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Community Law Clinics in the Neoliberal City: Assessing CUNY's Tenant Law and Organizing Project

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COMMUNITY LAW CLINICS IN THE NEOLIBERAL CITY: ASSESSING CUNY'S TENANT LAW AND ORGANIZING PROJECT

John Whitlow[†]

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“[W]e think that poor people need solidarity with each other and consequent political power and we provide legal services that advance that project. We have given up the illusion that lawyers might be able to liberate clients, one by one.”¹

“The more New York’s economy follows the dictates of real estate, the more it experiences the agonies of dislocation.”²

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¹ Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 407 (2008) (footnote omitted).

² TOM ANGOTTI, *NEW YORK FOR SALE: COMMUNITY PLANNING CONFRONTS GLOBAL REAL ESTATE* 43 (2011).

INTRODUCTION

This article takes up the question of what it means for a law school clinic to do anti-displacement work in a city where real estate “drives the growth machine, government oils and repairs it, the building trades make the parts, and global and local capital deliver the fuel.”³ The article looks at how a clinical law program centered on tenant advocacy can be designed so that its lawyering efforts address the deep, structural forces underlying inequality and gentrification, while also winning victories for clients and training students to be effective public interest lawyers. Through an exploration of models of law and organizing in the clinical law setting and of the political-economic forces driving urbanization in New York City in recent decades, I argue that such an endeavor requires the construction of a model of clinical practice that uses legal services to build solidarities among poor and working class tenants in gentrifying sections of the city, and that critically engages the core tenets of neoliberalism.⁴

The challenges of constructing such a clinical model are manifold. The dominant legal services paradigm with regard to tenant advocacy is highly individuated, prioritizing eviction prevention over lawyering strategies that support community organizing and redistributive policy and law reform campaigns.⁵ Such prioritization dovetails with traditional approaches to clinical legal education that privilege student work on individual cases in discrete legal areas over more politicized modes of lawyering aimed at supporting the organizing efforts of collectivities of subordinated people.⁶ While an increasing number of law clinics have incorporated community lawyering components⁷—including group representation

³ *Id.* at 39.

⁴ The ideology of neoliberalism is predicated on the belief that all of our social institutions function best when they work according to the principles of the market. This has meant the erosion of policies and practices based in the common good, and the emergence of a state apparatus the main purpose of which is to buttress markets rather than counter their deleterious effects. See LESTER K. SPENCE, *KNOCKING THE HUSTLE: AGAINST THE NEOLIBERAL TURN IN BLACK POLITICS* 9-10 (2015).

⁵ Telephone Interview with Robert McCreanor, Former Legal Dir., Catholic Migration Servs. (Dec. 4, 2016). Catholic Migration Services is a nonprofit legal organization that represents low-income immigrant tenants and workers. *Who We Serve*, CATHOLIC MIGRATION SERVICES, <http://catholicmigration.org/> [<https://perma.cc/4AVD-3H3G>].

⁶ See Ashar, *supra* note 1, at 368-69.

⁷ See, e.g., *Immigrant Rights Clinic*, U.C. IRVINE SCH. L., <http://www.law.uci.edu/academics/real-life-learning/clinics/immigrant-rights.html> [<https://perma.cc/9BEP-49TF>]; *Community Economic Development Clinic*, U.C. HASTINGS C. L., <http://www.uchastings.edu/academics/clinical-programs/clinics/community-economic-develop>

and support for community organizing initiatives—overall the hegemonic approach in clinical legal education remains the provision of essential legal services to a limited number of individuals in crisis.

Even where legal services—in or outside a law clinic—are deployed in support of groups organizing for social change and progressive law reforms, in the area of tenants' rights, problems of structural inequality and displacement are still difficult to address. Real estate markets in global cities are rich sources of economic growth and speculation, and the policy tools required to regulate these markets often reside beyond the scale of local governments. In New York City, for example, organizing campaigns to protect tenants from the escalating rents and evictions generated by overheated real estate markets must contend with the fact that the City has little legislative authority over its housing supply.⁸ Consequently, these campaigns, which are by-and-large highly localized, find themselves up against seemingly abstract forces and making demands of officials whose authority to act is circumscribed.⁹

ment/index.php [https://perma.cc/C9NQ-5S6B]; *Community Group Advocacy and Social Change Lawyering Clinic*, U.C. HASTINGS C. L., <http://www.uchastings.edu/academics/clinical-programs/clinics/group-advocacy-change/index.php> [https://perma.cc/V68J-UXSY]; *Community & Economic Development*, CUNY SCH. L., <http://www.law.cuny.edu/academics/clinics/ced.html> [https://perma.cc/M46B-82EU]; *Pro Bono Scholars Program Externship/Clinic: Litigation, Organizing and Systemic Change*, N.Y.U. SCH. L., <http://www.law.nyu.edu/academics/clinics/pbsp-litigation-organizing-social-change> [https://perma.cc/A8DQ-U392]; *Community and Economic Development Clinic*, MAURICE A. DEANE SCH. L. HOFSTRA U., <http://law.hofstra.edu/clinics/community-andeconomicdevelopmentclinic/> [https://perma.cc/CBE8-QF86]; *Business and Tax Clinic*, U. N.M. SCH. L., <http://lawschool.unm.edu/clinic/clinic-sections/index.php> [https://perma.cc/NM7Y-YA3W] (the Business and Tax Clinic is also known as the Economic Justice Clinic). These, among others, provide legal support to grassroots partner organizations working on social, economic, and racial justice issues.

⁸ In 1971, the New York State legislature enacted the Urstadt Law, through which it effectively seized legislative authority from New York City over the latter's supply of rent-regulated housing. Urstadt Law, N.Y. UNCONSOL. LAW § 8605 (McKinney 2010); Guy McPherson, Note, *It's the End of the World as We Know it (and I Feel Fine): Rent Regulation in New York City and the Unanswered Questions of Market and Society*, 72 *FORDHAM L. REV.* 1125, 1137-38 (2004). Note that the Urstadt Law is elaborated upon *infra* Section II.A.

⁹ In organizing campaigns to strengthen rent regulation, for example, the efforts of New York City-based tenant advocacy groups are constrained by the fact that elected officials outside of the City typically have no rent-regulated constituents. *See, e.g.*, Mike Vilensky & Josh Dawsey, *Real-Estate Developers Retain Clout in Albany*, *WALL ST. J.* (June 25, 2015, 11:37 PM), <https://www.wsj.com/articles/real-estate-developers-retain-clout-in-albany-1435280204> [https://perma.cc/2EQE-Z2KR]; Nicholas Confessore & Thomas Kaplan, *Albany Reaches Deal on Tax Cap and Rent Rules*, *N.Y. TIMES* (June 21, 2011), <http://www.nytimes.com/2011/06/22/nyregion/deal-on-rent-laws-and-property-tax-cap-in-albany.html> [https://perma.cc/K75J-F4C9]. Under the current framework, in which control of rent-regulation is vested with the State Legisla-

In this context, the work of an anti-displacement law clinic must be nimble, strategic, and interdisciplinary. As it confronts a crisis of affordable housing that is altering the race and class composition of many urban neighborhoods,¹⁰ such a clinic must strike the proper balance between direct legal services that yield urgently-needed results for clients and support for organizing and policy initiatives aimed at protecting large groups of poor and working class tenants from deleterious market effects. Moreover, because of the complexity of the problem of market-driven gentrification, the law clinic's legal services must be configured to span multiple legal areas—e.g., landlord-tenant, land use, consumer protection, etc.—and to support organizing and policy initiatives that operate across municipal and state scales of governance and that challenge the dominant mode of market-driven urbanization. In the midst of all this, the clinic must also train students to become effective social justice advocates.

In this article, I will discuss the building blocks of this project—the strategic combining of legal services and community organizing efforts, and a critique of the prevailing paradigm of neoliberal urbanization—and relate them to the work of CUNY School of Law's Tenant Law and Organizing Project ("TLOP").¹¹ In Part I of the article, I will discuss how law and community organizing can come together in a clinical law setting in a way that provides targeted and collaboratively-based legal services to—and builds meaningful solidarities among—subordinated clients while at the same time facilitating the training of soon-to-be public interest attorneys. In Part II, I will turn my attention to the political-economic and public policy context of gentrification in New York

ture, organizing campaigns led by City residents must grapple with the challenge of lobbying and pressuring legislators who have little-to-no incentive to address their concerns and whose campaigns are often supported by real estate interests.

¹⁰ For example, the NYU Furman Center's *State of New York City's Housing and Neighborhoods* found that New York City's population has become younger, more educated, and more weighted towards non-family households since 1990, and that these shifts have been even more dramatic in gentrifying neighborhoods. MAXWELL AUSTENSEN ET AL., NYU FURMAN CTR., STATE OF NEW YORK CITY'S HOUSING AND NEIGHBORHOODS IN 2015 8 (2016), http://furmancenter.org/files/sotc/NYUFurmanCenter_SOCin2015_9JUNE2016.pdf [<https://perma.cc/HP6R-VWBG>]. Further, "[s]ince the 1990s, the share of the population identifying as black or white has declined in the city as a whole, while the share identifying as Asian or Hispanic has increased. The share of the population that identified as black also declined in gentrifying neighborhoods between 1990 and 2010 (37.9 percent to 30.9 percent), but the share of population that identified as white increased (18.8 percent to 20.6 percent). The Asian and Hispanic shares also grew in gentrifying neighborhoods, but more slowly than they did in the city as a whole. ." *Id.* at 12 (footnote omitted).

¹¹ *Community & Economic Development*, *supra* note 7.

City, and I will also trace an alternate vision of urbanization that I argue can inform the approach of the clinic I am envisioning in this article. Finally, in Part III, I will describe the work of TLOP in putting these diverse strands—law and organizing and a critical engagement with neoliberalism—into practice in a law clinic.

I. LAW, ORGANIZING, AND LAW CLINICS

A. *In Search of a Model*

Since the advent of modern law clinics in the late 1960s, a tension has existed between clinics' role in educating the next generation of attorneys and their capacity to participate in movements for social change.¹² While some clinicians have argued that the purpose of a law clinic should be primarily pedagogical and not necessarily rooted in social justice, others have advocated for a more politicized approach to clinical education. In her article on the design of community economic development clinics, Alicia Alvarez avers that poverty reduction should be an organizing thread that runs through case selection, student learning, and clinical practice.¹³ Going a step further, Sameer Ashar has advocated for the creation of law clinics that provide legal assistance to collectivities of poor and subordinated people in the process of organizing for social change.¹⁴ My aim in this article is to extend Alvarez and Ashar's construction of politically-oriented law clinics to specifically account for anti-displacement legal and policy advocacy in the context of neoliberal urbanization. In this section, I will begin that discussion through an exploration of frameworks of law and organizing that can be applied in a clinical law setting.

Law and organizing¹⁵ emerged as a self-conscious movement in the 1990s, in response to a number of trends, including unprecedented wealth accumulation, escalating attacks on legal services, and a growing dissatisfaction with traditional litigation-centered approaches to poverty law.¹⁶ A key feature of the law and organizing

¹² See George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 176-177 (1974).

¹³ Alicia Alvarez, Essay, *Community Development Clinics: What Does Poverty Have to Do with Them?*, 34 FORDHAM URB. L.J. 1269, 1270-71 (2007).

¹⁴ See Ashar, *supra* note 1, at 356.

¹⁵ I adopt the definition of "organizing" used by Michael Grinthal, who describes "organizing" as "the processes by which people build and exercise power by collecting and activating relationships." Michael Grinthal, *Power with: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 34 (2011).

¹⁶ Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 446 (2001).

paradigm is “its insistence that lawyers can advance social justice claims and shift power to low-income constituencies through a particular type of legal advocacy . . . that is intimately joined with, and ultimately subordinate to, grassroots organizing campaigns.”¹⁷ In other words, adherents to a law and organizing framework embrace a politicized view of lawyering that strives to place the efforts of attorneys in the service of poor and subordinated people who are acting collectively to challenge the structural causes of their predicament.¹⁸

As law and organizing has developed, it has generated a body of scholarship reflective of practical concerns within the paradigm about how lawyers and organizers relate to each other and to represented parties. Recently, E. Tammy Kim and Michael Grinthal explored the mechanics of how legal services can be structured vis-à-vis community-led organizing efforts. Kim has advocated for an approach to combining law and organizing that she calls the resource-ally model. Rooted in the work of the Urban Justice Center’s Community Development Project, where she was a workers’ rights staff attorney, this model allows “lawyers [to] support community organizing efforts through legal representation of members of external grassroots organizations”¹⁹ In contrast with more fluid models that blend the roles of lawyers and organizers,²⁰ Kim’s approach is characterized by a mode of legal advocacy that is walled off from—but driven by—the exigencies of partner organizations’ organizing and policy campaigns.²¹ In practice, this means that a grassroots organization will refer strategically important cases²² to a “resource-ally” lawyer, who will then seek to prevail on their clients’ claims in much the same way that any con-

¹⁷ *Id.* at 447.

¹⁸ An early advocate of this type of politicized approach was Gary Bellow, who notably said that “[t]he fact that most law practice is not done self-consciously is simply a function of the degree to which most law practice serves the status quo.” Gary Bellow, Response Essay, *Steady Work: A Practitioner’s Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 301 (1996).

¹⁹ E. Tammy Kim, *Lawyers as Resource Allies in Workers’ Struggles for Social Change*, 13 N.Y. CITY L. REV. 213, 220 (2009).

²⁰ See generally Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407 (1995) (describing the work of a worker center where the legal clinic is only one part of a larger organizing effort).

²¹ See Kim, *supra* note 19, at 225-26.

²² I use “case” here because litigation is the focus of Kim’s article, but it is also possible for a partner organization to seek transactional or policy legal support from a “resource-ally” law office. *Id.* at 227.

scientious poverty lawyer would.²³ The key here is that while the work of the resource-ally lawyer generally takes place in the context of a broader organizing campaign and typically entails collaboration with an organizer, it unfolds primarily in a legal, rather than an organizing, space.²⁴

Kim's emphasis on the separation of the work of resource-ally lawyers from community organizing efforts is grounded in concerns about client empowerment and attorney efficacy. In terms of the former, resource-ally lawyers work at the behest of community-led groups, and do so in a way that avoids encroaching on decision-making spaces better occupied by clients and organizers.²⁵ In terms of the latter, as resource-ally lawyers do not engage in the work of organizers, they are able to focus their energies on the lawyering tasks they are trained to perform. As we will see, this bounded aspect of the resource-ally model makes it well-suited for a law clinic where students are learning, often for the first time, to do the complex work of lawyering.

The resource-ally model is useful in terms of laying out a framework in which legal services can combine with, and support, the organizing efforts of grassroots partner organizations. It is complimented by Grinthal's typology of practice models for lawyers working "with marginalized groups in the process of organizing for

²³ I say "conscientious poverty lawyer" here to emphasize the micro-dynamics at work in lawyering relationships with subordinated clients. These dynamics have been explored by a number of legal scholars, including Gerald López and Lucie White, and are exemplified by López's entreaty that "lawyers must know how to work with (not just on behalf of) women, low-income people, people of color, gays and lesbians, the disabled, and the elderly. They must know how to collaborate with other professional and lay allies rather than ignoring the help that these other problem-solvers may provide in a given situation. They must understand how to educate those with whom they work, particularly about law and professional lawyering, and, at the same time, they must open themselves up to being educated by all those with whom they come into contact, particularly about the traditions and experiences of life on the bottom and at the margins." Gerald P. López, *The Rebellious Idea of Lawyering Against Subordination*, in *LAWYERS' ETHICS AND THE PURSUIT OF SOCIAL JUSTICE: A CRITICAL READER* 187, 196 (Susan D. Carle ed., 2005).

²⁴ "Space" is used here to connote a field of practice, as well as a geographical location, since—as Kim stresses—the work of resource-ally attorneys unfolds apart from the work of organizers on both fronts "[t]he spatial boundary inherent to the CDP model prevents us from engaging in activities we are not trained to do. Generally speaking, law school does not train us 'to deal with the non-legal aspects of social or economic problems or, for that matter, with any form of multi-dimensional problem-solving,' and while we should learn to think in broader, more diverse ways, we should also be humble about how much we can realistically accomplish." Kim, *supra* note 19, at 226 (quoting Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 76 (2000)) (footnote omitted).

²⁵ *Id.*

power.”²⁶ Of Grinthal’s heuristic models of law and organizing, the “Legal Services as M*A*S*H Unit” approach and the “Political Enabler” approach are most relevant here. In the former, lawyers provide an array of legal services to individuals who are actively participating in the organizing efforts of community-led organizations;²⁷ in the latter, lawyers provide legal services in direct support of the organizing process itself, creating space for a group to organize and access variegated levers of political power.²⁸ In the type of law clinic envisioned by this article, the clinic would sign on to take the cases of members of tenant advocacy partner organizations, with a preference for affirmative, group actions. At the same time, the clinic would stand at the ready to support partner organizations’ organizing efforts directly through research, community legal education, and legislative testimony in relation to proposed law and policy reform campaigns. The clinic would also provide legal support to preserve the organization’s ability to organize where it was threatened by litigation or state action.²⁹

The resource-ally, Legal Services as M*A*S*H Unit, and Political Enabler models are well-suited for a law and organizing-based law clinic, as they allow law students to gain practical experience representing clients through a structured partnership with outside organizations. In these frameworks, students are able to take ownership of their cases and inhabit the role of attorneys, as they do in most clinical settings, but here they do so in the context of organizing campaigns intended to leverage political reform and social change for poor and subordinated constituencies. From a pedagogical standpoint, students hone standard lawyering skills—interviewing, counseling, fact-gathering, etc.—through their work on cases and projects and, at the same time, they grapple with the complex power dynamics and ethical tensions that inhere in the law and organizing paradigm, as we will see in the next section.

In addition to being sound pedagogical platforms, Kim and Grinthal’s law and organizing models, particularly the resource-ally and Legal Services as M*A*S*H* Unit models, are also a good fit for law clinics because clinics are uniquely situated to develop and implement creative advocacy approaches to all manner of problems facing poor clients. Though law clinics have limited capacities and face significant logistical obstacles given the con-

²⁶ Grinthal, *supra* note 15, at 26.

²⁷ *Id.* at 48.

²⁸ *Id.* at 50.

²⁹ Examples of this type of work could include securing permits for rallies and defending against lawsuits intended to chill an organization’s protected activity.

straints of semester timelines and student turnover, they are spaces where students and supervising attorney-professors can push the law in innovative directions. Unlike many legal services organizations that are faced with significant restrictions on their activities,³⁰ law clinics are generally free to take on a wide range of cases and projects, provided they fit into their school's mission. This relative freedom allows for the creation of partnerships with community-led organizations that are doing cutting edge work, and the deployment of targeted and multi-faceted legal services that are bound together by a politicized approach to lawyering.³¹

Ashar has written on the implementation of politicized law and organizing models in a clinical law setting. In his article on the subject of politicized law clinics, Ashar describes the framework of a clinic designed to support collectivities of poor and subordinated people who are organizing for radical democratic social change. In Ashar's aspirational "collective mobilization" law clinic, all aspects of the clinical program would be shaped by the legal needs of poor and subordinated constituents and the clinic would evolve to work primarily with populations involved in political organizing.³² "The clinic would both support the project of organizing the unorganized and condition the provision of services to communities on the establishment of collectives."³³ Access to the clinic's legal resources would be predicated on an organization's work in opposition to market forces,³⁴ and partner organizations would typically be member-led and rooted—geographically, culturally, and politically—in subordinated communities.

In practice, the work of Ashar's clinic would be contingent and shifting, depending on the priorities of its organizational partners, which would supply the clinic with clients, cases, and projects, based on several explicitly politicized requirements: e.g., a key member of the partner organization finds herself in a serious legal predicament, a particular project or case advances an organizing campaign, or a case preserves or creates space for the organization to continue doing its work. As in Kim and Grinthal's models of law and organizing, the driving force behind the clinic's design is a commitment to meeting the legal needs of poor and subordinated people who are getting organized, and who are referred for legal

³⁰ See David Luban, Essay, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CALIF. L. REV. 209, 220-26 (2003).

³¹ See Bellow, *supra* note 18, at 299-300.

³² See Ashar, *supra* note 1, at 356.

³³ *Id.*

³⁴ *Id.* at 359.

assistance by a grassroots partner organization. As will be seen in Part III, this structural setup was a major plank of CUNY School of Law's TLOP.

B. Productive Tensions of the Model

Law and organizing is important to the kind of tenant advocacy project envisioned in this article because it offers the hope that legal services can be mobilized to work against the structural causes of poverty, as opposed to focusing exclusively or primarily on their immediate instantiations (in the form of evictions, benefits cutoffs, etc.), as much of tenant-side legal services is configured to do.³⁵ Although the law and organizing formulations of Kim, Grinthal, and Ashar are not directed specifically to tenant advocacy,³⁶ their key lessons—particularly with regard to legal services' capacity to facilitate collective action and the ethical challenges that inhere in working with organizations and organizers—are translatable to this area.

In the law and organizing paradigm, as we have seen, legal services generally have a broader, more politicized purpose than the successful representation of individual clients.³⁷ In Kim's resource-ally model and Grinthal's Legal Services as M*A*S*H Unit model, in particular, legal services are deployed in a targeted manner to support the organizing priorities and/or build out the capacities of partner organizations. This might take the form of representation of an individual member of an organization in a specific legal action;³⁸ or, legal services in the law and organizing paradigm may be used to more actively facilitate the construction

³⁵ It should go without saying that nothing in this article is intended to detract from the hard and crucial work of tenants' attorneys who are working every day to prevent evictions and improve their clients' housing conditions. It is precisely because law clinics are in such a unique institutional position that they can afford to try out new approaches that I know many do not have the luxury—because of some combination of heavy caseloads and funding restrictions—to take up.

³⁶ Kim and Ashar's work is targeted mainly at low-wage immigrant worker law and organizing. See Ashar, *supra* note 1, at 361; see also Kim, *supra* note 19, at 214. Grinthal's is relatively agnostic on this point. See generally Grinthal, *supra* note 15.

³⁷ It should be noted that this point raises important ethical considerations regarding how public interest attorneys allocate their (scarce) legal resources. According to Paul Tremblay, this type of orientation "constitutes a justifiable, justice-based allocation of resources away from clients' short-term needs and in favor of a community's long-term needs." Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 950 (1992).

³⁸ Here, the mode of legal representation will likely mirror that of more traditional legal services offices—i.e., there is not necessarily a politicized component to lawyering efforts other than that a case was accepted through a politicized, organization intake mechanism.

of solidarities among clients.³⁹ For Kim, writing in the context of resource-ally-driven workers' rights litigation, this means concentrating lawyering efforts on group representation of partner organizations' members in state and federal wage and hour litigation, a practice that she says "avoid[s] perpetuating the separation and isolation of workers"⁴⁰ In an anti-displacement clinical program based in law and organizing, as we will see in Part III, legal resources are devoted to supporting the organizing efforts of tenants who are members of—and were referred by—grassroots partner organizations. In this context, cases are taken and claims are developed with the purpose of helping clients to view their grievances as shared and the solutions to those grievances as requiring collective action.

While law and organizing can amplify the potency of legal efforts—by building solidarities among clients and/or by strengthening the organizing campaigns of community partners—a law and organizing arrangement involving a partnership with a grassroots organization poses significant challenges with regard to the development of ethically-sound, trustworthy attorney-client relationships, particularly in a law clinic. This is so mainly because the involvement of a third party—here, an organizer from a partner organization—in the attorney-client relationship disrupts the normative, client-centered approach at the heart of much of clinical pedagogy.⁴¹ This approach holds that client autonomy is facilitated by a mode of lawyering in which attorneys decenter their own privilege and prioritize client voice and decision-making.⁴² But even in

³⁹ While the law and organizing literature cited thus far focuses on the structural and mechanical relationship between the work of lawyers and partner organizations, the content of particular legal claims or frameworks, operative within a law and organizing paradigm, can also help facilitate collective mobilization. In this regard, Benjamin Sachs has stressed that certain legal regimes have an enhanced capacity to foster collective action among clients. For Sachs, such regimes must have the capacity to galvanize a group of people capable of acting collectively, must be capable of protecting the group's collective activity against reprisals, and must be able to generate successive and increasingly robust forms of collective activity. Sachs' intervention points to the possibility of intentionally configuring legal services—and, more specifically, the legal claims and strategies they produce—to maximize the construction of solidarities between clients. *See generally* Benjamin I. Sachs, *Employment Law as Labor Law*, 29 *CARDOZO L. REV.* 2685 (2008).

⁴⁰ Kim, *supra* note 19, at 223.

⁴¹ As Muneer I. Ahmad notes, "[t]he traditional model of lawyering presumes a single lawyer and a single client. The Model Rules, as well as the Model Code of Professional Responsibility, are both premised upon this conception of a lawyer-client dyad." Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 *UCLA L. REV.* 999, 1045 (2007).

⁴² *Id.* at 1047-48.

relatively bounded models of law and organizing, like the one described by Kim,⁴³ organizers participate in direct and indirect ways in the cases they refer, and attorney-client relationships are multi-layered and complex as a result.

In the law and organizing context, client autonomy is challenged because organizers tend to be closer to clients—along cultural, class, racial, ethnic, and linguistic lines—than their attorneys. Also, organizers may have strongly-held and well-founded views about how a case should unfold in the context of an organizing campaign or an effort to leverage policy reform. The conflux of these points means that organizers wield a considerable amount of influence vis-à-vis clients, even where their involvement in a particular case is limited. In most law and organizing frameworks, therefore, client autonomy does not flow neatly from a one-on-one attorney-client relationship, but rather is negotiated through a web of relationships: between attorney and client, client and organizer, attorney and organizer, etc.

This negotiation generates tensions that should be viewed by clinicians as potential enhancers of—rather than obstacles to—effective, trustworthy attorney-client relationships. For clinicians working within this paradigm, the existence of thorny representational issues stemming from the involvement of organizers and partner organizations creates a space to honestly and realistically reckon with the context in which our lawyering efforts take place. Rather than abstracting clients from their cultural, social, and political milieus, our collaborations with organizers allow us to surface the power dynamics that impact the representation of poor and subordinated people and to discuss these issues with our students in a manner that enriches our lawyering efforts.⁴⁴ In many instances, this approach leads to a unique and robust working relationship with clients who come to view us as accessible and open to creative legal strategies aimed at winning discrete legal victories *and* fostering collective action.⁴⁵

⁴³ See Kim, *supra* note 19, at 220.

⁴⁴ See Ahmad, *supra* note 41, at 1068.

⁴⁵ This calls to mind the interventions of Ascanio Piomelli around collaborative lawyering. Building on the work of Gerald López and Lucy White, Piomelli has averred that two of the central tenets of a collaborative approach to law practice are the radical reshaping, along lateral rather than hierarchical lines, of relationships between lawyers and clients and an emphasis on larger, collective efforts to challenge the status quo. This vision of collaborative lawyering is organically linked to the paradigm of law and organizing, as the latter can be viewed as creating an architecture within which attorneys, through the mediation of organizers, can involve clients in substantive decision-making *and* link clients' legal problems to broader movements

The tensions that inhere in law and organizing, while challenging to navigate, can be helpful to the development of lawyers-in-training. In the clinical setting, many law students arrive with an exaggerated view of the law's capacity to resolve problems and, simultaneously, a narrow view of their clients' legal issues. The process of acknowledging our clients' embeddedness in variegated structures of power, a process that is often facilitated by working with an organizer, is indispensable to overcoming such misconceptions. In the law and organizing paradigm, students learn through experience that discrete but vital legal solutions—preventing an individual eviction or restoring a client's benefits—can be deepened and extended when they are connected to grassroots movements for political reform and social change.

The law and organizing paradigm—in particular the models I have highlighted—holds the promise of allowing attorneys to contribute their skills to such movements in an intentional and bounded manner. But thus far my discussion of this paradigm has only gone part of the way to addressing the challenge at the heart of this article: the creation of a tenant advocacy clinical program capable of targeting the structural causes of urban inequality and displacement in a global, neoliberal city. While we have discussed structural frameworks of combining law and organizing that can be implemented in a law clinic, we have yet to explore the content of the clinic's vision and how it informs the design of the program. It is to that task that I turn in the following section.

II. NEOLIBERAL URBANIZATION AND THE RIGHT TO THE CITY

A. *Neoliberal New York City and the Crisis of Affordable Housing*

In this section I will explore the political-economic and policy context of the tenant advocacy clinical law program at the core of this article. While the previous section focused on the way legal services can combine with community organizing efforts to facilitate social change favoring poor and subordinated clients, here I will look at the structural forces underlying urban inequality and displacement. My aim is to use this exploration to more effectively design a law clinic that trains law students to advocate for low-income tenants *and* counter policies that have produced high levels of inequality and market-driven displacement.

The causes of inequality run deep and are often hidden from

for social change. See generally Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541 (2006).

view, while also operating at a scale seemingly beyond the day-to-day interventions of lawyers and organizers.⁴⁶ In global cities whose economies are driven in significant part by expanding real estate markets, tenants in gentrifying neighborhoods face acute pressures from landlords, pressures often generated by unseen flows of capital that are regulated by policies outside the scale of local politics.⁴⁷ This is not exactly a new phenomenon, as the growth of capitalism has since its inception been bound up with urbanization, financialization, and uneven development,⁴⁸ but many of its particularities are recent innovations stemming from the turn to neoliberalism in the 1970s and 1980s.⁴⁹

The term neoliberalism is notoriously slippery and has come to take on a number of meanings.⁵⁰ Depending on the commentator, it can refer to a regime of economic policy, a modality of governance, or a mode of reason.⁵¹ For purposes of this article, I will focus mainly on the political-economic policy paradigm shift⁵²—emergent in New York City during the fiscal crisis of the mid 1970s and nationally in the early 1980s—that “calls for deregulation,

⁴⁶ See generally SASKIA SASSEN, *EXPULSIONS: BRUTALITY AND COMPLEXITY IN THE GLOBAL ECONOMY* (2014) (elaborating on the complexities of the global economy and the large-scale influences that drive displacement and inequality).

⁴⁷ According to Ada Colau and Adrià Alemany, “A recurring problem, and not just limited to the issue of housing, is the lack of tools and resources available to municipalities when faced with a problem whose origin is global. Increasingly, conflicts specific to an urban area are caused by phenomena that exceed the formal powers held by municipal governments.” ADA COLAU & ADRIÀ ALEMANY, *MORTGAGED LIVES: FROM THE HOUSING BUBBLE TO THE RIGHT TO HOUSING* 126 (Michelle Teran & Jessica Fuquay trans., 2014).

⁴⁸ See DAVID HARVEY, *REBEL CITIES: FROM THE RIGHT TO THE CITY TO THE URBAN REVOLUTION* 42 (2012) [hereinafter *REBEL CITIES*].

⁴⁹ According to Ruth Wilson Gilmore, neoliberalism came to the fore in a moment of economic and political crisis and was from the outset a racialized, class-based political project aimed at rolling back the redistributive functions of the state built up after the Great Depression and fortified during the Civil Rights Movement. RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 34 (2007).

⁵⁰ WENDY BROWN, *UNDOING THE DEMOS: NEOLIBERALISM’S STEALTH REVOLUTION* 20 (2015).

⁵¹ *Id.* at 20-21.

⁵² In describing the political-economic framework that preceded neoliberalism, often called ‘embedded liberalism,’ David Harvey notes “[the] acceptance that the state should focus on full employment, economic growth, and the welfare of its citizens, and that state power should be freely deployed, alongside of or, if necessary, intervening in or even substituting for market processes to achieve these ends. . . . A ‘class compromise’ between capital and labour was generally advocated as the key guarantor of domestic peace and tranquility. States actively intervened in industrial policy and moved to set standards for the social wage by constructing a variety of welfare systems (health care, education, and the like).” DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* 10-11 (2005) [hereinafter *A BRIEF HISTORY*].

privatization, market-driven development, decentralization, and the downloading of government functions to weak local governments, nonprofit organizations, and civil society.”⁵³ It is well-settled that the conflux of neoliberal policies has produced staggering levels of inequality over the past several decades.⁵⁴

New York City in the 1970s was a staging ground for the national rollout of neoliberalism a decade later.⁵⁵ In New York, neoliberal policies were ushered to the fore by an array of powerful corporate and state interests that mobilized to resolve the City’s deep fiscal crisis through a massive diminution and rescaling of the institutions comprising what Joshua Freeman has called the City’s “social democratic polity.”⁵⁶ With the City teetering on the edge of bankruptcy, emergency measures were enacted that effectively removed the City’s legislative control over a number of key components of the City’s network of social welfare institutions, including its vaunted public university and hospital systems.⁵⁷ In the years following the crisis, these measures were made permanent and the institutions in question were subjected to increasing austerity.⁵⁸

In the area of housing, New York’s system of rent regulation,⁵⁹

⁵³ ANGOTTI, *supra* note 2, at 12.

⁵⁴ See THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* 21 (Arthur Goldhammer trans., 2014). Inequality is currently the highest it has been since just before the Great Depression. Including capital gains, the share of national income going to the richest 1% of Americans has doubled since 1980, from 10.7% in 1980 to 20.2% in 2014. USA, *WORLD WEALTH & INCOME DATABASE*, <http://wid.world/country/usa/> (filter “Key Indicators” to “Top 1% Share” and use navigation bar to compare years). This is roughly where it was a century ago: in 1927, this share was 20.3%. *Id.* The share going to the top 0.01%—some 16,000 families with an average income of \$24 million—has quadrupled from just over 1% to almost 5%. *Forget the 1%: It Is the .01% Who Are Really Getting Ahead in America*, *ECONOMIST* (Nov. 6, 2014), <http://www.economist.com/news/finance-and-economics/21631129-it-001-who-are-really-getting-ahead-america-forget-1> [<https://perma.cc/6CW4-J84F>].

⁵⁵ See A BRIEF HISTORY, *supra* note 52, at 48. Harvey notes that “[t]he management of the New York fiscal crisis pioneered the way for neoliberal practices both domestically under Reagan and internationally through the IMF in the 1980s.” *Id.*

⁵⁶ JOSHUA B. FREEMAN, *WORKING CLASS NEW YORK: LIFE AND LABOR SINCE WORLD WAR II* 55-71 (2000). According to Kim Moody, the institutions comprising the social democratic polity included “a public hospital system that had twenty-two hospitals at its height, an expanding City University system, extensive public housing, significant union-provided cooperative housing, rent control . . . , and civil rights legislation” KIM MOODY, *FROM WELFARE STATE TO REAL ESTATE: REGIME CHANGE IN NEW YORK CITY, 1974 TO THE PRESENT* 16-17 (2007).

⁵⁷ MOODY, *supra* note 56, at 39.

⁵⁸ WILLIAM K. TABB, *THE LONG DEFAULT: NEW YORK CITY AND THE URBAN FISCAL CRISIS* 21-35 (1982).

⁵⁹ For two decades following the end of World War II, the New York State Legislature maintained price controls on apartments built prior to 1947 until, in 1969, the New York City Council passed the Rent Stabilization Law, which extended regulatory

a remnant of federal price controls implemented during World War II and a vital element of Freeman's "social democratic polity," also underwent dramatic changes in the 1970s. In 1971, the State Legislature responded to the New York City Council's 1969 expansion of tenant protections by passing the Urstadt Law, which removed the City's home rule over its supply of rent-regulated housing.⁶⁰ The Urstadt Law was renewed in the package of rent laws that passed the state legislature in 1974,⁶¹ marking the onset of the rent regulatory regime that remains largely in effect to this day. In the post-Urstadt era, legislative control of rent regulation has resided at the state level, and rent stabilization, the City's most prevalent form of affordable housing,⁶² has been gradually weakened.⁶³

The significance of rent regulation, in particular the predominant form of rent stabilization, is that it offers tenants security of tenure in the form of a statutory right to a renewal lease and places limits on rent increases for lease renewals.⁶⁴ In practice, this means that many rent-stabilized tenants are able to remain in their apartments, at relatively affordable rents, for long periods of time, even when property values in their neighborhood are increasing rapidly. It stands to reason that, as Craig Gurian has noted, rent-stabilized apartments are typically viewed by their residents as homes, with all the implications of longevity and rootedness in a particular community that the term connotes, rather than as assets to be maximized by their landlord.⁶⁵

The weakening of rent regulation has profoundly impacted New York City's supply of affordable housing: from 1994 to 2012, the City lost 152,751 rent stabilized apartments, with 74% of the

coverage to 400,000 units that were not previously subject to rent control. *History of Rent Regulation*, TENANTNET, <http://www.tenant.net/Oversight/50yrRentReg/history.html> [<https://perma.cc/S52D-J7GH>].

⁶⁰ McPherson, *supra* note 8, at 1137.

⁶¹ Urstadt Law, L. 1971, ch. 372, *as amended by* L. 1971, ch. 1012 (codified as N.Y. UNCONSOL. LAW §8605 (McKinney 2010)).

⁶² According to the New York City Rent Guidelines Board, there are currently approximately 1 million rent-stabilized units in New York. N.Y.C. RENT GUIDELINES BD., 2016 HOUSING SUPPLY REPORT 4 (2016), http://www.nycrgb.org/downloads/research/pdf_reports/16HSR.pdf [<https://perma.cc/T5R2-P9T5>].

⁶³ See Craig Gurian, *Let Them Rent Cake: George Pataki, Market Ideology, and the Attempt to Dismantle Rent Regulation in New York*, 31 *FORDHAM URB. L.J.* 339 (2004). Specific examples of the weakening of rent stabilization include high rent vacancy decontrol, which means that an apartment leaves the system when it reaches a certain monthly rent level, currently \$2500, and there is a vacancy; and greater leeway for landlords who charge preferential rents. *Id.* at 367-73.

⁶⁴ *Id.* at 341-42.

⁶⁵ *Id.* at 351-52.

losses directly attributable to legislatively-created loopholes in the rent laws.⁶⁶ The loss of so many rent stabilized apartments is notable because empirical evidence shows that New York's rent regulations reduce monthly rents significantly: in 2008 an econometric study found that rent regulations—both rent control and rent stabilization—reduced monthly rents by an average of \$458, “with an average effect ranging from \$829 per month in Manhattan to \$195 per month in the Bronx.”⁶⁷ Furthermore, while there are no income requirements to being a rent-regulated tenant, those who live in rent regulated housing tend to be poorer than their counterparts in market-rate apartments.⁶⁸ In short, New York's system of rent-regulated housing represents one of the last bastions of affordable housing for working class people in the City, and it has been hemorrhaging units in recent years.⁶⁹

In the same period that rent regulatory protections have been reduced, a long boom in New York's real estate market has generated a crisis in affordability that has adversely impacted low-income tenants. Between 2002 and 2012, median apartment rents—both regulated and unregulated—in New York City rose by 75 percent, compared to 44 percent in the rest of the country, with rents rising the fastest in the borough of Brooklyn.⁷⁰ The most recent phase of the rent spike comes in the wake of the economic crisis of 2008, from which many people have yet to fully recover; in particular, the income levels of working families in the bottom half of the income distribution remain stagnant.⁷¹ The convergence of these factors—

⁶⁶ FRANK BRACONI & STEPHEN CORSON, OFFICE OF THE N.Y.C. COMPTROLLER, *THE GROWING GAP: NEW YORK CITY'S HOUSING AFFORDABILITY CHALLENGE 20* (2014), http://comptroller.nyc.gov/wp-content/uploads/documents/Growing_Gap.pdf [<https://perma.cc/A79U-PSFT>] [hereinafter *THE GROWING GAP*]. Note that these losses are pegged specifically to high-rent vacancy deregulation and high-rent high-income deregulation.

⁶⁷ *Id.* at 7.

⁶⁸ NYU FURMAN CTR., *PROFILE OF RENT-STABILIZED UNITS AND TENANTS IN NEW YORK CITY 4* (2014), http://furmancenter.org/files/FurmanCenter_FactBrief_RentStabilization_June2014.pdf [<https://perma.cc/MK6S-NBT3>]. In 2011, the average median household income in rent regulated apartments was \$36,600, compared to \$52,260 in market rate units. *Id.*

⁶⁹ According to the Furman Center for Real Estate & Urban Policy, there was a net loss of 231,000 rent-regulated units from 1981 to 2011. FURMAN CTR. FOR REAL ESTATE & URBAN POLICY, *FACT BRIEF: RENT STABILIZATION IN NEW YORK CITY 2* (2012), http://furmancenter.org/files/publications/HVS_Rent_Stabilization_fact_sheet_FINAL_4.pdf [<https://perma.cc/QP6J-ANMF>]. More recently, there was a loss of 8,009 rent-stabilized units in 2015. *See* N.Y.C. RENT GUIDELINES BD., *CHANGES TO THE RENT STABILIZED HOUSING STOCK IN NEW YORK CITY IN 2015 8* (2016), http://www.nycrgb.org/downloads/research/pdf_reports/changes2016.pdf [<https://perma.cc/3AAE-8E4C>].

⁷⁰ *THE GROWING GAP*, *supra* note 66, at 5.

⁷¹ *Id.* at 9-10.

rapidly rising rents and stalled incomes—has meant a sharp increase in the rent-to-income ratios of low-income New Yorkers, particularly those earning between \$20,001 and \$40,000 annually.⁷² In 2012, more than 1 million households in the City—or half of all New York renters—were considered rent burdened.⁷³ This has resulted in a spike in housing court proceedings and a record number of people living in homeless shelters.⁷⁴

In the absence of local control and in an age characterized by neoliberal public policy, successive mayoral administrations, including the current, self-styled progressive administration of Bill de Blasio, have addressed the City's shortage of affordable housing predominantly through the market-facilitative mechanism of inclusionary zoning, or upzoning, as it is sometimes called.⁷⁵ Upzoning incentivizes private developers to incorporate some percentage of below-market-rate units into their new developments by altering zoning laws to allow for taller—and thus more populated—residential structures.⁷⁶ The often-cited problems with this approach are that it does not produce enough affordable housing units and that the City's definition of affordability is inaccessible to most New Yorkers.⁷⁷ While these criticisms are valid, according to Samuel Stein, “[t]he real problem with inclusionary zoning is that it marshals a multitude of rich people into places that are already experiencing gentrification,” thereby accelerating rent increases for those who already reside in an affordable apartment.⁷⁸ In other words, the prevailing mode of remediating the City's crisis of affordable housing actually exacerbates the problem by placing upward pressure on rents in areas targeted for upzoning.

In sum, the neoliberal political-economic turn that took root

⁷² *Id.* at 10-11.

⁷³ SEAN CAPPERIS ET AL., NYU FURMAN CTR., STATE OF NEW YORK CITY'S HOUSING AND NEIGHBORHOODS IN 2013 32 (2014) https://wagner.nyu.edu/files/faculty/publications/SOC2013_HighRes.pdf [<https://perma.cc/H2MR-LEBW>].

⁷⁴ THE GROWING GAP, *supra* note 66, at 12; N.Y.C. OFFICE OF CIVIL JUSTICE, N.Y.C. HUMAN RESOURCES ADMIN., 2016 ANNUAL REPORT 22-27 (2016), https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf [<https://perma.cc/MF5S-KFLU>] (noting that despite overall downward trends, there has been a recent uptick in nonpayment proceedings in the Bronx and an increase in Housing Part petitions overall from 2014 to 2015).

⁷⁵ Samuel Stein, *De Blasio's Doomed Housing Plan*, JACOBIN (Oct. 3, 2014), <https://www.jacobinmag.com/2014/10/de-blasios-doomed-housing-plan/> [<https://perma.cc/5382-FSD8>].

⁷⁶ See ANGOTTI, *supra* note 2, at 54.

⁷⁷ Stein, *supra* note 75.

⁷⁸ *Id.*

in New York City in the 1970s has produced a context in which grave social problems like extreme inequality and displacement proliferate; at the same time, market-based solutions to these problems are largely taken for granted. For housing advocates, particularly those working within a law and organizing framework, it is vital to critically engage the neoliberal paradigm in order to effectively deal with the structural conditions underlying poverty and inequality. An anti-displacement law clinic of the kind proposed by this article should look to partner with grassroots organizations that embrace an alternative mode of urbanization—one that is rooted in the common good, rather than market principles, and that validates the uniquely democratic quality of urban space. In the section that follows, I will explore such an alternative mode of urbanization, with the aim of relating it to a tenant advocacy clinical law practice.

B. *The Right to the City*

In a context of rising land values, weakened rent laws, and soaring inequality, many of New York's neighborhoods have undergone profound and rapid processes of gentrification in recent years.⁷⁹ On a recurring basis, working class and poor tenants of color and the small businesses that cater to them have been priced out to make way for their wealthier replacements.⁸⁰ In the process, areas once considered “fringe” have become battlegrounds over urban space, with long-time tenants, landlords, developers, and affluent newcomers all jockeying for position. The stark changes to the social composition of urban areas wrought by gentrification have raised the specter that the historical character of cities—as “frontier zones where actors from different worlds can have an encounter for which there are no established rules of engagement, and

⁷⁹ THE GROWING GAP, *supra* note 66, at 15-18. Gentrification has been characterized by Neil Smith as “the leading residential edge of . . . the class remake of the central urban landscape.” NEIL SMITH, THE NEW URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY 37 (1996). It describes the process in which formerly poor and working class urban neighborhoods are transformed by an influx of private capital and middle class homeowners and renters. *Id.* at 30. For Smith, gentrification is driven primarily by capital investment (rather than consumer preferences) and is backed by state policy; it occurs in areas where there exists a “rent gap,” i.e., a disparity between the actual rent that can be obtained under the present land use and the potential rent level. *Id.* at 64-67. In this formulation of gentrification, the impoverishment of urban zones in one historical moment—through years of disinvestment, deindustrialization, and suburbanization—is precisely what makes them potentially profitable sites for future development. *Id.* at 32-45.

⁸⁰ See generally AUSTENSEN ET AL., *supra* note 10.

where the powerless and the powerful can actually meet”⁸¹—is under siege.

The notion that the special character of urban life is being undermined by gentrification evokes the New Left concept of the right to the city (“RTC”), which originated with the writings of French social theorist Henri Lefebvre and in recent years has enjoyed a resurgence amid the immense urban inequality and precarity produced by neoliberal restructuring.⁸² Since its advent in the late 1960s, the RTC has evoked an imaginary of cities as sites of radical, democratic, and anti-capitalist struggles. According to David Harvey, the RTC is a collective, rather than an individual, right requiring the reinvention of urban space according to the exercise of a “shaping power over the processes of urbanization, over the ways in which our cities are made and remade”⁸³ Peter Marcuse argues that the RTC is “an exigent demand by those deprived of basic material and legal rights, and an aspiration for the future by those discontented with life as they see it around them”⁸⁴ For both Harvey and Marcuse, the RTC signifies a struggle over the use and accessibility of urban space, and the policy and planning decisions shaping it.⁸⁵

By all accounts, the RTC runs contrary to neoliberal understandings of urbanization, as it affirms the right of a diverse mix of urban residents to democratically construct processes of urban economic development and to access urban space as a sort of commons, free from the impingement of market forces.⁸⁶ The full valence of this point comes into focus when it is placed in relation to the ways in which cities have historically functioned within capitalism—i.e., as focal points for the production, circulation, and

⁸¹ Saskia Sassen, *Who Owns Our Cities – and Why This Urban Takeover Should Concern Us All*, *GUARDIAN* (Nov. 24, 2015, 3:30 PM), <https://www.theguardian.com/cities/2015/nov/24/who-owns-our-cities-and-why-this-urban-takeover-should-concern-us-all> [<https://perma.cc/2KKC-MXK3>].

⁸² Cedric Johnson, *Charming Accommodations: Progressive Urbanism Meets Privatization in Brad Pitt’s Make It Right Foundation*, in *THE NEOLIBERAL DELUGE: HURRICANE KATRINA, LATE CAPITALISM, AND THE REMAKING OF NEW ORLEANS 187, 192* (Cedric Johnson ed., 2011).

⁸³ *REBEL CITIES*, *supra* note 48, at 5.

⁸⁴ Peter Marcuse, *Whose Right(s) to What City?*, in *CITIES FOR PEOPLE, NOT FOR PROFIT 24, 30* (Neil Brenner et al. eds., 2012).

⁸⁵ According to Brenner, Marcuse, and Mayer, “[u]rban space under capitalism . . . is continually shaped and reshaped through a relentless clash of opposed social forces oriented, respectively, towards the exchange-value (profit-oriented) and use-value (everyday life) dimensions of urban sociospatial configurations.” Neil Brenner et al., *Cities for People, Not for Profit: An Introduction*, in *CITIES FOR PEOPLE, NOT FOR PROFIT*, *supra* note 84, at 1, 3-4.

⁸⁶ *A BRIEF HISTORY*, *supra* note 52, at 73.

consumption of commodities,⁸⁷ and as nodes of capital accumulation and valorization.⁸⁸ Under the RTC, the neoliberal conception of cities primarily as sites of growth and market discipline⁸⁹ gives way to a view of cities as spaces where democracy, equality, and diversity flourish, and where the use value of urban space predominates over its exchange value.⁹⁰

While the RTC has historically been conceived as a revolutionary demand rather than a concrete policy platform,⁹¹ there do exist an array of legal protections and subsidies in the U.S. that reflect some of the core principles of the RTC. Consumer advocate-turned legal scholar Alan M. White points to two such examples: municipal social property tax programs that are intended to address the reality of unaffordable property taxes for poor and working class homeowners (presumably in gentrifying areas) and social rates for water and energy services that provide relief to low-income customers.⁹² Both programs insulate residents from deleterious market forces by effectively socializing pricing in key, housing-related areas; and the resultant decrease in costs has the effect of reducing market-driven displacement.⁹³

Another example of a legal-regulatory regime that reflects the RTC principle that urban space should be democratic and accessible is the system of rent regulation prevalent in New York and several other cities. As outlined in Part II, rent regulation typically confers on tenants an enhanced property right to their rental apartments in the form of a statutory right to a renewal lease.⁹⁴ This means that in gentrifying areas of cities, where property owners are incentivized to replace poorer tenants with wealthier ones who can pay more in rent, the former can rely on a legal frame-

⁸⁷ Brenner et al., *supra* note 85, at 3.

⁸⁸ REBEL CITIES, *supra* note 48, at 6-7.

⁸⁹ Margit Mayer, *The "Right to the City" in Urban Social Movements*, in CITIES FOR PEOPLE, NOT FOR PROFIT, *supra* note 84, at 63, 67.

⁹⁰ "Use value" refers to the everyday usefulness of a commodity, whereas "exchange value" refers to the quantitative value at which it can be exchanged with other commodities. According to Mark Purcell, "[t]he use value aspect of urban space must . . . be the primary consideration in decisions that produce urban space. The conception of urban space as private property, as a commodity to be valorized (or used to valorize other commodities) by the capitalist production process, is specifically what the right to appropriation stands against." Mark Purcell, *Excavating Lefebvre: The Right to the City and Its Urban Politics of the Inhabitant*, 58 GEOJOURNAL 99, 103 (2002).

⁹¹ Alan M. White, *Market Price, Social Price, and the Right to the City: Land Taxes and Rates for City Services in Brazil and the United States*, 44 U. MIAMI INTER-AM. L. REV. 313, 315-16 (2013).

⁹² *Id.* at 327-34.

⁹³ *Id.* at 328.

⁹⁴ See Gurian, *supra* note 63, at 379.

work that limits landlords' rate of return on their property (i.e. the tenant's home). In this way, rent regulation places a limit on capital's ability to fully valorize urban space. Anecdotally, in my experience as a tenant attorney in New York City, I have noted that areas with a high density of rent-regulated housing tend to retain their pluralistic and working class character even as market forces fundamentally alter the race and class composition of surrounding areas.

While the existence of social property tax and utility programs and rent regulatory regimes is not constitutive of a state-sanctioned RTC under US law, these programs demonstrate that public policies can be fought for and constructed to promote the use-value of urban space for low-income people. And though they are far from revolutionary, these policies stand for the core RTC tenet that those who create the texture of urban life have a right to remain in their homes without regard to the vicissitudes of the market.⁹⁵ In this way, these RTC-inflected policies operate in opposition to the prevailing mode of neoliberal urbanization that grafts market logic on to efforts to solve our most pressing urban social problems.⁹⁶ As such, they are examples of the types of political reforms that a tenant advocacy clinic based in law and organizing and located in a global city can and should take on.

III. CUNY SCHOOL OF LAW'S TENANT LAW AND ORGANIZING PROJECT

A. *BHIP and Bushwick*

When students approached me in my second year of teaching about the possibility of incorporating tenant advocacy into their Community and Economic Development⁹⁷ clinical experience, my instinct was to seek out community-based tenant organizations working in gentrifying areas of the city and to see what we could offer them in the way of legal services, within the frameworks of the resource-ally and M*A*S*H Unit models described in Part IA. Having worked in a law and organizing framework at the Urban Justice

⁹⁵ White, *supra* note 91, at 317.

⁹⁶ See generally BROWN, *supra* note 50.

⁹⁷ Founded and directed by Prof. Carmen Huertas-Noble, CUNY School of Law's Community & Economic Development Clinic ("CED Clinic") addresses economic inequality in marginalized communities in New York City through litigation, transactional representation, grassroots community advocacy, and policy reform. *Faculty Profile: Prof. Carmen Huertas-Noble*, CUNY SCH. L., <http://www.law.cuny.edu/academics/clinics/ced/Carmen-Huertas-Noble.html> [<https://perma.cc/GZ46-TCQH>]; *Community & Economic Development*, *supra* note 7.

Center's Community Development Project⁹⁸ and at Make the Road New York,⁹⁹ I knew that partnering with vibrant, grassroots organizations was the best starting point to aligning our advocacy efforts with community organizing initiatives. After putting out feelers with a number of organizations, we agreed to collaborate with the Brooklyn Housing Independence Project (BHIP),¹⁰⁰ a small, member-based nonprofit working mainly with immigrant tenants in the Bushwick section of Brooklyn.

BHIP was an ideal organizational partner for our foray into tenant advocacy for a number of reasons. It had a deep history of working with low-income, immigrant tenants who had difficulty accessing legal services.¹⁰¹ The organization emphasized preserving affordable housing by focusing its resources on rent-stabilized apartment buildings where landlords were employing aggressive tactics aimed at displacing longtime residents. Also, BHIP approached its work through the lens of grassroots organizing—there was a full-time organizer on staff who connected tenants to each other and worked with them to understand and exercise their rights under the rent stabilization law—and the organization had experience working with housing attorneys from a range of legal services offices.¹⁰²

⁹⁸ The Community Development Project of the Urban Justice Center “provides legal, participatory research, and policy support to strengthen the work of grassroots and community-based groups in New York City to dismantle racial, economic and social oppression.” *Community Development Project: Our Vision*, URBAN JUST. CTR., <http://cdp.urbanjustice.org/cdp-ourvision> [<https://perma.cc/NF3L-UNCZ>]. I was a staff attorney at the Community Development Project from 2005 to 2007.

⁹⁹ Make the Road New York is a membership-based organization that “builds the power of Latino and working class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services.” *Who We Are: Our Mission*, MAKE THE ROAD N.Y., <http://www.maketheroadny.org/whoweare.php> [<https://perma.cc/VG7K-9GEZ>]. I was a supervising attorney at Make the Road New York from 2008 to 2011.

¹⁰⁰ BHIP is a membership-based organization—with roots in the Catholic Worker tradition—that advocates for immigrant tenants who are organizing for affordable and decent housing. BHIP members tend to be undocumented workers living in rent-stabilized apartments in the Bushwick section of Brooklyn. I have served as a member of BHIP's board of directors since 2011.

¹⁰¹ This difficulty stems from a number of factors. Legal services offices in receipt of Legal Services Corporation Funds are generally prohibited from representing undocumented individuals. 45 C.F.R. § 1626.3 (2014). Also, there have historically been many more tenants in need of legal assistance than there are service providers. See Raymond H. Brescia, *Sheltering Counsel: Towards a Right to a Lawyer in Eviction Proceedings*, 25 *TOURO L. REV.* 187, 225-27 (2009).

¹⁰² In the past, BHIP had partnered with housing attorneys from Ridgewood-Bushwick Legal Services, Brooklyn Legal Services Corp. A, Brooklyn Legal Aid, and South Brooklyn Legal Services.

The geographical focus of BHIP's work—in the neighborhood of Bushwick, Brooklyn—was also significant to our partnership. In 2012, at TLOP's inception, Bushwick was widely recognized as an epicenter of overheated gentrification, and its recent history closely tracks the broader transformation of New York City following the fiscal crisis of the 1970s. In the wake of that crisis, Bushwick rapidly became a symbol of urban decay, with austerity measures lowering the standard of living of the neighborhood's working-class, increasingly-immigrant population.¹⁰³ More recently, as gentrification from neighboring Williamsburg spilled out beyond its geographical limits, Bushwick's relative underdevelopment and comparatively low rents made it an attractive site for both capital investment and newcomers with means.¹⁰⁴ In the span of a few years in the 2000s, the neighborhood morphed into a destination for the City's avant-garde, with sleek boutiques and condos occupying the same blocks as dilapidated housing and small, immigrant-owned storefronts.¹⁰⁵

Bushwick's mash-up of contradictory dynamics—characterized by renovation and dislocation in close proximity¹⁰⁶—is summed up by reading together two *New York Times* pieces, published within four months of each other. The first, an article entitled “Adieu Manhattan, Bonjour Bushwick,” follows a trendy French restaurateur as he rediscovers himself by relocating from Manhattan to Bushwick, where he revels in the gritty, ethnic texture of the neighborhood by day and enjoys its array of hip cafes and clubs by night.¹⁰⁷ Though the article mentions the steep increase in rents in

¹⁰³ Forrest Hylton, *You Think the Highland Clearances Were Bad? Why the Avant Garde Moved to Brooklyn*, COUNTERPUNCH, Jan. 2007, at 1, 4, <http://www.unz.org/Pub/Counterpunch-2007jan01-00001> [<https://perma.cc/AV2W-SPXL>]; see also SEAN CAPPERIS ET AL., NYU FURMAN CTR., STATE OF NEW YORK CITY'S HOUSING AND NEIGHBORHOODS IN 2014 (2015), http://furmancenter.org/files/sotc/NYUFurmanCenter_SOC2014_HighRes.pdf [<https://perma.cc/QMU9-KLYB>]; Neil deMause, *After Williamsburg's Gentrification Began, Bushwick's Was Inevitable*, GOTHAMIST (Sept. 28, 2016, 2:40 PM), http://gothamist.com/2016/09/28/the_bushwick_wars_redevelopment.php#photo-1 [<https://perma.cc/C6RD-SP45>].

¹⁰⁴ Hylton, *supra* note 103, at 5.

¹⁰⁵ *Id.* at 1.

¹⁰⁶ In neighborhoods like Bushwick, there is often a contradictory cocktail of renovation and dislocation, as urban chic collides—often in tight quarters—with the violence of displacement. These seemingly contradictory forces can, in practice, be strangely complementary. As Neil Smith put it: “where the militance or persistence of working-class communities or the extent of disinvestment and dilapidation would seem to render such genteel reconstruction a Sisyphean task, the classes can be juxtaposed by other means. Squalor, poverty and the violence of eviction are constituted as exquisite ambience.” SMITH, *supra* note 79, at 25.

¹⁰⁷ Liz Robbins, *Adieu, Manhattan; Bonjour, Bushwick: Florent Morellet Revels in a New*

recent years—average rents for one-bedroom apartments in Bushwick rose to \$1,950 in 2013 from \$1,535 in 2010—it says nothing of the neighborhood’s long-time Puerto Rican, Dominican, and Mexican residents, who have created much of the cultural milieu in which the protagonist is luxuriating and who now find themselves being priced out of their homes.¹⁰⁸ That task is left to “The Fight for 98 Linden,” which tells the story of a group of rent stabilized neighbors, all hailing from Nicaragua, who, with the assistance of BHIP and legal services attorneys, fought back against a relentless campaign of harassment by their landlord that included the unlawful gut renovation of swaths of their building, leaving them without bathrooms and kitchens for an extended period of time.¹⁰⁹

In partnering with BHIP and centering our work in Bushwick, TLOP’s objective was to employ the law and organizing frameworks described in Part IA in the fight against landlord tactics of the sort used at 98 Linden, and to assist tenants who were organizing to preserve the diverse and working class character of their neighborhood. BHIP’s membership structure and its emphasis on grassroots organizing, as well as its lack of in-house legal services, dovetailed with the description of partner organizations in both Kim’s resource-ally model of law and organizing and Grinthal’s M*A*S*H Unit model.¹¹⁰ BHIP would be able to refer us the legal cases of its members, who were in the process of getting organized while also dealing with intense landlord harassment. The organization would select which cases to send our way, according to its organizing priorities, with the shared understanding that affirmative and group cases would be prioritized. In keeping with the M*A*S*H Unit model, there was also a shared understanding that TLOP would take on particularly urgent cases of individual members of BHIP and that our representation would not necessarily be limited to housing court proceedings. Notably, BHIP would staff referred cases with an organizer, who would work to ensure that the tenants sustained their cohesiveness and remained connected to BHIP’s ongoing organizing activities during the course of the litigation.

Scene in Brooklyn, N.Y. TIMES (Nov. 1, 2013), <https://mobile.nytimes.com/2013/11/03/nyregion/florent-morellet-revels-in-a-new-scene-in-brooklyn.html> [https://perma.cc/95YN-3KZ4].

¹⁰⁸ *Id.*

¹⁰⁹ Mona El-Naggar, *The Fight for 98 Linden*, N.Y. TIMES: TIMESVIDEO (Feb. 24, 2014), <https://www.nytimes.com/video/nyregion/10000002727148/the-fight-for-98-linden.html> [https://nyti.ms/1fG5Zyx].

¹¹⁰ Students in TLOP had read and discussed Kim and Grinthal’s articles in CUNY School of Law’s CED Seminar.

In the following section, I will describe how TLOP's partnership with BHIP played out and to what degree we lived up to our aspirations of providing anti-displacement legal services while also addressing the structural forces underlying inequality and gentrification.

B. TLOP in Practice

On a grey September morning, four clinical law students and I set out for a rundown apartment building on Starr Avenue in Bushwick to meet with BHIP's lead organizer and a group of aggrieved tenants. The building was located in a corner of the neighborhood where family-run storefront businesses were being replaced by sleek espresso bars and vintage clothing shops, and new, metallic condos were springing up left and right. BHIP had a longstanding relationship with four of the building's six residents, all of whom were undocumented immigrant workers with rent-stabilized leases and sub-\$1000 rents. The tenants had each lived in the building for over ten years—one had been there for nearly twenty—and they had been engaged in an escalating battle with successive landlords for as long as they could remember.

In the past two years—in the midst of a period of rapidly rising rents across Bushwick¹¹¹—the tenants' landlord had grown increasingly aggressive in his efforts to get them out of the building: initial buyout offers¹¹² morphed into harassment; then came a series of meritless eviction proceedings;¹¹³ and all the while the building was left in a state of constant disrepair. The only thing standing in the way of the landlord's plan to displace the tenants was their rent-stabilization status and their refusal to leave their homes in spite of their landlord's harassing tactics; instead, several of the tenants had become members of BHIP and had invited an organizer into the building. Through their engagement with BHIP, the tenants knew that the rent laws gave them a statutory right to remain in

¹¹¹ From 2000 to 2012, the real average rent for Bushwick rose by 50.3%, from \$684 per month to \$1,028 per month. Bushwick's percent increase in real average rent from 2000 to 2012 is surpassed only by the New York neighborhoods of Brooklyn Heights/Fort Greene and Williamsburg/Greenpoint, with increases of 58% and 76.1%, respectively. *THE GROWING GAP*, *supra* note 66, at 16-17.

¹¹² Buy-outs are common in areas of rapidly rising rents. See Louis W. Fisher, Note, *Paying for Pushout: Regulating Landlord Buyout Offers in New York City's Rent-Stabilized Apartments*, 50 *HARV. C.R.-C.L. L. REV.* 491, 494-99 (2015). Typically, a landlord will approach tenants and offer a payment of a few thousand dollars if they will vacate their apartment. See *id.* at 497.

¹¹³ These included nonpayment cases where the tenant had already paid the alleged amount.

their apartments and that this in turn gave them cover to organize and agitate for better conditions.¹¹⁴ What the tenants lacked were the legal resources to challenge the landlord's practices.

TLOP was well-positioned to engage in this work. Operating under the umbrella of CUNY School of Law's clinical arm, Main Street Legal Services,¹¹⁵ TLOP was free from the contractual, funding, and logistical constraints of many of New York's housing legal services offices.¹¹⁶ Not only were we able to represent undocumented individuals, we were also unencumbered by the imperative to take on a high volume of eviction defense cases. In short, even though TLOP's capacity was limited, we were one of the few legal services providers in the City that could take on an affirmative, group housing case on behalf of undocumented tenants.¹¹⁷ And from preliminary discussions with BHIP's organizer, this seemed to be what the Starr Avenue tenants were looking for.

As we approached the building on Starr Avenue for our initial meeting with the tenants, I felt a last-minute rush of anxiety. The meeting had been set up by BHIP's organizer, a force of nature and fixture in the local tenant advocacy community who had told me on a call a few days earlier that she would attend and that she planned to intervene liberally; she was happy to have our services

¹¹⁴ N.Y. REAL PROP. LAW § 223-b (McKinney 2005) protects all tenants, regardless of their rent-regulatory status, from retaliatory action by their landlord under certain circumstances, including engaging in organizing activity. However, in practice this statute provides only limited protection to tenants of unregulated apartments, who can be evicted at-will at the conclusion of their lease.

¹¹⁵ Main Street Legal Services ("MSLS") is a public interest law firm that is staffed by CUNY clinical law students who work under the supervision of experienced attorneys. MSLS includes the following programs: the CED Clinic, the Criminal Defense Clinic, the Economic Justice Project, the Elder Law Clinic, the Immigrant and Non-Citizen Rights Clinic, the Human Rights and Gender Justice Clinic, and the Mediation Clinic. See *Clinical Programs*, CUNY SCH. L., <http://www.law.cuny.edu/academics/clinics.html> [<https://perma.cc/734W-5Z97>].

¹¹⁶ Legal services offices that receive federal Legal Services Corporation funding are generally prohibited from representing undocumented individuals. *About Statutory Restrictions on LSC-Funded Programs*, LEGAL SERVICES CORP., <http://www.lsc.gov/about-statutory-restrictions-lsc-funded-programs> [<https://perma.cc/AK5H-V5YC>]. Further, at the time of the events of this article, very few tenant legal services organizations devoted significant resources to affirmative group litigation, instead focusing primarily on individual eviction defense.

¹¹⁷ This situation has changed somewhat in recent years, with tenant-side legal services more readily available under Mayor de Blasio's affordable housing and economic development plan. Press Release, Office of the Mayor of N.Y.C., Protecting Tenants and Affordable Housing: Mayor de Blasio's Tenant Support Unit Helps 1,000 Tenants Fight Harassment, Secure Repairs (Feb. 29, 2016), <http://www1.nyc.gov/office-of-the-mayor/news/208-16/protecting-tenants-affordable-housing-mayor-de-blasio-s-tenant-support-unit-helps-1-000#/0> [<https://perma.cc/V8HK-88DT>].

and thought we could be helpful to the tenants' cause, but she was also protective of the tenants and openly wary of the idea of law students handling a case in housing court, where landlord attorneys are known to be hyper-aggressive. The organizer's apprehensions raised concerns regarding our representation of the tenants and the pedagogical needs of the students. To what extent would we be able to develop effective attorney-client relationships when the organizer who had referred us our clients' case lacked confidence in our abilities? And how would we operate effectively within a resource-ally law and organizing framework when the organizer seemed intent on playing an active role in our representation?

While I was confident we would be able to work through these issues, I also recognized that the stakes for the first meeting were high. I had no solid backup plan in the event we did not take the tenants' case (or if the tenants opted not to retain us). Also, as this was our first time at the building and our first encounter with the tenants, the meeting, out of necessity, had to serve a number of functions: client intake, rapport-building, fact-investigation, and initial counseling session. In addition to introducing ourselves and securing basic information about the clients, we needed to identify their legal issues and goals, begin to evaluate them, and, as per the organizer's instructions, generate some preliminary legal options. Perhaps most challenging of all, we needed to do this in a group setting that included an organizer who likely had her own ideas about how best to address the problems in the building.

The meeting also posed other, more subtle challenges. The students needed to take into account the fact that our dialogue would be translated between English, the language of the students, and Spanish, the language of the tenants and the first language of the organizer, leading to at least some degree of awkwardness and miscommunication. Also, we would be enmeshed in a web of long-standing relationships among neighbors, and put in direct relation to a third-party attendee, the organizer, who was a confidant of the tenants and more than a little skeptical of the idea of legal services administered by law students. In short, the meeting was a far cry from the interview room of the students' law school simulations,¹¹⁸ as it placed us on our clients' geographical, cultural, and linguistic home turf. Navigating all these dynamics—while establishing the building blocks for an effective attorney-client relationship—was no small task.

The students were well prepared for the challenges posed by

¹¹⁸ Ahmad, *supra* note 41, at 1078-79.

the meeting, based on the curriculum of CUNY's CED Clinic, our small-group TLOP sessions, and their own experiences at tenants living in New York City. In terms of the formal training offered by the CED Clinic, the students had engaged with theories of law and organizing, community lawyering, ethical issues in group representation, and cultural competency. Class discussions in the seminar portion of the Clinic regularly touched on issues of race, class, and culture in the representation of poor and subordinated clients. And in-class exercises were structured to make students keenly aware of the micro-dynamics at play in lawyering across these lines of difference.

In our TLOP small-group sessions, which met outside the regularly scheduled Clinic class time, we focused on getting up to speed on relevant aspects of New York City landlord-tenant law, no small task given the array of statutes and regulations in play.¹¹⁹ We also read and discussed scholarly articles about gentrification and urbanization, with a focus on the Bushwick neighborhood that was the geographical locus of our advocacy efforts. These discussions were useful in understanding the historical-cultural context of the neighborhood and the political-economic and policy context of gentrification, and helped us to frame our representation in terms of a larger struggle to preserve affordable housing in a traditionally working class, immigrant section of the City.

Finally, it should be noted that much of the students' preparation for their work in TLOP occurred outside of the classroom, as the students were all tenants living in New York City. Although they were not subject to the same degree of economic precarity or landlord harassment as our prospective clients, the students knew what it meant to live in a tight, predatory real estate market on a relatively low income. They appreciated the value of an affordable, rent-stabilized apartment and knew what it meant to struggle to get much-needed repairs from a stubborn landlord. Because of these experiences, the students approached our tenant meeting with a not-insignificant amount of understanding, empathy, and solidarity.

As it turned out, our meeting with the tenants went well, if not smoothly. The interpretation was a bit clunky,¹²⁰ and the students

¹¹⁹ At a minimum, students needed to have a working knowledge of the New York City Rent Stabilization Law, N.Y. UNCONSOL. LAW ch. 4 (McKinney 2017), and the N.Y. REAL PROP. ACTS. LAW ch. 81, (McKinney 2017), as well as the N.Y. C.P.L.R. ch. 8 (McKinney 2017).

¹²⁰ The organizer and I co-interpreted the meeting, occasionally stepping on each other's toes.

were predictably tentative, particularly when it came to the client counseling portion of the agenda. Also, the organizer and one of the tenants spoke far more than anyone else in the group, causing me to wonder about the internal dynamics of the group.¹²¹ Still, even if there had been a couple of stumbles, the meeting produced two concrete takeaways: the tenants wanted us to represent them and we learned that they were determined to get more than just repairs in the building; they also wanted to get their landlord's attention and to force him to take their concerns seriously. In the meeting, the tenants told us that for years the landlord had treated them like they were invisible and disposable, ignoring their complaints and taking them to court under false pretenses; now, with their neighborhood changing all around them, they wanted to stake a strong claim to their homes.

The tenants' desire for recognition from their landlord, combined with the fact that they were in the process of getting organized, directly informed our legal strategy, leading us to opt for a rarely-used type of housing court case: an Article 7a proceeding.¹²² The latter tends to catch the attention of offending landlords because it seeks the appointment of an administrator to manage and control the rent rolls of buildings with unrepaired, emergency housing conditions.¹²³ From a law and organizing standpoint, 7a cases are useful because they require the participation of at least

¹²¹ From my experience working with tenant associations, this issue raised a yellow—if not a red—flag, in relation to maintaining a successful group litigation. I had several cases early in my career in which a single tenant dominated meetings, often foreclosing space for other tenants to actively participate in their case and in broader organizing efforts. Alternatively, I had cases where many tenants deferred to a perceived tenant leader and never reached a sustained level of investment in their case. I have generally deferred to organizers to ensure more democratic participation in group settings, but I have also occasionally intervened in tenant meetings in a way intended to induce such participation.

¹²² Article 7a proceedings are rarely used because they require an organized group of tenants and because service of process is notoriously difficult. N.Y. REAL PROP. ACTS. LAW §§ 770(1), 771(1) (McKinney 2013); MOLLY WASOW PARK, CITY OF N.Y. INDEP. BUDGET OFFICE, REVIEW OF THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT'S ARTICLE 7A PROGRAM 6 (2003) ("A significant number—50 percent—of 7A cases brought either by tenants or HPD do not result in the appointment of an administrator, because the judge instead allows the building owner to enter into an agreement to complete repairs. Similarly, when a building is sold—even after a 7A administrator is appointed—judges generally give the new owner the opportunity to correct building violations.").

¹²³ N.Y. REAL PROP. ACTS. LAW § 770(1) states that a 7a proceeding can be maintained where there exists in a building "or in any part thereof a lack of heat or of running water or of light or of electricity or of adequate sewage disposal facilities, or any other condition dangerous to life, health or safety, which has existed for five days, or an infestation by rodents, or any combination of such conditions; or course of

one-third of a building's tenants.¹²⁴ This minimum participation requirement facilitates solidarity-building among clients, as, by statute, maintaining a 7a proceeding requires a portion of a building's tenants to come together and sustain at least a semi-active investment in the litigation.¹²⁵ Over the course of a case, tenants in a 7a proceeding are compelled to be in communication with one another, a fact that often leads to viewing their grievances against their landlord as shared and intertwined.

Following our initial client meeting and the decision to opt for a 7a proceeding, our next task was to draft our pleadings in a way that reflected our clients' core concern that their landlord had been continually harassing them in an effort to get them to leave their homes. Even though 7a cases typically only relate to conditions,¹²⁶ we made sure to include in the pleadings allegations of the landlord's various attempts to get the tenants to vacate the building. Our approach served two purposes: in theory, it alerted the judge to the context in which the lack of repairs was taking place, and it allowed the tenants to share with us, and with each other, their experiences of being dragged to court for no reason and repeatedly harassed to accept a paltry buyout offer. Surfacing these events in our tenant meetings and including them in our pleadings not only honored the tenants' lived experience, it also fortified their belief that the action against the landlord was rooted in shared grievances, and therefore truly a collective one.

In terms of the merits and potential success of our case, from the outset we were clear with the tenants that although it was highly unlikely a court would take the fairly drastic measure of appointing a 7a administrator, simply filing for this form of relief would send the landlord a firm message—namely, that the tenants were to be taken seriously and that they had no intention of leaving their homes. The 7a litigation lasted nearly the entire academic year, with a number of highs and lows. The tenants were well-organized and clear-minded with regard to their goals, but they were disappointed by how long it took to get repairs done in the build-

conduct by the owner or the owner's agents of harassment, illegal eviction, continued deprivation of services or other acts dangerous to life, health or safety"

¹²⁴ *See id.*

¹²⁵ At a minimum, after at least one-third of the tenants in a building sign on to the petition, they should also continue to appear at court appearances to avoid the landlord challenging their claim as defective for failing to sustain the minimum participation requirement. *See id.*

¹²⁶ Even though the 7a statute expressly includes harassment as a ground for the proceeding, *see id.*, judges rarely sustain such a claim when based on this ground.

ing, even once we were in court. On at least two occasions in the early stages of the litigation, the landlord's workers failed to show up to make agreed-upon, court-ordered repairs. And at an early court appearance, before any repairs had been made, the presiding judge essentially attempted to gut our entire case by asking us to remove the threat of a 7a administrator.¹²⁷ The same judge granted lengthy adjournments to the landlord, and appeared unmoved by the conditions in the building or by the landlord's harassment.

In the context of the inertia of the litigation, providing effective representation to the tenants required a sensitivity to the dynamics of the group and a steady collaboration with the organizer. Early on—and with the tenants' permission¹²⁸—we included the organizer in our strategic planning for the case. In preparing for our initial court appearances, we relied heavily on her to ensure that the tenants appreciated the importance of being unified and present, even when it was clear that little or any legal significance was likely to occur. We also worked with the organizer to coordinate regular meetings with the tenants, meetings that often doubled as litigation updates and check-ins about the morale of the group.

It should be noted that, as the organizer became increasingly confident that we were up to the task of representing the tenants, her interventions in the legal spaces of our attorney-client relationship decreased. Whereas at the beginning of the case, the organizer would volunteer suggestions about questions of legal strategy and would make it a point to attend all meetings and court appearances, by the end of the litigation her attendance and participation were on an as-needed basis. In this way, our partnership, which was intended to operate under a resource-ally model of law and organizing, with its separation of attorney and organizer roles, evolved to fit the dictates of that model organically through our practice.

Overall, the involvement of the organizer, particularly in the early stages of our litigation, was critical to building a trusting attorney-client relationship with the tenants and to maintaining solidar-

¹²⁷ The judge attempted to force a settlement by suggesting that we remove the threat of an appointed administrator in exchange for a promise to make repairs.

¹²⁸ The students discussed confidentiality and privilege with the tenants but it was determined that the presence of the organizer was so integral to our early meetings that she should be included notwithstanding the potential ethical concerns. Later, as the case developed, the students would meet with the tenants without the organizer present.

ity within the group, but it also sparked concerns among the students. We clearly had ethical obligations to our clients—to maintain their confidences, to zealously advocate for their interests, etc.—but what, if any, duties did we owe to the organizer and/or to BHIP, and how did our relationship with BHIP interface with our duties to our clients? The Rules of Professional Responsibility provided scant guidance on this point, as they failed to take into account the nuances and practicalities of our institutional partnership with BHIP: we were taking this particular case because BHIP had identified it as strategically important to its goal of maintaining affordable housing for working class, immigrant tenants in Bushwick; moreover, our ability to take cases from BHIP in the future was predicated not just on our effective representation of the tenants, but on our ability to work well with the organizer. Luckily, these concerns proved mostly academic, as the tenants clearly and explicitly identified their interests with the goals of BHIP and they were unanimously in favor of the active participation of the organizer, even if that posed potential problems with regard to client confidentiality and/or attorney-client privilege.

In the end, despite setbacks and delays, our 7a case was a success on a number of fronts. At what turned out to be our final court appearance, after we had moved to hold the landlord in criminal contempt¹²⁹ for his repeated disregard of court orders, he finally caved, agreeing to make all the necessary repairs. Just as importantly, he emphasized that the tenants should contact him personally in the future if there were any problems in the building—such was his desire to avoid another protracted court fight. This point was particularly gratifying to the tenants, who at least for the time being felt they had a partner, rather than an adversary, in the upkeep of the building. In early May, when we had our final tenant meeting, the building's interior spaces were nearly unrecognizable—clean hallways, new doors and floors, etc. In my decade of representing tenants in disputes with their landlords, I had never seen a building so completely transformed during the course of litigation. The ultimate mark of approval came when the organizer, initially skeptical of the capacity of a law clinic to do battle with an

¹²⁹ Section 750(A)(3) of the New York Judiciary Law allows for the imposition of criminal contempt upon a finding of “Wilful disobedience to [the court’s] lawful mandate.” N.Y. JUD. LAW § 750(A)(3) (McKinney 2017). In 7a cases, criminal contempt is possible where the party fails to comply with the terms of a court-ordered stipulation agreement, e.g., an agreement to make specified repairs in a building by a date certain. *See id.*

aggressive slumlord, told the students and me that she had tenants in other buildings whom she wanted us to represent.

While TLOP engaged in other efforts that year—a community education training and a collaboration with a tenant advocacy organization on a law reform campaign—the 7a litigation was our high water mark. Despite the litigation’s many successes—achieving our clients’ objectives, successfully partnering with BHIP, and getting the students hands-on lawyering experience—I came away feeling a bit pessimistic. Though we had worked collaboratively and creatively with our clients and had put our lawyering at the service of a community-led organization along the lines of the law and organizing models we had discussed in class, it was hard to escape the limitedness of our impact. Given the scale of gentrification across New York City, it felt futile to focus our efforts on a single building and to work squarely within the confines of landlord-tenant law.

The models and tools of law and organizing—working at the direction of a grassroots partner organization and crafting legal claims to take into account the construction of solidarities among poor and subordinated tenants—had served our clients and the students well in this particular instance. But, in isolation, they could not live up to the bigger challenge, asserted by the RTC, to imagine and recreate our cities as democratic spaces that prioritize use-value of urban space, particularly in relation to the accessibility of decent and affordable housing and the prevention of market-driven displacement. Achieving those goals, particularly in a rapidly gentrifying global city, would require more of an engagement with the policy and market forces that have led to increased inequality and weakened legal protections for tenants.

C. Future Directions for TLOP

As we have seen, creating a law and organizing-based tenant advocacy law clinic that takes on urban inequality and displacement from an RTC perspective is a complicated endeavor. The first iteration of TLOP managed to do impactful but partial work in this regard. While we collaborated effectively with a grassroots, partner organization and successfully represented a group of tenants in one of New York’s most rapidly gentrifying neighborhoods, our work did not branch out to impact policies of the sort discussed in Part II. To have a broader impact on gentrification and market-driven displacement, a more robust version of TLOP would need to expand its advocacy efforts beyond the confines of landlord-ten-

ant litigation, and also become more involved with community-led law and policy reform campaigns, across multiple scales of governance, that aim to enhance protections for tenants.

Landlord-tenant law is vital—indeed required—to protecting tenants in rapidly gentrifying areas from displacement; it can also be useful in forcing landlords to make much-needed repairs, as we saw in the previous section. But it has limitations in relation to organizing large groups of tenants¹³⁰ and to reducing urban inequalities. Where tenants are residents of discrete buildings—even ones owned by the same landlord—landlord-tenant law offers little to nothing in the way of remedies.¹³¹ Further, even the most robust landlord-tenant practice cannot stave off economic development and policy initiatives that contribute to rising real estate values and displacement. The limitedness of this area of law means that future projects should look to other legal frameworks to support tenant collective action and prevent widespread displacement. One possibility in this regard is land use law, which can be used to regulate and reign in local real estate development.¹³² Another area to explore is consumer protection law, which in some circumstances allows tenants living in separate buildings to file claims against a common owner.¹³³ Future projects should also look into community land trust formation,¹³⁴ as land trusts offer an alternative form of property ownership that creates access to affordable housing for low-income and working class tenants, and can serve as a bulwark against rapidly increasing land values.

As mentioned above, future iterations of TLOP should also look to expand the inaugural project's focus to include law and

¹³⁰ This is so mainly because the affirmative, group claims available to tenants under landlord-tenant law require tenants to live in the same building.

¹³¹ There are two types of tenant-initiated proceedings under landlord-tenant law: HP actions, brought pursuant to the Housing Maintenance Code, N.Y.C. ADMIN. CODE § 27-2115, and 7a proceedings, brought pursuant to N.Y. REAL PROP. ACTS. LAW § 770(1). Both allow for multi-tenant proceedings, but tenants must all reside in the same property.

¹³² See Vicki Been et al., *Urban Land-Use Regulation: Are Homevoters Overtaking the Growth Machine?*, 11 J. EMPIRICAL LEGAL STUD. 227, 229 (2014).

¹³³ An example of the use of consumer protection law in the tenant organizing context occurred in the case of *Aguaiza v. Vantage*, where a group of tenants, living in separate buildings, sued their private equity landlord on the basis of its deceptive business practices. See *Aguaiza v. Vantage Props., L.L.C.*, 69 A.D.3d 422 (1st Dep't 2010); see also Gretchen Morgenson, *Questions of Rent Tactics by Private Equity*, N.Y. TIMES (May 9, 2008), <http://www.nytimes.com/2008/05/09/business/09rent.html> [<https://perma.cc/3WA9-5BDV>].

¹³⁴ Deborah Kenn, *Paradise Unfound: The American Dream of Housing Justice for All*, 5 B.U. PUB. INT. L.J. 69, 77-81 (1995).

policy reform efforts.¹³⁵ This will entail partnering with RTC organizations that are advocating for policies—for example, stronger rent stabilization protections—that attack displacement by privileging the use value of urban space over its exchange value. It is worth noting here that attempts to fortify the rent stabilization laws would run directly up against the Urstadt Law, referenced in Part IIA *supra*, which removed the City's home rule over its supply of rent-regulated housing. For this reason, another possible, longer-term RTC reform is the repeal of Urstadt so as to return local control of rent-stabilization to City residents. Going forward, TLOP should also engage with progressive community planning efforts that seek to achieve equality, social inclusion, and environmental justice.¹³⁶ As with the advocacy efforts undertaken by TLOP in its first edition, law and policy reform work would be contingent upon—and driven by—the organizing priorities of grassroots, partner organizations whose memberships bear the brunt of a mode of urbanization that has benefited the few at the expense of the many.

In terms of the impact of a built-out TLOP on the professional and educational development of its student participants, the latter would work in—and be exposed to—multiple legal areas, which would be articulated together by a commitment to challenging the underlying structural causes of urban inequality and market-driven displacement. The policy and law reform aspects of TLOP would offer students not only hands-on experience with researching, envisioning, and drafting legislation, but also a view of the law as dynamic and subject to change. And, as described in Part IIIB *supra*, TLOP's continued affirmative group litigation work would afford students valuable experience collaborating with partner organizations and helping clients resolve concrete, often critical legal issues in a law and organizing context.

CONCLUSION

This article has been an attempt to envision an anti-displacement law clinic that combines frameworks of law and organizing and a critical approach to neoliberal urbanization. My hope is that such a clinic can win concrete gains for tenants, train law students in the complexities of representing poor and subordinated clients

¹³⁵ In its first year, TLOP provided limited assistance—in the form of submitting administrative complaints on behalf of tenants being charged questionable rent increases—to a community organization that was working to strengthen rent-stabilization protections. This was not a significant aspect of the Project's work, which is why it is not detailed in this article.

¹³⁶ See ANGOTTI, *supra* note 2, at 8.

through close collaborations with partner organizations, and, ultimately, contribute to the creation of more equitable, diverse, and democratic cities.