narrative to this critical vision of lawyers” (p. xi). By placing lawyers’ work side by side the work of their organizational partners, Cummings seeks to demonstrate how these critiques are not unique to lawyering. He illustrates how they apply to all social-movement actors, including organizers and activists. And, thus, according to Cummings, these critiques should not undermine lawyers’ important role in bringing about social change.

Cummings has elsewhere expressed his goal of moving “toward an inspirational, yet politically grounded, model of how law may meaningfully contribute to social change.”<sup>27</sup> In this way, the stories in *An Equal Place* illustrate what Cornel West describes as the lawyering that occurs in the “space left between the Scylla of upbeat liberalism that harbors excessive hopes for the law and the Charybdis of downbeat leftism that promotes exorbitant doubts about the law.”<sup>28</sup>

How can this space that West describes and Cummings illustrates be guided by the radical visions of today’s movements—visions that are premised on dismantling racial capitalism—such that the lawyering that occurs there may be better equipped to support these movements? The next Section explores this question.

## II. A RADICAL ANALYSIS OF THE STRUGGLES OF LOS ANGELES’S LOW-WAGE WORKERS

*An Equal Place* offers rich historical context for the conditions facing low-wage workers in Los Angeles in the period immediately preceding the 2008

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27. Scott L. Cummings, Book Review, 61 J. LEGAL EDUC. 711, 714 (2012) (reviewing STONES OF HOPE: HOW AFRICAN ACTIVISTS RECLAIM HUMAN RIGHTS TO CHALLENGE GLOBAL POVERTY (Lucie E. White & Jeremy Perelman eds., 2011)).

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

recession. It avoids, however, a radical analysis of how and why these conditions came about. Exploring such an analysis helps illuminate that these workers' struggles are deeply interconnected with struggles of oppressed communities not featured in the book. Understanding these interconnections can, in turn, help create space to work towards a more liberatory future.

The political economy in which Cummings's stories take place was structured by the particular transnational and carceral dimensions of racial capitalism in that era. Los Angeles was experiencing the immediate aftermath of the manufacturing sector's decline—resulting from the selective liberalization of trade and the end of the United States' "military Keynesianism"<sup>29</sup>—and the rise of California's carceral economy. The following Sections examine each of these forces in turn.

### A. *Selective Liberalization of Trade*

*An Equal Place* makes references to the impact of neo-imperialism, or what is commonly referred to as "globalization,"<sup>30</sup> on urban life in the United States. This phenomenon was created by selective liberalization of trade<sup>31</sup> in the 1990s, coupled with the International Monetary Fund (IMF) and World

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29. See *infra* note 44.

30. See, e.g., p. 315 (discussing the impact of globalization on "ports' relationship with workers and local communities"); pp. 85–86 (discussing how international trade agreements "fundamentally altered the economic terrain on which anti-sweatshop activism played out"). Globalization can be understood as "weaken[ing] the regulatory capacities" of newly decolonized states vis-à-vis "the power of corporations and transnational economic actors." Gurminder K. Bhambra, *Colonial Global Economy: Towards a Theoretical Reorientation of Political Economy*, 28 REV. INT'L POL. ECON. 307, 317 (2021). This process allowed capital situated in former colonizing powers and their settler colonial states to control access to the land and labor of postcolonial states, effectively continuing the economic relationships of the colonial era in new forms. See Antony Anghie, *The Evolution of International Law: Colonial and Postcolonial Realities*, 27 THIRD WORLD Q. 739, 749 (2006).

31. The era beginning with the General Agreement on Trade and Tariffs (1947) is commonly viewed as an era of "free trade" following the protectionism that characterized the period between the two World Wars. See, e.g., Michael H. Davis & Dana Neacsu, *Legitimacy, Globally: The Incoherence of Free Trade Practice, Global Economics and Their Governing Principles of Political Economy*, 69 UMKC L. REV. 733, 751 n.94, 752 n.96 (2001) (describing a principal goal of the post-World War II international legal framework as a restoration of "a kind of historical, perhaps mythical, free market"). But this view ignores how trade was liberalized selectively, allowing capital-rich states (that is, former colonizers and their settler colonial states who were able to extract capital from colonized territories) to maintain higher levels of protectionism while capital-poor states (i.e., formerly colonized states whose capital was "drained" from them by imperialism) were forced to reduce, and prevented from instituting, protectionist measures. *Id.* at 767–70; Bhambra, *supra* note 30, at 309–17 (describing wealth transfers via colonialism); see also Carmen G. Gonzalez, *International Economic Law and the Right to Food*, in RETHINKING FOOD SYSTEMS 165, 170–78 (Nadia C.S. Lambek, Priscilla Claeys, Adrienna Wong & Lea Brilmayer eds., 2014) (explaining how international trade agreements on agriculture forced global South countries into food dependency by requiring them to lift barriers to entry for global North products, while global North countries were permitted to maintain protectionist measures).

Bank's exploitation via restructuring of formerly colonized countries following the 1980s global debt crisis, which together led to significant dislocations of industry and labor.<sup>32</sup>

The selective liberalization of trade and IMF/World Bank restructuring prompted manufacturers to move from urban centers in capital-rich places like the United States to urban centers in capital-poor places like Mexico.<sup>33</sup> U.S. cities like Los Angeles thus became home to high-wage labor—predominantly in insurance, finance, and law—supported by an array of low-wage service workers tending to their every need.<sup>34</sup> Any manufacturing that remained in L.A. in the 1990s and early 2000s was invisibilized through the nature of sweatshops, as seen in the chapter covering garment workers (chapter 2). The sweatshop model's shift from directly employing garment workers to contracting out to smaller independent contractors who employed garment workers reflected the underlying economic theory of global trade agreements in this period: encouraging global competition among cities based on where labor laws were the least protective (to make labor the cheapest) to allow for more of the pie created by economic growth to be captured by capital. To remain competitive for capital, a region (like Los Angeles) had to legally structure its low-wage work to prevent organizing. By hiring workers through small independent contractors rather than directly, retailers could separate workers from one another to prevent them from organizing in numbers significant enough to demand higher wages.<sup>35</sup>

At the same time, trade agreements and IMF/World Bank restructuring dispossessed communities in the Global South of their lands and forced them to not only flee to the urban centers in their own regions, but also, facing insufficient demand of labor in those markets, to migrate to places where the capital was located—like the United States.<sup>36</sup> This economic migration occurred alongside decades-long U.S. intervention to foil struggles against capitalism in Central America and Southeast Asia, resulting in brutal civil wars that further fed waves of immigration to the United States, particularly Los

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32. See, e.g., Carmen G. Gonzalez, *An Environmental Justice Critique of Comparative Advantage: Indigenous Peoples, Trade Policy, and the Mexican Neoliberal Economic Reforms*, 32 U. PA. J. INT'L L. 723, 740–41, 745–46 (2011) [hereinafter Gonzalez, *Environmental Justice Critique*]; Gonzalez, *supra* note 31, at 173–74.

33. Judi A. Kessler, *The North American Free Trade Agreement, Emerging Apparel Production Networks and Industrial Upgrading: The Southern California/Mexico Connection*, 6 REV. INT'L POL. ECON. 565, 576–79 (1999) (describing “significant production shift from Los Angeles to Mexico”).

34. See Emily J. Erickson, *Standing While Latino: Understanding Day Labor Ordinances in California Cities 23–24* (2009) (M.A. thesis, University of California San Diego) (eScholarship) (summarizing Saskia Sassen's analysis).

35. See p. 38.

36. See, e.g., Gonzalez, *Environmental Justice Critique*, *supra* note 32, at 745–53.

Angeles.<sup>37</sup> Both of these migration drivers served a central strategy of capitalism: “uprooting people from their land and other means of livelihood, or what is known as *primitive accumulation*, so that they have no other choice but to work for capital if they want to survive.”<sup>38</sup> Capital’s control over this immigrant labor once they arrive in centers of capital, like Los Angeles, is supported by immigration laws and enforcement that maintain a segment of the labor force as distinct from citizen-workers. By making immigrant laborers “deportable,” immigration law renders them exploitable.<sup>39</sup> *An Equal Place’s* stories of the campaigns for garment workers, day laborers, and truck drivers—who were predominantly immigrants—are particularly illustrative of this analysis.

Together, these shifts in manufacturing (impacting the garment workers) and labor (creating the day laborers and a more vulnerable form of garment workers and truck drivers) thus operate as “flip sides of the same coin.”<sup>40</sup> The free flow of capital exploits land and labor in capital-poor countries and requires rendering unlawful much of labor’s cross-border movement in order to keep it cheap in capital-rich countries.<sup>41</sup>

Understanding the role of trade agreements and the policies of international financial institutions in creating these shifts in the way capital is employed and labor is structured widens possibilities for transnational movement building. Lawyers operating based on such a radical analysis can identify opportunities for supporting such movement building in new and meaningful ways.

### B. *California’s Carceral Economy*

The rise of California’s carceral economy also enabled the oppressive conditions faced by Los Angeles’s low-wage workers. The low-wage workers in Cummings’s stories are predominantly Latinx, Indigenous, Black, or immigrant. These demographics are not mere coincidence but rather the outcome of racial capitalism, specifically its transnational dislocations described above and the growth of California’s carceral economy discussed here.

Ruth Wilson Gilmore explains that because

Capital must be able to get rid of workers whose labor power is no longer desirable—whether permanently, by mechanical or human replacement, or temporarily by layoffs—and have access to new or previously idled labor as

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37. See, e.g., Sarah Sherman-Stokes, *Reparations for Central American Refugees*, 96 DENV. L. REV. 585, 592–93 (2019); Hemant Shah, *Press Coverage of Interethnic Conflict: Examples from the Los Angeles Riots of 1992*, 2007 J. DISP. RESOL. 177, 178 (2007).

38. William I. Robinson & Xuan Santos, *Global Capitalism, Immigrant Labor, and the Struggle for Justice*, 2 CLASS, RACE & CORP. POWER, no. 3, 2014, at 1, 2, <https://doi.org/10.25148/CRCP.2.3.16092122>.

39. *Id.* at 5–7.

40. HARSHA WALIA, BORDER AND RULE: GLOBAL MIGRATION, CAPITALISM, AND THE RISE OF RACIST NATIONALISM 7 (2021).

41. See *id.* at 6–7.

the need arises. . . . The progressive nature of capitalism requires the essential commodity—working people’s labor power—in varying quantities and qualities over space, sector, and time.<sup>42</sup>

This requires access to powerless labor, which requires both surplus labor—competing for employment, lowering wages—and labor that cannot organize for higher wages. In the 1990s and early 2000s, Los Angeles experienced both. Surplus labor resulted from austerity<sup>43</sup> following the United States’ end of “military Keynesianism”<sup>44</sup> and increased immigration<sup>45</sup> due to the factors discussed in Section II.A. Twin forces served to prevent this surplus labor from organizing: decades of state repression of organized labor<sup>46</sup> and carceral control of immigrant and racialized citizen labor.<sup>47</sup> The role of the latter can be understood through racial capitalism’s reliance on carceral mechanisms.

Unlike in prior eras, citizen workers of color were now able to benefit from greater legal protections thanks to the civil rights movement’s gains. But racial capitalism requires not only labor it can exploit but labor it can “super-exploit,” which is often done through racial ideology.<sup>48</sup> So, capital needed to both eliminate some workers from the labor pool that it could no longer superexploit and find a new group to superexploit. The former was resolved through California’s decision to spend public funds on building prisons. The incarceration of Californians (would-be labor) grew exponentially between 1982 and 2000.<sup>49</sup> Most of those incarcerated during this era were Black and Latinx residents in and around Los Angeles.<sup>50</sup> With this group of workers removed from the labor pool, a new group—racialized immigrants (meaning

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42. RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 71 (2007).

43. *Id.* at 57 (referencing “the state’s failure to put idled capacities back to work through infrastructural, educational, employment, and other projects”).

44. *See id.* at 25. Military Keynesianism “refers to economic policies in which the government devotes large amounts of spending to the military in order to foster economic growth.” Peter Custers, *Military Keynesianism Today: An Innovative Discourse*, *RACE & CLASS*, April 2010, at 79, 79.

45. GILMORE, *supra* note 42, at 70.

46. *Id.* at 25–26; Lawrence Mishel, Lynn Rhinehart & Lane Windham, *Explaining the Erosion of Private-Sector Unions*, *ECON. POL’Y INST.* (Nov. 18, 2020), <https://www.epi.org/unequalpower/publications/private-sector-unions-corporate-legal-erosion> [perma.cc/SP8Q-V4C6]; *see also* Issar, *supra* note 14, at 50–51 (“While the post-war Keynesian state in the United States and western Europe was defined, according to [David] Harvey, by a ‘class compromise’ between capital and labor, neoliberalism aimed at reinstating the power of the capitalist class by crushing the (relative) power of labor during this period.”).

47. *See* GILMORE, *supra* note 42, at 72.

48. Issar, *supra* note 14, at 62 (quoting Michael C. Dawson, *Hidden in Plain Sight: A Note on Legitimation Crises and the Racial Order*, 3 *CRITICAL HIST. STUD.* 143, 151 (2016)).

49. GILMORE, *supra* note 42, at 7.

50. *Id.* at 7–8. From a historical perspective, the racial-capitalist nature of the U.S. political economy meant that this population would be predominantly Black and Latinx. *See, e.g.*, Etienne C. Toussaint, *Black Urban Ecologies and Structural Extermination*, 45 *HARV. ENV. L. REV.* 447, 462 (2021); Issar, *supra* note 14, at 57. From a structural perspective, the neoliberal

immigrants who are undocumented, with that status's own form of racialization attached,<sup>51</sup> and immigrants of color)—became available to superexploit. The garment workers' story perfectly illustrates this. In describing the role of immigration in the garment industry, Cummings explains, "While the halcyon days of garment union organizing coincided with racially restrictive controls on immigration, the era of deunionization occurred during the liberalization of immigration law, which (paradoxically) resulted in an expansion of undocumented entry" (p. 37). In short, formal racialized controls on labor, both citizen and immigrant, were replaced by racialized incarceration and a legally structured increase in undocumented immigration, both of which required the central role of policing. Though unmentioned in *An Equal Place*, policing plays a role in all the stories recounted.

First, most directly, policing plays a role in ensuring that immigrant workers remain in the precariat by actualizing threats of deportation should they attempt to exert any power.<sup>52</sup> In the stories of the garment workers and truck drivers, contracting firms exploit immigrant workers by relying on the threat of policing operating in the background, be it in the form of local police or federal immigration agents.<sup>53</sup> Garment manufacturers specifically sought an undocumented immigrant workforce, as Cummings explains, to ensure "labor flexibility"—that is, limited resistance to exploitation out of "fear of employers exposing their lack of legal status if they complained of abuse" (p. 37). Similarly, as the labor force to drive drayage trucks became increasingly immigrant, traditional labor unions like the Teamsters found it difficult to organize drivers because of "the green card issue."<sup>54</sup> The day laborers' story brings the racialized nature of this threat to the forefront. In passing antisolicitation ordinances to criminalize day laborers, Los Angeles municipalities deployed their police in a plain demonstration of the racialized economy.<sup>55</sup>

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state's ability to "manage" surplus populations depended on a racial logic: racist ideology (as seen in tropes such as "welfare queens," "Muslim extremists," "illegals," "narcos," "super-predators," and so on") could "naturalize" those policed and incarcerated to be removed from the surplus-labor population. Arun Kundnani, *What Is Racial Capitalism?*, ARUN KUNDNANI (Oct. 23, 2020), <https://www.kundnani.org/what-is-racial-capitalism> [perma.cc/C58G-JXGH]; see also Is-sar, *supra*, at 62.

51. See generally Menjivar, *supra* note 24 (describing how immigration laws in a "post-racial" context render certain immigrant groups illegal in a way that produces the "racialization of illegality").

52. GILMORE, *supra* note 42, at 77.

53. See Silky Shah, *The Immigrant Justice Movement Should Embrace Abolition*, FORGE (Mar. 4, 2021), <https://forgeorganizing.org/article/immigrant-justice-movement-should-embrace-abolition> [perma.cc/E42F-ZDA9] (explaining how not only does "ICE collaborate[] with local police to target immigrants for deportation" but also that "ICE is only one piece of the puzzle" since "[i]mmigrants are criminalized by a variety of agencies at the local, state, and federal levels").

54. P. 322 (quoting EDNA BONACICH & JAKE B. WILSON, *GETTING THE GOODS: PORTS, LABOR, AND THE LOGISTICS REVOLUTION* 213 (2008)).

55. Pp. 92–93; cf. Monica C. Bell, *Anti-segregation Policing*, 95 N.Y.U. L. REV. 650, 722 (2020).

While day laborers met capital's need for "access to a cheap labor pool" (p. 98), the antisolicitation ordinances facilitated police encounters to ensure this labor remained cheap and that laborers understood their "racial standing,"<sup>56</sup> that is, their powerlessness.

Second, *An Equal Place* illustrates the harms of ongoing racial segregation, which is in turn maintained by policing. High levels of residential segregation serve to externalize environmental harms, which constitute a significant cost of industry, onto communities of color. In Cummings's narrative, this is exemplified by the LAX airport's expansion plans in the retail workers' story and by the Los Angeles and Long Beach ports' logistics industry in the truck drivers' story. Residential segregation also deprives communities of color of access to needs like affordable food. In Cummings's narrative, this surfaces in Walmart's decisions of where to site its ununionized low-wage stores in the grocery workers story (pp. 264–65). Monica C. Bell carefully elucidates the ways that residential segregation is maintained by policing.<sup>57</sup> For example, Bell explains how "heavy police surveillance in race-class subjugated neighborhoods makes poor people of color even poorer, thereby locking them into poor and segregated neighborhoods."<sup>58</sup> Conversely, policing in white communities serves to "ward[] off" people of color, "operating as an attractive and possibly exclusionary amenity for Whites by protecting their racial and economic value."<sup>59</sup>

Finally, communities using community benefits agreements (CBAs) to resist gentrification resulting from redevelopment projects, like the Staples Center and L.A. Live in the retail workers' story, were likely also facing or expecting to face increased levels of policing to facilitate the gentrification process. Samikchhya Bhusal, who studied these along with similar redevelopment projects in Los Angeles, uncovered data "suggestive of increased policing in neighborhoods surrounding CBA developments," noting how corporate-backed media often associated "revitalization" of these neighborhoods with increased police presence.<sup>60</sup> Indeed, other researchers have confirmed that "policing can be particularly intense during the process of gentrification," both to decrease the economic value of property that capital wants to purchase and to help increase the value of property that capital wants to sell.<sup>61</sup>

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56. See Stephen Lee, *Racial Justice for Street Vendors*, 12 CALIF. L. REV. ONLINE 1 (2021). In the context of predominantly immigrant workers, what lurks behind these routine police interactions is "the threat of contact with the state snowballing into an immigration nightmare." *Id.* at 8.

57. Bell, *supra* note 55, at 687–728.

58. *Id.* at 690.

59. *Id.* at 696, 722.

60. Bhusal, *supra* note 9.

61. Brenden Beck, *The Role of Police in Gentrification*, APPEAL (Aug. 4, 2020), <https://theappeal.org/the-role-of-police-igentrification-breonna-taylor> [perma.cc/RXE3-HQV2].

Making these linkages is important—perhaps necessary—for understanding the struggle of low-wage workers that *An Equal Place* recounts. Failing to recognize racial capitalism’s reasons for treating citizens and immigrants of color differently allows capital to drive wedges between and among these communities. It also ensures that racism—defined as “the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death”<sup>62</sup>—continues. As the grocery workers fought against big-box stores, Walmart tried to pit civil rights groups against labor (pp. 275–76) even though retail work is the second-largest source of jobs for people of color.<sup>63</sup> In the truck drivers’ campaign, the trucking industry tried to divide, on the one hand, the community groups formed to fight pollution from the trucks and, on the other hand, the truck drivers themselves, who could not afford to upgrade and maintain their trucks to lower their pollution levels (pp. 378, 389, 405). Yet, some of the drivers were from those very communities, and both the truck drivers and the impacted community members were predominantly people of color (pp. 322, 325, 328). In the day laborers’ campaign, laborers were fighting antisolicitation ordinances not only in predominantly white communities but in communities of color as well (pp. 103–04, 124, 136). Understanding these linkages thus opens space for solidarity.<sup>64</sup> As Ruth Wilson Gilmore prescribed in 2007:

Voters and legislators decided to lock immigrants out of social services, to lock more people into prison for part or all of their lives, and to put a personal lock on opportunities in public sector education, employment, and contracts. This triple-pronged attack on working people demonstrates the potential for identifying linkages between immigrant, labor, and antiprison activism.<sup>65</sup>

Today’s movements remind us, however, that solidarity demands not only a radical analysis of oppressive conditions that reveals the types of linkages described above, but also a transformative process of change. Transformation requires shifting power, particularly by building oppressed people’s power to dismantle systems of their oppression and replace them with structures that meet their collective needs. This is what the final Section explores.

62. GILMORE, *supra* note 42, at 28.

63. Michelle Chen, *How the Retail Industry Keeps People of Color in Poverty*, NATION (June 2, 2015), <https://www.thenation.com/article/archive/how-retail-industry-keeps-people-color-poverty> [perma.cc/424W-J2KC].

64. See Desis Rising Up & Moving, *Four Levels of Solidarity*, MOVEMENT HUB, <https://movementhub.org/resource/four-levels-of-solidarity> [perma.cc/2QFK-NG9T] (defining “transformative solidarity” as “[w]hen masses of oppressed communities choose to forgo something that would benefit them, and do not take it because it comes at the expense of other oppressed communities”).

65. GILMORE, *supra* note 42, at 246; *see also* Shah, *supra* note 53 (describing the need for solidarity between “[t]he fight for migrant justice and abolition of the prison industrial complex”).

## III. LAWYERING FOR TRANSFORMATIVE CHANGE

Cummings uses the stories in *An Equal Place* to offer a vision of lawyering that reinforces its importance to struggles for social justice in the face of widely held critiques of law as a tool for justice. New generations of lawyers—who have studied the role of lawyers in past civil rights and labor struggles while experiencing and witnessing ongoing racial and economic oppression—are increasingly convinced of the gross limitations of the law’s ability to achieve social justice. Audre Lorde’s aphorism, “[T]he master’s tools will never dismantle the master’s house,”<sup>66</sup> rings true to many who use the law to fight injustice. Cummings seeks to disrupt this disillusionment with inspiring stories that offer detailed guidance on the plethora of roles that lawyers can play to help bring about social change.

To measure the success of *An Equal Place* in achieving this goal, I offer that the fundamental questions of social justice lawyering are: (1) What is it that lawyers actually do? (2) Why, or for what purpose, do lawyers operate in social justice struggles? (3) How do lawyers do so?<sup>67</sup> For lawyering to support *transformative* change, the “why” and “how” matter as much as, if not more, than the “what.” As described in Part I, Cummings is highly successful in offering his readers the “what.” Where his book is found wanting, however, is in exploring the remaining two questions. The following two Sections show how *An Equal Place*’s stories *could have been assessed* to offer deeper insight into lawyering for transformative change.

A. *The “Why” of Social Justice Lawyering*

In *An Equal Place*, Cummings narrows his evaluation of the lawyers’ work to a defense of legal liberalism. Under legal liberalism, the purpose of lawyering is to create or enforce the law to bring about equality. In doing so, Cummings misses out on evaluating lawyers’ work under critical race theory—a framework that arose not only out of criticism of legal liberalism’s failure to disturb unequal distributions of power that undergird the law but also from frustration with critical legal studies’ “wholesale rejection of the possibility that law could be valuable to the subordinated.”<sup>68</sup> As viewed through a critical race lens, lawyering has a role in struggle, and its purpose is to help redistribute power—in other words, to support transformative change. This gives lawyering a new “why.”

Cummings highlights the role of lawyers in each story to build a record in defense of the legal liberal project. The “key goal” of this project, according to

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66. Audre Lorde, *The Master’s Tools Will Never Dismantle the Master’s House*, in THIS BRIDGE CALLED MY BACK 94, 95 (Cherríe Moraga & Gloria Anzaldúa eds., 4th ed. 2015) (emphasis omitted).

67. My understanding and framing of social justice lawyering that follows in this Section arose from my work in developing movement-lawyering trainings in collaboration with Purvi Shah, Meena Jagannath, Nikki Thanos, Amna Akbar, and Marbre Stahly-Butts.

68. KHIARA M. BRIDGES, CRITICAL RACE THEORY 26 (2018).

Cummings, is to carry forth the legacy of the New Deal and civil rights eras—namely, to use the law to restore, and expand, the “egalitarian” state “degraded by neoliberalism” (p. 478). For example, the lawyers in *An Equal Place*’s stories seek to reclassify independent contractors as employees so that companies would have labor law obligations to them. They also seek to draft CBAs that would enforce minimum wage laws and to enforce First Amendment protections to prevent cities from criminalizing day laborers’ solicitation of work. From this perspective, in each case, the lawyers’ goals are to develop or better effectuate laws in ways that protect low-wage workers. In other words, like the legal liberalism employed in prior eras, the lawyers’ target is the law. But unlike mainstream conceptions of lawyers in the past, the lawyers in *An Equal Place* do so not alone, but as part of multifaceted, community-based campaigns.

Cummings uses his stories to conclude that critiques of legal liberalism are “outmoded” (p. 478). But in doing so, Cummings appears to overlook the focus of critical race scholars’ critique of the legal liberal project. Critical race scholars understand that “law is not the neutral rational force courts . . . purport it to be,” but that “a core function of law is to make raced and gendered power distribution and social domination *look* rational, neutral, and just—to make it seem outside of and before politics.”<sup>69</sup> This understanding of the law leads to three imperatives: that past law reform efforts were incapable of redistributing power toward those communities most oppressed by the state and political economy; that redistributing power requires organizing as a theory of change, rather than merely a tactic of change; and that the law is not irrelevant to the process of redistributing power.

First, a critical race lens exposes the failure of the legal liberal project’s New Deal- and civil rights-era victories to change *power* distributions subordinating poor communities of color. And incorporating a radical analysis from Part II, we see how those power distributions were structured by racial capitalism, of which neoliberalism is simply a current form.<sup>70</sup> The New Deal victories in the form of labor protections and a welfare state tended to exclude (and to some extent, exacerbate harms to) people of color,<sup>71</sup> and the later civil rights victories that would have required an expansion of the state’s labor and

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69. Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 444 (2018) (emphasis added).

70. Issar, *supra* note 14, at 50, 60 (defining racial capitalism and explaining “the necessity of historicizing neoliberalism within racial capitalism’s *longue durée*”).

71. *See generally* ROBIN D.G. KELLEY, HAMMER AND HOE: ALABAMA COMMUNISTS DURING THE GREAT DEPRESSION (25th anniversary ed. 2015) (describing how for many Black workers, the New Deal era increased inequality); Dorothy E. Roberts, *Welfare and the Problem of Black Citizenship*, 105 YALE L.J. 1563, 1571 (1996) (reviewing LINDA GORDON, PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE (1994), and JILL QUADAGNO, THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY (1994)) (“The New Deal solidified welfare’s stratification along racial as well as gender lines.”).

welfare protections to citizens of color led to the retreat of those protections.<sup>72</sup> This lens thus weakens the assumed linearity of justice that merely faced a setback through neoliberalism.<sup>73</sup> Instead, it reveals the limitations of legal victories for those whose subordination is required by racial capitalism.<sup>74</sup> Indeed, Cummings implicitly affirms this logic when he points out that, where the impacted community is particularly marginalized, “there was ultimately little law could do for a class . . . defined as formally outside its scope” (p. 489). In the past, this class was composed of predominantly Black, and to varying extents, Latinx citizens. Today, as described in Part II, this class is composed of both those outside the scope of *An Equal Place*’s stories—Black and Latinx citizens excluded from legal protections via incarceration, as well as those at the heart of his stories—immigrants of color, excluded from legal protections via their undocumented or otherwise precarious legal status.

These racial divides reflect unequal power distributions. Power here refers to what Gilmore explains as “a capacity composed of active and changing relationships enabling a person, group, or institution to compel others to do things they would not do on their own.”<sup>75</sup> The legal liberal project, which focused on the powers of the state via law reform, was criticized for failing to retain focus on building power within poor and working-class Black communities.<sup>76</sup> As a result, structures of subordination remained intact, such that they could continue, albeit in new forms. For example, while liberal lawyers successfully dismantled de jure school segregation, their efforts overlooked the role of segregation in protecting whiteness as a materially exclusionary project,<sup>77</sup> resulting in the re-creation of apartheid within schools.<sup>78</sup>

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72. See, e.g., Roberts, *supra* note 71, at 1572–73 (“[I]t was precisely the War on Poverty programs’ link to Blacks’ civil rights that doomed them: Whites opposed them as an infringement of their economic right to discriminate against Blacks and a threat to white political power. . . . [T]he AFL-CIO defended its ‘property right’ to exclude Blacks from its ranks and opposed the civil rights campaign for an open labor market.”); Bhambra, *supra* note 30, at 319 (“The welfare state was not an historic achievement of the working class,” but “an amelioration of national conditions of deprivation funded by the labour and resources of racialized others and colonial subjects.”).

73. See Issar, *supra* note 14, at 63 (“[C]ritiques of neoliberalism, in focusing on the ways neoliberalism is discontinuous from earlier phases of capitalism, too often hide the presence of these longstanding racialized patterns in the history and functioning of capitalism.”).

74. See *supra* Section II.B.

75. GILMORE, *supra* note 42, at 247–48.

76. See, e.g., Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 32 (2011) (explaining that while NAACP and labor lawyers were initially “grounded in organized constituencies,” they “became detached from their bases only later, during a general professionalization of political advocacy in the 1960s and 1970s”); MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 225–26 (rev. ed. 2012).

77. See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1752–53 (1993); Bell, *supra* note 55, at 659.

78. See Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 487–88 (1976).

Second, understanding power in this way reveals the central role of organizing in redistributing power. Organizing is “building the capacity of the people to become central actors on the stage of history or in the drama of emancipation.”<sup>79</sup> This understanding is distinct from how Cummings uses the term “organizing” in his stories, a better word for which would be “mobilizing.”<sup>80</sup> Mobilizing is “about bringing the rank and file out to mass actions (the spectacles of resistance) such as rallies, demonstrations, pickets, strikes, and voter registration drives.”<sup>81</sup> Kwame Ture would caution Black Freedom Movement actors that “[t]o be an organizer, one must be a mobilizer, but being a mobilizer doesn’t make you an organizer.”<sup>82</sup> This distinction reveals that organizing is central to the *theory of change* that a critical race lens of the law illuminates, as opposed to merely a *tactic* of change. Organizing must be embedded as part of the purpose, rather than just a tool.

Third, while organizing is central to the theory of change informed by critical race theory, law and lawyering are not irrelevant. To Cummings, alternatives to the legal liberal project view law as irrelevant.<sup>83</sup> But, a critical race lens understands that, for struggles of the subordinated, the law *cannot* be irrelevant. Speaking of the civil rights movement, Kimberlé Williams Crenshaw explains: “Challenges and demands made from outside the institutional logic would have accomplished little because Blacks, as the subordinate ‘other,’ were already perceived as being outside the mainstream.”<sup>84</sup> Instead, legal tools are necessary, but not for their intended purpose—or as Cummings assesses them—to create or enforce laws. Rather, they are necessary to “creat[e] ideological and political crisis” in the status quo<sup>85</sup> that, in turn, can “help[] to create an atmosphere in which the [subordinated] people can more readily function, organize, and move forward.”<sup>86</sup> In other words, legal tools can (and perhaps must) be used as part of the process to shift power.

Understanding social justice lawyering through the lens of critical race theory—primarily its “multiple consciousness” of the relationship between law and power<sup>87</sup>—then suggests that critiques of the legal liberal project are

79. Ajamu Nangwaya, ‘*Organization Is the Weapon of the Oppressed*,’ PAMBAZUKA NEWS (Sept. 9, 2014, 3:00 AM), <https://www.pambazuka.org/governance/organization-weapon-oppressed> [perma.cc/XN2B-V8X3].

80. See Elsesser, *supra* note 25, at 392 (discussing how lawyers often confuse mobilizing for organizing).

81. Nangwaya, *supra* note 79.

82. *Id.*

83. P. 478 (contrasting legal liberalism to “romantic progressive accounts of community mobilization outside structures of government power”).

84. Crenshaw, *supra* note 10, at 1386.

85. *Id.*

86. ARTHUR KINOY, RIGHTS ON TRIAL: THE ODYSSEY OF A PEOPLE’S LAWYER 61 (1983); see also Crenshaw, *supra* note 10, at 1382.

87. Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN’S RTS. L. REP. 297, 298 (1992).

not “outmoded,” as Cummings suggests. They are instead necessary for lawyers to understand the theory of change undergirding their lawyering—their “why”—and, as the next Section will discuss, to help them make decisions about “how” to lawyer in alignment with this underlying theory.<sup>88</sup> Indeed, many of the lawyers in Cummings’s stories came to understand how they approach their lawyering based on these critiques. Cummings notes that it is “precisely because of their critical training” that the lawyers in these stories were able to understand the importance of working with organizers (pp. 481–82). Their use of legal tactics may have been “liberal in practice” but in fact “radical in purpose,” as they were not for their intended purpose but to help organizing structures to form or exercise their newly created power.<sup>89</sup> The lawyers were thus arguably far more useful to the communities they were supporting than if they had been trained in the legal liberal project alone.

### B. *The “How” of Social Justice Lawyering*

If the purpose of lawyering under a critical race lens is to shift power, then how can legal tactics be deployed to build power in subordinated communities? Assessing lawyering by how well it supports organizing both addresses head-on what Cummings emphasizes as the core critiques of the legal liberal project and offers a deeper understanding of the strengths and shortcomings of the lawyers’ contributions to the struggles in *An Equal Place* in bringing about transformative change.

Cummings views the central criticisms lodged against the legal liberal project to be its inefficacy and lack of accountability to impacted communities in the struggle for social justice. Cummings uses various movement actors in each of the stories to demonstrate how neither critique is unique to lawyering: all activities that seek to bring about social change (i.e., all forms of protest and politics) are also limited in their long-term efficacy (pp. 483–84), and the difficulties in accountability to directly impacted communities “cut[] across different forms of representation—legal, political, and social movement” (pp. 479–80; emphasis omitted). Unfortunately, Cummings’s argument that critiques of efficacy and accountability are not limited to lawyering (a notion that is difficult to dispute) prevents *An Equal Place* from offering a meaningful critique of the lawyers in its stories. Under a critical race lens, the lawyers’ work would be assessed in terms of their roles in building power in subordinated communities.

Understanding organizing as a process for building power, as opposed to a tactic, addresses the efficacy and accountability critiques of the legal liberal project. As to efficacy, Cummings identifies three metrics: sustainable en-

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88. See, e.g., Betty Hung, Essay, *Law and Organizing from the Perspective of Organizers: Finding a Shared Theory of Social Change*, 1 L.A. PUB. INT. L.J. 4, 6 (2009) (“[T]he key to the law and organizing model—and to effective partnerships in social justice movements—is a shared theory of social change based on the primacy of affected community members.”).

89. West, *supra* note 28, at 1804 (emphasis omitted).

forcement of legal and policy victories, protection against countermobilizations, and preventing co-option (p. 483). The process of building power within a subordinated community is to support the community's capacity to protect its victories and continually build upon them.<sup>90</sup> This form of power allows those most directly harmed by institutions to be able to dismantle and replace those institutions with ones responsive to their needs. This process is even more successful when the organizing reaches a point where it can address root causes of the harms the community is facing,<sup>91</sup> particularly since radical demands are harder to co-opt.<sup>92</sup>

As to accountability, Cummings specifically highlights how this problem extends to organizers, who, in addition to their target communities, are also often beholden to their ideological commitments and funders (p. 480). While this is undoubtedly an issue that organizers struggle with regularly, it is important to keep in mind that organizing, by its definition, requires accountability to a community directly impacted by injustice.<sup>93</sup> For instance, Cummings characterizes an organizer's popular education activities as stemming from an ideological commitment distinct from community needs.<sup>94</sup> But listening to the community and facilitating Freirean-style popular education<sup>95</sup> to help community members arrive at a radical analysis of their problems is actually the core work of organizing. Such popular education activities can help ensure accountability.<sup>96</sup> We see this, for example, in the garment workers'

90. See, e.g., Elsesser, *supra* note 25, at 384; Grinthal, *supra* note 76, at 28.

91. See *supra* Part II. For example, organizing that helps communities build power by restructuring their economic relations into a solidarity economy addresses root causes of labor abuses in contrast to organizing for higher wages under capitalism. See, e.g., Carmen Huertas-Noble, Missy Risser-Lovings & Christopher Adams, *The Liberatory Potential of Union Co-ops*, NONPROFIT Q. (July 14, 2021), <https://nonprofitquarterly.org/the-liberatory-potential-of-union-co-ops> [perma.cc/HK3P-99MG]; Carmen Huertas-Noble, *Promoting Worker-Owned Cooperatives as a CED Empowerment Strategy: A Case Study of Colors and Lawyering in Support of Participatory Decision-Making and Meaningful Social Change*, 17 CLINICAL L. REV. 255 (2010).

92. See Haymarket Books, *Lawyering for Liberation*, YOUTUBE, at 26:00 (May 26, 2021), <https://youtu.be/jxvem9THmsc> (describing how a sharper, more radical vision is harder to co-opt, offering examples of “decarceral prosecutors” as opposed to “progressive prosecutors” and “anti-border work” as opposed to immigrant justice).

93. See Ewing, *supra* note 11.

94. See p. 480.

95. For an overview of Freirean-style popular education, see generally PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (Myra Bergman Ramos trans., 30th anniversary ed. 2000) (1970).

96. Legendary community organizer Ella Baker's practice demonstrated that “[t]he process of building a movement for social transformation had to allow for, encourage, and nurture the transformation of the human beings involved.” BARBARA RANSBY, *ELLA BAKER AND THE BLACK FREEDOM MOVEMENT* 369 (Thadious M. Davis & Linda K. Kerber eds., 2003). And thus, while leadership in social change struggles must come from oppressed communities, political education is necessary to support the development of this leadership. See, e.g., *id.* at 95 (“One of the main goals of workers' education, according to Baker, was to provide the worker with ‘a more intelligent understanding of the social and political economy of which he is a part.’”); MOSES & COBB, *supra* note 16, at 193 (quoting Ella Baker, *The Black Woman in the Civil Rights Struggle: The Long View* 655 (1969) (transcript available in the Duke University Libraries Repository))

story. The organizing shop—the Garment Worker Center—formed out of the legal strategy decided to move away from legal and policy tactics in order to focus on worker organizing through “popular education workshops to promote worker political consciousness and leadership development” (p. 77).

From a critical race perspective, the best metrics to determine the efficacy and accountability of *lawyering* in particular would evaluate how well it supports the process of organizing, such as whether it builds the base of the organizing project, such that more members of the impacted communities are organized; it offers ways for the organized community to exercise the power they have built; and it builds structures that allow the organized community to exercise power on an ongoing basis. These are questions organizers regularly reflect on. If lawyering is meant to support organizing, lawyers should be reflecting upon their work in similar ways.<sup>97</sup> And because these questions will differ depending on the level and extent to which a community is organized around specific harms, there are different models to assess legal work in relation to the broad spectrum on which organizing occurs.<sup>98</sup>

*An Equal Place*'s stories captured this breadth of organizing. An analysis of the lawyering that took place in each story, framed in relation to the level and extent of organizing happening at the time, could allow for more meaningful assessment of the lawyers' work towards transformative change. For example, at one end of the organizing spectrum were stories of lawyers working with highly organized coalitions of community groups—as in the campaigns for retail workers, grocery workers, or truck drivers. An analysis that centered around shifting power would reflect on questions such as: Should lawyers ever be members of coalitions, or should they instead limit themselves to being lawyers for the coalition? When conflicts arise among coalition members, how can and should lawyers identify them and work through them? At the other end of the spectrum, were lawyers helping to organize an unorganized community on the “scaffolding of litigation,”<sup>99</sup> as was the birth story of the National Day Laborers Organizing Network and the Garment Worker Center. In these stories, an analysis that centered around shifting power may ask: How does the lawyer's role change once organizing is actively taking place? What structures are necessary to ensure community members' leadership? How should lawyers address tensions that arise with organizers?

Asking such questions would also change the metrics of assessing how successful the lawyers were in their work. For example, one metric that Cummings uses to measure lawyers' success in supporting a campaign is the ability to anticipate problems and proactively address them. An alternative, power-

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(“In order for us as poor and oppressed people to become part of a society that is meaningful, the system under which we now exist has to be radically changed. This means that we are going to have to learn to think in radical terms. I use the term *radical* in its original meaning—getting down to and understanding the root cause.”).

97. See Grinthal, *supra* note 76, at 28; Elsesser, *supra* note 25, at 397.

98. Elsesser, *supra* note 25, at 386–90; Grinthal, *supra* note 76, at 29.

99. Grinthal, *supra* note 76, at 54.

based metric would measure a legal tactic's success in helping the impacted *community* do so. The truck drivers' story illustrates this point. The campaign's goals were twofold: reduce the environmental impact of old trucks coming in and out of the ports on nearby communities and reclassify truck drivers from owner-operators to workers, who could then be organized into labor unions and whose employers would bear responsibility for mitigating the trucks' environmental impact (p. 311). From the outset, there was a clear understanding that an environmental justice victory without a labor victory would result in the onus of mitigating environmental harms falling upon the truck drivers—one of the primary communities the campaign sought to help—because, as “owner-operators” of the polluting trucks, they would be responsible for updating and maintaining them (pp. 321, 352–53).

But the drivers themselves were not formally part of the campaign, and organizers did not engage them in “deep analysis of potential costs” of the campaign (pp. 442–43). The campaign had attempted a legal strategy that sought to have the law recognize the drivers as employees, thus rendering their actual employers responsible for upgrading and maintaining trucks, but this strategy failed (pp. 404–05). It was the later adopted strategy—one that used legal tactics to support the organizing of the truck drivers—that succeeded (p. 445). An alternative analysis from Cummings's would focus on the differences between the legal tactics used for the purposes of law reform (as under legal liberalism) where law was used to attempt to mitigate risks, and the legal tactics used for building power within directly impacted communities (as under critical race theory). What lessons around power shifting could be learned from such a comparison?

Finally, what Cummings characterizes as “trade-offs”—which exist in nearly any campaign—could be viewed (and thereby assessed) differently through a power lens. For example, Cummings describes several of the campaigns' enervating “us[e] [of] normative frames aligned with mainstream values” that he says can serve to “deradicalize movements,” including how characterizing abuses against the garment workers as “modern day slavery” “obscured” the inherently oppressive nature of industries structured by global capitalism (p. 485). Cummings also describes how situating the campaigns for retail workers in the context of affordable housing (via CBAs) and truck drivers in the context of environmental injustices (via the “Clean Truck” campaign), as opposed to labor organizing, effectively deradicalized the demands of these campaigns (p. 484–85).

But it might be shortsighted to see these decisions as deradicalizing if the essential work of organizing is accounted for. Such normative frames may be necessary to win concrete victories that attract more community members into the organizing and demonstrate a community organization's power vis-à-vis elected officials (p. 485). At the same time, political education, which is a central component of organizing, could ensure impacted communities see such tactical victories as part of larger strategies in pursuit of longer-term radical goals (p. 485). Yet this role of organizing spaces—the Garment Worker Center, the beginnings of the National Day Laborers Organizing Network, the

community organizing in places like Wilmington impacted by the pollution at the center of the truck drivers' story—is underexplored.

Similarly, Cummings sees certain policy victories as compromises that curtailed their “transformative scope.” In the garment workers' campaign, compromises resulted “in ceding a private right of action in the statewide garment manufacturer liability and willful misclassification laws” (p. 485). In the retail workers' campaigns, compromises resulted in “giving up mandatory community benefits and big-box regulations for site-specific economic impact review” (p. 485). A power-based analysis would question whether any such forgone reforms could actually be “transformative” if they did not shift power, and whether, instead, the more modest victories allowed for greater power building by attracting base membership, demonstrating community leadership that political actors must contend with, or creating ongoing space for power to be asserted by organized communities.

In short, a critical race lens, which focuses on the distribution of power undergirding the law, would assess the “how” of social justice lawyering by focusing on how well the lawyering supported organizing given that it is central to redistributing power. Such an approach would ultimately allow for an assessment of how well lawyering contributed to *transformative* change.

#### CONCLUSION

*An Equal Place* beautifully reveals the layers of Los Angeles underneath its decadent wealth. Those layers were created by those whose identities are simultaneously forged *by the imperative of capital*—they sew, construct, drive, sell, and clean—and *by love for their communities*—they fight to build and protect their homes, schools, air, and very right to exist. As Luis J. Rodriguez's poem reminds us, these workers operate in Los Angeles's deep legacy of resistance. It is not just a city but a site of struggle. We, as readers, are given the opportunity to witness some of that incredible struggle thanks to Cummings.

*An Equal Place* also reveals lessons in advocacy and lawyering in fighting the forces of neoliberalism in the contemporary U.S. city. If newer generations of social justice lawyers and advocates were to place the book's narratives in the context of the larger political economy that creates this community of low-wage workers and view their resistance through the lens of power, they would be able to do what Ella Baker exhorted us to do: more deeply *understand* where our predecessors have been, and pick up where they left off in the ongoing struggle for “an equal place.”