

# Networks and Norms: Social Justice Lawyering and Social Capital in Post-Katrina New Orleans

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## I. INTRODUCTION

When Hurricane Katrina struck the Gulf Coast on August 29, 2005, it ravaged New Orleans' infrastructure and set in motion two other, less-visible trends. First, the flooding displaced a huge percentage of the population and tore apart the region's social networks. Second, by highlighting and compounding long-standing institutional failures and inequities in the region, the flooding triggered an increase in social justice litigation.<sup>1</sup> Starting from these observations, we argue that scholarship on social capital can inform the practice of social justice advocacy.

Social capital theory posits that social networks and norms can help individuals and societies achieve better outcomes. Before Katrina, family and neighborhood connections often helped residents make ends meet when the government failed to provide public services. By damaging these local social networks, Katrina reduced one of the few resources available to the city's poorest residents.<sup>2</sup> Despite the recent prominence of social capital the-

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<sup>1</sup> See Hon. Sarah S. Vance, *Justice After Disaster: What Hurricane Katrina Did to the Justice System in New Orleans*, 51 HOW. L.J. 621, 644-5 (2008).

<sup>2</sup> We are not the first to suggest that disasters such as levee failures can have devastating effects on local social capital. See, e.g., Liesel Ashley Ritchie & Duane A. Gill, *Social Capital Theory as an Integrating Theoretical Framework in Technological Disaster Research*, 27 SOC. SPECTRUM 103 (2007). See also Golam M. Mathbor, *Enhancement of Community Preparedness for Natural Disasters*, 50 INT'L SOC. WORK 357, 360 (2007) (suggesting that a focus on building social capital can help preparation for and response to natural disasters); DeMond Shondell Miller, *Visualizing the Corrosive Community: Looting in the Aftermath of Hurricane Katrina*, 9 SPACE & CULTURE 71 (2006) (arguing that Katrina hurt civic trust and social capital in New Orleans); Claire H. Procopio & Steven T. Procopio, *Do You Know What It Means to Miss New Orleans? Internet Communication, Geographic Community, and Social Capital in Crisis*, 35 J. APPLIED COMM'N RES. 67 (2007) (arguing that Katrina survivors used the internet to rebuild and sustain pre-existing social capital damaged by Katrina).

ory, few scholars have addressed how social capital concepts might impact social justice advocacy. We argue that a client-centered social capital model, emphasizing networks and norms that affect our clients, provides a framework for social justice lawyers to address clients' needs.

In Part II, we define the concept of social capital for the purposes of social justice lawyering, taking account of a fundamental incongruity between social capital theory and social justice legal advocacy. Social capital theory emphasizes the value of generalized trust, associational memberships, and reciprocal relationships, while social justice advocacy often uses tools of conflict, such as litigation and public protest. Previous attempts to apply social capital theory to the law have not properly accounted for the ways that social justice advocacy can undermine some kinds of social capital. We argue in Part II that only a client-centered view, defining social capital as the norms and networks that affect our clients, can effectively operationalize social capital for social justice lawyers.

In Part III, we argue that a client-centered social capital framework illuminates internal debates within the social justice community. In Part III.A, we show how networks and norms map onto a debate over two strategies for social justice lawyering, namely community lawyering and impact litigation. Further, we show how a social capital analysis helps predict which of these strategies might be more effective in a given situation. In Part III.B, we show how a client-centered social capital framework can illuminate internal disagreements between social justice lawyers in a second way. Some internal disagreements within the social justice community can be better understood as debates over the relative value of bonding social capital versus bridging social capital, where bonding capital exists between members of a self-identified group, and bridging capital exists between members of different groups. We use *Brown v. Board of Education* and a major public housing case from New Orleans as examples.

Part IV identifies ways that these reflections about social capital might enhance future social justice work in and around New Orleans. We argue that lawyers should use social capital analysis when helping their clients build a legal strategy. We recommend that advocates in New Orleans expand advocacy efforts that create "linking" capital between citizens and government agencies.

At several points we draw examples from the Post-Katrina New Orleans Social Justice Docket ("the Docket").<sup>3</sup> The Docket, created by local and national public interest attorneys, advocates and law student volunteers, is a comprehensive attempt to catalogue the major social justice-related litigation and advocacy efforts in New Orleans since the storm. The Docket includes cases addressing housing, voting rights, criminal justice, workplace justice, education, and environmental justice. Additionally, it includes advocacy ar-

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<sup>3</sup> Morgan W. Williams et al., *The Post-Katrina New Orleans Social Justice Docket* (2008), <http://www.law.harvard.edu/students/orgs/crcl/Katrina/Docket.pdf> [hereinafter Docket].

eas particular to post-Katrina New Orleans, like insurance coverage, levee construction, and property rights. The Docket reflects the breadth and depth of social justice litigation brought in federal and state courts since the storm.

## II. SOCIAL JUSTICE LAWYERING REQUIRES DEFINING CLIENT-CENTERED SOCIAL CAPITAL AS THE NETWORKS AND NORMS THAT AFFECT OUR CLIENTS

Social networks, in which members observe reciprocal norms and trust one other, have value. These networks allow individuals to achieve goals more easily; when societies have higher levels of generalized trust among their members, they are typically able to solve collective action problems at lower cost. The field of social capital has had mixed success in defining,<sup>4</sup> quantifying,<sup>5</sup> and clarifying these observations, and social capital remains a “widely employed, loosely defined, and differently operationalized concept.”<sup>6</sup> Nevertheless, as social capital theory has swept across the social sciences, it has become a basic metric of analysis in fields like sociology, medicine, education, and political science. Scholars have found relationships between high levels of social capital and positive social phenomena, including well-functioning democratic governments,<sup>7</sup> better health<sup>8</sup> and edu-

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<sup>4</sup> For a comparison chart of twenty different definitions of the term, see Tristan Claridge, *Definitions of Social Capital*, <http://www.gnudung.com/literature/definition.html> (last visited Aug. 26, 2008). For a discussion of different conceptions of social capital, see Glenna Colclough & Bhavani Sitaraman, *Community and Social Capital: What is the Difference?*, 75 *SOC. INQUIRY* 474 (2005). For a historical look at the concept, see James Farr, *Social Capital: A Conceptual History*, 32 *POL. THEORY* 6 (2004). See also Emily Chamlee-Wright, *The Structure of Social Capital: An Austrian Perspective on its Nature and Development*, 20 *REV. POL. ECON.* 41 (2008) (an analysis of social capital theory). For a concise summary of the concept of social capital, see Russell Mannion & Huw T. O. Davies, *Taking Stock of Social Capital in the Production of Health Care*, 10 *J. HEALTH SERV. RES. & POL.* 129, 129 (2003). See also Eva Cox, *The Functional Value of Social Capital*, 42 *AUSTRALIAN J. SOC. ISSUES* 503 (2007) (arguing that social capital is a useful concept even if we cannot reach consensus on its proper definition and operationalization); Gregory M. Fulkerson & Gretchen H. Thompson, *Fifteen Years of Social Capital (1988-2002): An Analysis of Definitions and Trends in Sociological Journal Articles* (Aug. 14, 2004) (unpublished manuscript, online at [http://www.allacademic.com/meta/p108985\\_index.html](http://www.allacademic.com/meta/p108985_index.html)).

<sup>5</sup> For a discussion of some of the problems of measurement of social capital in Europe, see Frane Adam, *Mapping Social Capital Across Europe: Findings, Trends and Methodological Shortcomings of Cross-National Surveys*, 47 *SOC. SCI. INFO.* 159 (2008). See also Peter Knorringa & Irene van Staveren, *Beyond Social Capital: A Critical Approach*, 65 *REV. SOC. ECON.* 1, 2-5 (2007) (describing ways in which measurement of social capital is contested).

<sup>6</sup> John Brehm, Book Review, 32 *CONTEMP. SOC.* 345, 345 (2003) (reviewing *SOCIAL CAPITAL AND POOR COMMUNITIES* (Susan Saegert, J. Phillip Thompson, & Mark R. Warren eds., 2001)).

<sup>7</sup> Social capital has been correlated with the performance of government institutions at the regional and local levels. See, e.g., ROBERT PUTNAM ET AL., *MAKING DEMOCRACY WORK* (1993); Hilde Coffé & Benny Geys, *Institutional Performance and Social Capital: An Application to the Local Government Level*, 27 *J. URB. AFF.* 485 (2005); see also Kenneth Newton, *Social Trust: Individual and Cross-National Approaches*, 3 *PORTUGUESE J. SOC. SCI.* 5, 15 (2004) (arguing that social capital is associated with “societal characteristics that underpin democratic development and stability”).

cation outcomes,<sup>9</sup> and happiness and life satisfaction.<sup>10</sup> Likewise, low social capital is associated with negative results in these areas.<sup>11</sup> While at least two legal scholars have advocated creating social capital to benefit disadvantaged clients,<sup>12</sup> social capital theory has not become a major analytic principle for social justice lawyers.<sup>13</sup>

In fact, prior legal scholarship has failed to note one way in which social capital could be an inapt framework for thinking about social justice lawyering. Trust and reciprocity are desirable goals, but social justice lawyers often rely on dissent, protest, and litigation. Lawsuits typically do not

<sup>8</sup> See generally Sara Ferlander, *The Importance of Different Forms of Social Capital for Health*, 50 ACTA SOCIOLOGICA 115, 120-24 (2007); Jennifer M. Mellor & Jeffrey Milyo, *State Social Capital and Individual Health Status*, 30 J. HEALTH POL. POL'Y & L. 1101, 1101-03 (2005). Social capital may reduce mortality rates. See, e.g., Robert R. Weaver & Robert Rivello, *The Distribution of Mortality in the United States: The Effects of Income (Inequality), Social Capital, and Race*, 54 OMEGA-J. DEATH & DYING 19, 21-23 (2006). It also may increase access to and satisfaction with healthcare. See, e.g., Megan Perry et al., *Social Capital and Health Care Experiences Among Low-Income Individuals*, 98 AM. J. PUB. HEALTH 330, 333 (2008); see also Mikael Rostila, *Social Capital and Health in European Welfare Regimes: A Multilevel Approach*, 17 J. EUR. SOC. POL'Y 223, 223 (2007) (arguing that "social trust could explain health differences between European welfare regimes"). The conclusion that social capital has positive impacts on health has also been challenged. See, e.g., Howard I. Kushner & Claire E. Sterk, *The Limits of Social Capital: Durkheim, Suicide and Social Cohesion*, 95 AM. J. PUB. HEALTH 1139 (2005).

<sup>9</sup> See, e.g., Eric M. Hampton & Stephen Gruenert, *Social Capital and School Success: Combining Internal and External Commitment with School Functioning Factors*, 2 J. ETHNOGRAPHIC & QUALITATIVE RES. 163, 163-64 (2008) (arguing that social capital may explain why some high-poverty, high-minority schools exceed expectations); Glenn D. Israel & Lionel J. Beaulieu, *Laying the Foundation for Employment: The Role of Social Capital in Educational Achievement*, 34 REV. REGIONAL STUD. 260 (2004) (reporting that some forms of social capital increase test scores); Peter John, *The Contribution of Volunteering, Trust and Networks to Educational Performance*, 33 POL'Y STUD. J. 635, 635 (2005) (arguing that certain types of social capital increase educational attainment).

<sup>10</sup> Evonne Miller & Laurie Buys, *Does Social Capital Predict Happiness, Health and Life Satisfaction in an Urban Australian Community?*, 3 KŌTUITUI: NEW ZEALAND J. SOC. SCI. ONLINE 15 (2008), <http://www.royalsociety.org.nz/Site/publish/Journals/kotuitui/2008/002.aspx>; see also Carey Leigh Usher, *Trust and Well-Being in the African American Neighborhood*, 6 CITY & COMMUNITY 367 (2007) (arguing that generalized trust is a predictor of well-being among a group of African Americans).

<sup>11</sup> Kathy Lemon Osterling, *Social Capital and Neighborhood Poverty: Toward an Ecologically-Grounded Model of Neighborhood Effects*, 16 J. HUM. BEHAV. SOC. ENV'T. 123 (2007) (attempting to model how lack of social capital could account for negative "neighborhood effects," including high unemployment, depression, teen pregnancy, and others).

<sup>12</sup> See Susan D. Bennett, *Creating a Client Consortium: Building Social Capital, Bridging Structural Holes*, 13 CLINICAL L. REV. 67, 95-109 (2006) (arguing that lawyers should seek to build social capital); Willie Brown, *The Forgotten Type of Capital: Addressing the Social Capital Deficiency in the Inner City*, 11 GEO. J. ON POVERTY L. & POL'Y 527 (2004) (arguing that efforts to eliminate inner-city black poverty should incorporate creation of social capital).

<sup>13</sup> For applications of social capital theory to other areas of the law, see Jason Mazzone, *When Courts Speak: Social Capital and Law's Expressive Function*, 49 SYRACUSE L. REV. 1039, 1060-61 (1999) (arguing that courts in communities with low social capital are less likely to express opinions on society beyond the facts of the case before them, while courts in communities with high social capital are more likely to do so); Richard H. Pildes, *The Destruction of Social Capital Through Law*, 144 U. PA. L. REV. 2055 (1996) (discussing the relationship between law and aspects of social capital norms).

help build cooperative relationships with the opposing party. Widespread social activism may reduce some measures of social capital by undermining trust in societal institutions.<sup>14</sup> Researchers have even found “support [for] the conclusion that social activism is both a cause and a consequence of higher levels of homicide.”<sup>15</sup> This reasoning suggests that social justice lawyering could actually undermine social capital. If we are to make social capital a useful concept for social justice lawyering, we must resolve this apparent tension.

The uneasy relationship between social capital and social justice activism is reflected in a broader dispute over trends in American society since the 1960s. In *Bowling Alone*, Robert Putnam uses data on declining associational membership, newspaper readership, and generalized trust to argue that the United States has suffered a serious loss of social capital over the last fifty years.<sup>16</sup> According to Putnam, this trend threatens our democratic institutions.<sup>17</sup>

Others have challenged Putnam’s conclusions, and indeed his entire conception of social capital, as failing to account for the power gained by women and minorities over the last fifty years. In *Diverse Communities: The Problem with Social Capital*, Barbara Arneil argues that decreases in certain types of social capital in the United States do not represent a threat to American democracy.<sup>18</sup> Rather, Arneil views these declines merely as one consequence of turbulent forces of historical change that have ultimately created a more just society and empowered women and racial minorities.<sup>19</sup> Another study found that “collective civic action has not declined; rather, what we have looked to as the traditional indicators of civic participation have declined while the nature of participation in collective events has changed.”<sup>20</sup>

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<sup>14</sup> PUTNAM, MAKING DEMOCRACY WORK, *supra* note 7, at 177-78. Other scholars have used the concept of feedback cycles to explain the mechanism by which social activism and protest may have harmful effects on social capital. Successful interactions tend to generate virtuous self-reinforcing feedback cycles – the actors tend to trust each other the next time they interact. Conversely, distrust and negative interactions tend to create vicious self-reinforcing cycles as well, confirming to actors that they should not rely on each other in the future. See John Brehm & Wendy Rahn, *Individual-Level Evidence for the Causes and Consequences of Social Capital*, 41 AM. J. POL. SCI. 999, 1014-15 (1997) (discussing virtuous and vicious feedback cycles of trust). Due to these self-reinforcing feedback cycles, the emphasis on conflict in social protest and activism may reduce generalized societal trust, which may in turn generate more problems and conflict.

<sup>15</sup> Steven F. Messner, Eric P. Baumer & Richard Rosenfeld, *Dimensions of Social Capital and Rates of Criminal Homicide*, 69 AM. SOC. REV. 882, 896 (2004).

<sup>16</sup> ROBERT PUTNAM, *BOWLING ALONE* (2000).

<sup>17</sup> *Id.*

<sup>18</sup> BARBARA ARNEIL, *DIVERSE COMMUNITIES: THE PROBLEM WITH SOCIAL CAPITAL* (2006).

<sup>19</sup> *Id.*; see also RODNEY HERO, *RACIAL DIVERSITY AND SOCIAL CAPITAL: EQUALITY AND COMMUNITY IN AMERICA* (2007) (criticizing social capital theory from a structural racism perspective).

<sup>20</sup> Robert J. Sampson et al., *Civil Society Reconsidered: The Durable Nature and Community Structure of Collective Civic Action*, 111 AM. J. SOC. 673, 711 (2005).

These disputes can be traced to an underlying disagreement about how to define and measure social capital. Putnam follows a tradition that primarily conceives of social capital as a public good, available to all, benefiting society as a whole. His metrics for measuring social capital, namely associational membership and generalized trust, emphasize his concern about overall levels of social capital in society. Putnam presents a compelling case that some society-wide measures of social capital, like generalized trust, appear causally related to society's ability to build democratic institutions and respond effectively to collective action problems.

Others have argued that social capital is best understood as inhering in specific individuals or groups. On this account, social capital represents the ability of a particular person or group to harness social networks in a productive way. An individualized view of social capital reveals that, like all resources, social capital is distributed unequally among actors.<sup>21</sup> Consider this analysis of structural racism:

[I]n societies in which resources are distributed partly along racial lines, social networks (social capital) will also be racialized. This means that social networks may be mobilized to further or defend racial projects, and this also means that social networks may not always be a "public good" whose benefits are equally available to all. In a racialized society, the benefits of collective associations and friendship ties will be deeply structured by racial rules.<sup>22</sup>

Not only might social capital be distributed unequally within society, but also these inequities in social capital can enable socially harmful actions like organized crime<sup>23</sup> and racial exclusivity. Critics of Putnam tend to think that specific social networks and norms from fifty years ago, such as racially segregated schools, preserved social capital for some groups while denying it to others. These critics see a realignment of social networks and norms as less problematic.<sup>24</sup>

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<sup>21</sup> See J. FIELD, SOCIAL CAPITAL 74 (2003) (describing ways that social capital can be related to inequality).

<sup>22</sup> Eduardo Bonilla-Silva & Gianpaolo Baiocchi, Anything But Racism: How Sociologists Minimize the Significance of Racism 20 (Aug. 16, 2003) (unpublished manuscript, online at [http://www.allacademic.com/meta/p108127\\_index.html](http://www.allacademic.com/meta/p108127_index.html)); see also Jane Edwards & Brian Cheers, *Is Social Capital Good for Everyone?: The Case of Same-Sex Attracted Women in Rural South Australian Communities*, 16 HEALTH SOC. REV. 226, 226 (2007) ("[S]ocial capital is unequally distributed and experienced in different ways . . . . [B]lanket claims to increase and enhance social capital should be treated cautiously because of the adverse consequences for some groups.").

<sup>23</sup> See Christopher R. Browning, Seth L. Feinberg & Robert D. Dietz, *The Paradox of Social Organization: Networks, Collective Efficacy, and Violent Crime in Urban Neighborhoods*, 83 SOC. FORCES 503, 523 (2004) ("While networks promote neighborhood cohesion and informal social control orientations, they also generate network-based social capital for [criminal] offenders that may inhibit more consequential forms of social control.").

<sup>24</sup> Cf. Sangyoub Park, *From Bowling Alone To Lattes Together: A Reinvestigation of the Alleged Decline of Social Capital in the United States* 13 (Aug. 10, 2006) (unpublished manuscript, online at [http://www.allacademic.com/meta/p104570\\_index.html](http://www.allacademic.com/meta/p104570_index.html)). Park suggests that if

While we strongly support the gains made by women and minorities over the last fifty years, we do not attempt in this article to resolve the ongoing disputes concerning the causes or effects of the alleged national decline of social capital during that period. Rather, we propose to use a “client-centered” view of social capital that emphasizes the practical ways that social capital can be a resource or an obstacle for our clients. Society-wide conceptions of social capital may have valid uses, but they do not fit our purpose.<sup>25</sup>

We define client-centered social capital as the social networks and societal norms that can either empower or harm our clients. We choose a two-part definition of client-centered social capital – networks and norms – because it concisely captures the relevant questions for our clients: Which connections would benefit them and how can they develop those connections? Which relationships are governed by constructive, equitable norms, and which are constrained by unfair or exploitative norms? A client-centered view of social capital legitimizes litigation, protest, and conflict as part of a range of strategies to help our clients,<sup>26</sup> and therefore this model is consistent with our ethical responsibilities as lawyers. While earlier legal scholarship has noted the distinction between generalized, society-level social capital and individualized social capital, it has not emphasized the significance of this distinction for advocates.<sup>27</sup>

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social tolerance is added to social trust as a component of social capital, then there has been no overall decline in social capital in the United States. Rather, the “main source of social capital has shifted from social trust in individuals to social tolerance.” *Id.* While perhaps true, it is unclear that social tolerance has the same consequences for society as social trust.

<sup>25</sup> In light of the recent rush to apply social capital to a wide variety of social ills, some scholars have noted that the concept can be misapplied. *Cf.* Kate Bezanson, *Gender and the Limits of Social Capital*, 43 *CANADIAN REV. SOC. & ANTH.* 427 (2006) (arguing that an insufficiently nuanced application of social capital theory can miss important gender structures); Kuntala Lahiri-Dutt & Gopa Samanta, *Constructing Social Capital: Self-Help Groups and Rural Women’s Development in India*, 44 *GEOGRAPHICAL RES.* 285 (2006) (arguing that an uncritical attempt to maximize social capital among rural Indian women backfired because it did not take account of local religious, caste, and political differences). An example of misapprehensions that can arise in applying social capital concepts may be found in Jason Mazzone, *The Social Capital Argument for Federalism*, 11 *S. CAL. INTERDISC. L.J.* 27, 37-42 (2001). Mazzone argues (without any empirical data) that a federal system of government is better than a single national government at promoting social capital, because it creates numerous levers of power in different locations and therefore creates opportunities for stronger and more diversified civic networks. But it is just as likely that by creating numerous dispersed pockets of power, a federal system could hurt overall social capital, if those smaller pockets are more easily captured by interest groups or individuals. Further, even if a federal system increases opportunities for political interaction, there is no guarantee that those interactions would generate cooperation and trust instead of conflict and distrust.

<sup>26</sup> See Clare Farrell, *Thinking Critically about Social Capital*, *IRISH J. SOC.*, Dec. 2007, at 27, 28 (arguing that social capital on the societal level “is no substitute for old fashioned ideas like empowerment or advocacy or mobilization for social change: ideas which are core to community development yet are challenged by social capital’s often functionalist (and conservative) orientation and its consequent emphasis on social cohesion at the expense of social change.” (citations omitted)).

<sup>27</sup> For instance, one author believes that social capital’s effects on society are “more important[ ]” than benefits to individuals. Jason Mazzone, *Toward a Social Capital Theory of*

A client-centered perspective on social capital recalls the Civil Rights Movement, an era of much conflict and unrest that arguably may have reduced generalized societal trust. Nevertheless, the Movement had positive effects on both social networks and societal norms that affected African Americans and other minorities. Most notably, the Movement altered cultural and legal norms that had explicitly oppressed blacks. It also helped create strong networks within the African American community and connected many blacks to other communities, including white and Jewish communities. These inter-community connections began the process of building a more inclusive American identity.<sup>28</sup> Even if the Movement reduced generalized social trust, it had positive effects for client-centered norms and networks.

A client-centered view of social capital also allows social justice lawyers to answer the claim that diversity, including racial diversity, reduces society's overall stock of social capital in the short run. Putnam, for example, has argued that diversity has long-run benefits but "in the short run, . . . immigration and ethnic diversity tend to reduce social solidarity and social capital."<sup>29</sup> He believes that "learning to live with diversity is difficult, but not impossible."<sup>30</sup> While Putnam has lauded the long-run benefits of diversity,<sup>31</sup> other writers have used a similar line of argument to oppose racial integration of schools in Louisiana<sup>32</sup> and to imply that the Civil Rights Movement created as many problems as it solved.<sup>33</sup> Whether Putnam's assertions about the overall costs and benefits of diversity are correct<sup>34</sup> is irrel-

*Law: Lessons from Collaborative Reproduction*, 39 SANTA CLARA L. REV. 1, 6 (1998). Even if true, this is irrelevant in a client-centered view of social capital.

<sup>28</sup> Cf. Robert Putnam, *E Pluribus Unum: Diversity and Community in the Twenty-First Century*, 30 SCANDINAVIAN POL. STUD. 137 (2007), available at <http://www3.interscience.wiley.com/cgi-bin/fulltext/118510920/PDFSTART> [hereinafter Putnam, *E Pluribus Unum*] (arguing that contact with different ethnicities can have short-run negative impacts on social capital, but can lay the groundwork for more inclusive identities with positive long-term effects).

<sup>29</sup> *Id.* at 137.

<sup>30</sup> *Bowling with Robert Putnam: A Conversation with the Author of Bowling Alone*, AM. INT., Jan./Feb. 2008, at 42, 45, available at <http://www.the-american-interest.com/ai2/article.cfm?Id=374&Mid=17>.

<sup>31</sup> Putnam, *E Pluribus Unum*, *supra* note 28, at 140-41 (identifying the long-run benefits of diversity and immigration).

<sup>32</sup> See Stephen J. Caldas et al., *A Case Study of Teachers' Perceptions of School Desegregation and the Redistribution of Social and Academic Capital*, 39 EDUC. & URB. SOC'Y 194 (2007) (arguing that busing black students to white schools is a bad idea because it hurts the social capital of the white students).

<sup>33</sup> William Galston believes that "[a]lthough the civil rights movement is widely acknowledged to have righted ancient wrongs, epidemics of crime, drugs and teenage pregnancy have exacted a fearful toll." WILLIAM A. GALSTON, *LIBERAL PURPOSES: GOODS, VIRTUES AND DIVERSITY IN THE LIBERAL STATE* 273 (1991), quoted in Dorothy E. Roberts, *The Moral Exclusivity of the New Civil Society*, 75 CHI.-KENT L. REV. 555, 569 (2000).

<sup>34</sup> Some argue that diversity does not reduce social trust. See, e.g., Christian Bjørnskov, *Social Trust and Fractionalization: A Possible Reinterpretation*, 24 EUR. SOC. REV. 271 (2008) (arguing based on a large, international data sample that ethnic diversity does not reduce social trust).

evant from a client-centered perspective, so long as diversity and integration benefit our client populations.<sup>35</sup>

Examples in the Docket suggest that conflict can increase client-centered social capital.<sup>36</sup> For instance, the Greater New Orleans Fair Housing Action Center (“GNOFHAC”) successfully sued St. Bernard Parish, an overwhelmingly white parish bordering New Orleans, and overturned an ordinance prohibiting housing rentals to non-blood-relatives.<sup>37</sup> In addition to making a property rights claim, GNOFHAC argued that the ordinance had a disparate racial impact and an unstated discriminatory intent.<sup>38</sup> In the terminology of social capital, St. Bernard Parish allegedly aimed to create legal norms that would insulate its social networks from outsiders and exclude blacks from neighboring Orleans Parish.

It is possible that the very public and visible lawsuit against St. Bernard Parish may have reduced trust in local government institutions, and hurt society-wide measures of generalized trust. The suit’s result may have caused St. Bernard Parish to lose social capital associated with its insular social networks. But, from a client-centered social capital perspective, the lawsuit created networks and norms that benefited our clients. It opened St. Bernard’s social networks (and physical assets, like real estate) to our client population and modeled public norms of tolerance and nondiscrimination. The case illustrates how client-centered social capital analysis is compatible with assertive social justice lawyering.

### III. CLIENT-CENTERED SOCIAL CAPITAL CAN ILLUMINATE INTERNAL DEBATES WITHIN THE PRACTICE OF SOCIAL JUSTICE LAW

#### A. *The Framework of Client-Centered Social Capital Informs the Debate Between Community Lawyering and Impact Litigation*

A client-centered conception of social capital is useful for understanding ongoing tensions within social justice lawyering. Social capital theory identifies social networks and social norms as distinct, important resources for our clients and helps resolve a conflict between two approaches to social justice law that we will call “impact litigation” and “community lawyering.”

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<sup>35</sup> See, e.g., Melissa J. Marschall & Dietlind Stolle, *Race and the City: Neighborhood Context and the Development of Generalized Trust*, 26 POL. BEHAV. 125, 146 (2004) (suggesting that some disadvantaged groups can benefit from heterogeneous interactions, even if not all groups do).

<sup>36</sup> This is not a quantitative article, and we do not have readily available, real-time measurements of social capital in New Orleans. Therefore, we must speculate in our assessments of how legal strategy decisions might affect social capital.

<sup>37</sup> Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, No. 06-7185-HGB-SS, 2008 WL 2510092, at \*1 (E.D. La. June 17, 2008) (award of attorney fees following consent order); see also Docket, *supra* note 3.

<sup>38</sup> Greater New Orleans Fair Hous. Action Ctr., 2008 WL 2510092, at \*1.

In the classic model, impact litigation is lawyer-driven strategic litigation meant to establish social justice norms as law. Groups like the American Civil Liberties Union and the NAACP Legal Defense and Educational Fund, among many others, have pursued high stakes litigation as part of a broader strategy to force changes in the law.<sup>39</sup> Impact litigation lawyers often seek out ideal clients, who do not play a large role in developing or executing litigation strategies. While impact litigation has risks, it can establish broad legal rules that benefit many people.<sup>40</sup>

Community lawyering emerged from critiques painting impact litigation as elitist, disempowering to clients, and too reliant upon notions of change through the courts.<sup>41</sup> Relying on alternatives to litigation and a community-centered approach, community lawyering prioritizes organizing and empowerment strategies.<sup>42</sup> Legal claims and litigation emerge secondarily, if they emerge at all. Community-driven instead of lawyer-driven,<sup>43</sup> this model has enjoyed recent popularity both in practice and in legal scholarship.<sup>44</sup>

Community lawyering has its own limits. Given its ties to a particular community, its scope is often limited to smaller geographic boundaries, and some critics “have wondered whether local, neighborhood-based efforts”

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<sup>39</sup> The most famous example of this is the NAACP’s decades-long strategy to break segregation through a carefully planned series of lawsuits. See RICHARD KLUGER, *SIMPLE JUSTICE* (1977) (tracing history of desegregation lawsuits).

<sup>40</sup> There are real doubts as to whether legal decisions from impact litigation can change society on their own. See, e.g., GERALD N. ROSEN, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991) (arguing that they cannot). Nevertheless, court decisions can certainly trigger political debates that do change society. The obvious example is *Brown v. Board of Education*, 347 U.S. 483 (1954), which triggered debate about the future of race relations, catapulting the country into the height of the civil rights movement and eventually civil rights laws of the mid-1960s. A recent example is *Goodridge v. Department of Public Health*, 798 N.E.2d 941 (Mass. 2003), in which the Massachusetts Supreme Judicial Court found that the prohibition of same-sex marriage violated the state’s constitution. The case triggered national debate and political movements concerning same-sex marriage.

<sup>41</sup> For a detailed discussion, see the seminal book GERALD P. LOPEZ, *REBELLIOUS LAWYERING* (1992), in which the author advocates a new community-based model of lawyering.

<sup>42</sup> See Rose Cuison Villazor, *Community Lawyering: An Approach to Addressing Inequalities in Access to Health Care for Poor, of Color and Immigrant Communities*, 8 N.Y.U. J. LEG. & PUB. POL. 35, 37-38 (2004) (arguing for non-traditional forms of advocacy).

<sup>43</sup> See, e.g., David Dominguez, *Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering*, 12 GEO. J. ON POVERTY L. & POL’Y 55, 55 (2005) (“[L]awyers are more likely to ensure lasting social change if they help residents of underserved communities articulate their own interests and thereby learn to act as their own long-term advocates.”).

<sup>44</sup> See, e.g., Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008); Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619 (1992); Jennifer Gordon, *We Make the Road By Walking: Immigrant Workers, the Workplace Justice Project and the Struggle for Social Change*, 30 HARV. C.R.—C.L. L. REV. 407 (1995); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994). For an extensive set of citations to community lawyering scholarship, see Ascario Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541, 543-45 nn.2-16 (2006).

can “offer a coherent challenge to the larger institutional structures that produce poverty and inequality.”<sup>45</sup> By pulling lawyers towards public education and organizing efforts, community lawyering may reduce the overall number of clients that a single public interest lawyer can represent.<sup>46</sup> Nevertheless, in ways that impact litigation cannot, community lawyering can help build powerful community organizations that remain in place after lawyers leave.

Some authors have implied that community lawyering is more effective at building social capital since it is explicitly focused on empowering social networks.<sup>47</sup> That view is too simple. Developing client-centered social capital requires building both strong social networks and enduring societal norms. While community lawyering emphasizes building networks, impact litigation is focused on developing norms. By identifying networks and norms as separate entities, the client-centered model of social capital provides a framework for understanding the complimentary nature of these two strategies.

Many authors have emphasized the conflict between impact litigation and community lawyering,<sup>48</sup> but both lawyering models can build social capital for our clients and their communities. Rather than prioritizing one lawyering model over the other, we view them as complementary and compatible methods for generating social capital.<sup>49</sup> By reconceptualizing community lawyering and impact litigation in social capital terms, we can also evaluate underlying structures that make one model preferable in a given situation.

In general, community lawyering is a better option when a legal problem affects groups that can easily network and respond. These groups often share common identities, their membership tends to be stable, their members are typically geographically concentrated, and their membership information is generally public or easily available. Community lawyering is also better suited for “repeat interaction” situations, in which a stable and well-defined social network frequently interacts with a particular entity, such as a corporation or government agency. Further, community lawyering better addresses problems like structural poverty, where political solutions tend to be more effective than judicial solutions. Finally, community lawyering is particularly effective when the legal environment is not changing quickly.

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<sup>45</sup> Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 486 (2001).

<sup>46</sup> *Id.* at 491-92.

<sup>47</sup> *See, e.g.*, Bennett, *supra* note 12, at 95.

<sup>48</sup> *See, e.g.*, Villazor, *supra* note 42, at 49. The author writes that “under a typical strategy grounded in litigation, the lawyer and the litigation process itself become agents of client subordination.” While an unhealthy dynamic can exist in any lawyer-client relationship, many impact litigators are able to maintain constructive, empowering relationships with their clients.

<sup>49</sup> *See* Cummings & Eagly, *supra* note 45, at 516-17 (arguing that community lawyering should be seen not as preempting all other approaches to public interest law, but as one of many tools for public interest lawyers).

Client communities lacking some or all of these features may be better served by other legal strategies. In particular, impact litigation functions well for client groups who share common legal issues, but are geographically dispersed or otherwise difficult to organize into stable social networks. Impact litigation is a superior strategy when judicial solutions are as effective as, or even preferable to, political solutions, or when the legal environment is constantly shifting.

Sometimes all of these factors point towards a particular legal strategy. For instance, community lawyering is effective for many land use and housing issues because the residents live together with low turnover, residents share many common interests and legal goals, judicial solutions tend to be inferior to political solutions in land use cases, residents repeatedly interact with the same developers and government agencies, and the legal environment is relatively stable. Community lawyering might also be very effective in building an advocacy organization for parents of children at a particular school.

At other times, analysis of these factors point towards impact litigation. For example, most New Orleans residents became eligible for various types of FEMA benefits after Katrina. However, FEMA has proved to be extremely arbitrary in creating, enforcing, and altering its benefits policies. The class of people affected by these policies is huge, fluid, dispersed, and unlikely to have repeated interactions or a longstanding relationship with FEMA. Affected people have few tools for identifying one another or for building strong social networks. The policies at issue are extremely complex, constantly changing, and subject to substantive judicial review. For these structural reasons, community lawyering strategies are unlikely to resolve disputes with FEMA. Impact litigation has had some success in requiring FEMA to abandon illegal and unfair policies and to comply with fair and equitable norms.<sup>50</sup>

While these examples present ideal cases, most legal issues and client groups fall somewhere in between. In the Docket's immigrant workers' rights cases, plaintiffs in opposition to a single employer often share language, ethnicity, and common interests.<sup>51</sup> Those factors suggest that a com-

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<sup>50</sup> See, e.g., *McWaters v. FEMA*, 436 F. Supp. 2d 802 (E.D. La. 2006) (disentangling legal claims against FEMA, ordering FEMA not to require SBA loan applications as a prerequisite for requesting assistance, and placing limits on how quickly FEMA could terminate hotel assistance for some applicants); *McWaters v. FEMA*, 408 F. Supp. 2d 221, (E.D. La. 2005), *modified*, 408 F. Supp. 2d 221 (E.D. La. 2006) (same); Settlement Agreement, *Brou v. FEMA*, No. 06-0838 (E.D. La. 2006), *available at* [http://www.fema.gov/pdf/library/brou\\_fema.pdf](http://www.fema.gov/pdf/library/brou_fema.pdf) (settling disability access claims against FEMA); *Ridgely v. FEMA*, No. Civ.A. 07-2146, 2007 WL 1728725 (E.D. La. June 13, 2007) (granting class certification to plaintiffs who challenged FEMA's arbitrary procedures for recouping overpayments); FEMA Collection of Overpayments Notice, 73 Fed. Reg. 51,831 (Sept. 5, 2008) (suspending recoupment of FEMA overpayments until further notice).

<sup>51</sup> See, e.g., Complaint at 2, *Navarrete-Cruz v. LVI Envtl. Serv. of New Orleans, Inc.*, No. 06-0489 (E.D. La. Feb. 1, 2006), *available at* <http://www.splcenter.org/pdf/dynamic/legal/LVI-D&LComplaint-1.pdf> (alleging foreign workers not paid properly); Complaint at 3, Daniel

munity lawyering approach would work well. Simultaneously, many plaintiffs are transient migrant workers, and their problems often concern technical areas of immigration and employment law more amenable to judicial solutions than to political ones. These characteristics indicate that an impact litigation approach will succeed. As a result, in this area social justice lawyers have mixed community lawyering techniques with impact litigation strategies.

A good example is *David v. Signal International, L.L.C.*<sup>52</sup> The plaintiffs allege that “[h]undreds of guestworkers from India, lured by false promises of permanent U.S. residency, paid tens of thousands of dollars each to obtain temporary jobs at Gulf Coast shipyards only to find themselves forced into involuntary servitude and living in overcrowded, guarded labor camps . . . .”<sup>53</sup> Attorneys from the Southern Poverty Law Center and elsewhere worked closely with organizers at the New Orleans Workers’ Center for Racial Justice to build an impact litigation strategy. Simultaneous to the litigation, the Workers’ Center helped the plaintiffs organize a protest march, in the tradition of Mohandas Gandhi, from New Orleans to Washington, D.C. The *Signal* case shows how social justice lawyers can successfully identify the underlying social capital factors in a case and apply a mix of lawyering techniques.<sup>54</sup>

Finally, contingency fees and litigation costs can affect strategy. The Docket contains a major class of cases that have significant social justice implications but that employ neither community lawyering nor impact litigation. These cases seek money damages for hurricane victims alleging liability for flooding due to levee failures in and around New Orleans.<sup>55</sup> Defendants in these cases are typically repeat players, such as the Army

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Castellanos-Contreras v. Decatur Hotels, L.L.C., No. 06-4340 (E.D. La. Aug. 24, 2006), available at [http://www.splcenter.org/pdf/dynamic/legal/Decatur\\_Amended\\_Complaint.pdf](http://www.splcenter.org/pdf/dynamic/legal/Decatur_Amended_Complaint.pdf) (same); Second Amended Complaint at 2, *Rodrigues v. Belfor USA Group Inc.*, No. 06-0491 (E.D. La. Jan. 20, 2006), available at [http://www.splcenter.org/pdf/dynamic/legal/belfor\\_complaint.pdf](http://www.splcenter.org/pdf/dynamic/legal/belfor_complaint.pdf) (same); see also Docket, *supra* note 3.

<sup>52</sup> Litigation in this case is ongoing. Most recently, defendants’ motion to dismiss was denied. See *David v. Signal Int’l, L.L.C.*, No. 08-1220, 2008 WL 4266214 (E.D. La., Sept. 11, 2008).

<sup>53</sup> Southern Poverty Law Center, SPLC Lawsuit: Indian Guestworkers Defrauded by Recruiters, Forced into Slave-like Conditions, Legal Action (Mar. 10, 2008), <http://www.splcenter.org/news/item.jsp?aid=302>.

<sup>54</sup> Another example of mixing techniques might be the Juvenile Justice Project of Louisiana’s (“JJPL”) efforts to close juvenile detention facilities around the state. JJPL has worked hard to build networks of families affected by these detention centers and to push for political decisions to close the centers. However, JJPL has often resorted to impact litigation when its organizing efforts stalled. JJPL has been extremely effective in closing detention centers using this combination of community lawyering and impact litigation techniques. See Juvenile Justice Project of Louisiana, *What We Do*, [http://jjpl.org/new/?page\\_id=3](http://jjpl.org/new/?page_id=3) (last visited Oct. 11, 2008).

<sup>55</sup> See, e.g., *Taylor v. State Farm Fire & Cas. Co.*, No. 06-2609, 2007 WL 1237819 (E.D. La. Apr. 25, 2007); *Tommaseo v. United States*, 80 Fed. Cl. 366 (Fed. Cl. 2008); *Orellana v. La. Citizens Prop. Ins. Corp.*, 972 So. 2d 1252 (La. Ct. App. 2007); see also Docket, *supra* note 3.

Corps of Engineers or insurance companies who refused to cover flood damage. These cases might appear to be a perfect fit for community lawyering. The set of clients is large, but the group is well-defined because its members live within the same levee structures. The clients can expect to have repeated interactions with the Army Corps of Engineers and insurance companies who issued policies to them. Further, in the long run, issues of levee and insurance policy will require political solutions. Finally, the legal rules governing levees and insurance do not change often. For all of these reasons, community lawyering techniques could facilitate a network between these clients.<sup>56</sup>

Such networks, however, have not been developed. Because these cases seek large monetary damages, and because they are expensive to litigate, they are handled almost exclusively by the private bar. The private bar has made little or no effort to organize their client groups into powerful, self-sustaining entities (networks), or to seek policy reforms in the areas of levee or insurance policy (norms). If damage claims did not predominate these cases, social justice lawyers may have pursued community lawyering or impact litigation strategies. The availability of significant contingency fees has altered the possibilities in these cases.

By emphasizing the distinct roles of norms and networks, social capital helps to identify the complimentary nature of impact litigation and community lawyering. Analyzing the social capital potential of a client population can help to define viable strategies for lawyering.

*B. Some Disagreements within the Social Justice Community  
Concern the Relative Valuation of Bonding Capital  
Versus Bridging Capital*

There is at least one other way that the conceptual framework of social capital can help to illuminate divisions within the social justice community. While scholars continue to articulate new typologies of social capital,<sup>57</sup> one of the oldest and most useful has been between “bonding,” “bridging,” and “linking” social capital.<sup>58</sup> Bonding social capital occurs among people who identify as belonging to the same group, whether it be cultural, racial, economic, or geographic. Bridging social capital connects people who identify

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<sup>56</sup> For an illustration of non-litigation attempts to create and mobilize community networks around issues relating to levee policy, see the Levees.Org Home Page, <http://www.levees.org> (last visited Oct. 15, 2008).

<sup>57</sup> See, e.g., Bill Reimer et al., *Social Capital as Social Relations: The Contribution of Normative Structures*, 56 SOC. REV. 256 (2008).

<sup>58</sup> Putnam distinguished between bridging and bonding social capital in BOWLING ALONE. See PUTNAM, BOWLING ALONE, *supra* note 16, at 22. Linking social capital has been articulated separately. See Michael Woolcock, *Social Capital and Economic Development: Toward a Theoretical Synthesis and Policy Framework*, 27 THEORY & SOC’Y 151, 166 (1998); see also Alan Middleton, Alan Murie & Rick Groves, *Social Capital and Neighborhoods That Work*, 42 URB. STUD. 1711, 1716 (2005) (discussing three types of social capital).

as belonging to different groups.<sup>59</sup> Both bonding and bridging capital can be thought of as “horizontal.” Linking social capital is a sort of “vertical” bridging capital, connecting local social networks to large and powerful institutions like government agencies, national corporations, and major non-governmental organizations. We argue in this section that many disputes between social justice advocates ultimately concern the relative valuation of bonding versus bridging capital.

Social capital scholars generally believe that while both bonding and bridging capital are required for a healthy society, bonding capital is more frequently exclusionary and parochial, whereas bridging capital is more likely to be inclusive and expansive. For example, Putnam thinks bonding social capital may create internal group networks that help with “getting by,” but he argues that individuals and communities need bridging capital for “getting ahead.”<sup>60</sup> A common problem is that groups might have too little bridging capital and too much bonding capital, making them insular and isolated.<sup>61</sup> For example, a group that has experienced low bridging and high bonding capital is the European Roma, which has strong internal networks but is often isolated from the national societies in which its members live.<sup>62</sup>

Some scholars have challenged the preference for bridging capital over bonding capital as simplistic.<sup>63</sup> Bonding capital may be a prerequisite to building effective bridging capital.<sup>64</sup> More importantly, bonding capital, even exclusionary bonding social networks, can help a community protect itself from outside threats. For example, one study found that strong bonding capital was crucial in enabling a community to successfully oppose an unwanted development of community green space.<sup>65</sup> Neutralizing external threats is likely the reason that many groups exhibit exclusionary bonding behavior in the first place.

<sup>59</sup> See PUTNAM, BOWLING ALONE, *supra* note 16, at 22.

<sup>60</sup> *Id.* at 23 (quoting Xavier de Souza Briggs, *Doing Democracy Up Close: Culture, Power, and Communication in Community Building*, 18 J. PLAN. EDUC. & RES. 1-13 (1998)).

<sup>61</sup> Nicola Morrison, *Neighborhoods and Social Cohesion: Experiences from Europe*, 8 INT'L PLAN. STUD. 115, 135 (2003) (“[L]ocalized, inward-looking initiatives may even start to reinforce the processes which keep the neighbourhood as a whole cut off from mainstream society.”).

<sup>62</sup> See DENA RINGOLD, ROMA AND THE TRANSITION IN CENTRAL AND EASTERN EUROPE viii (2000), available at <http://romanothan.ro/romana/rapoarte/docs/transi.pdf> (“Aspects of Roma culture and living conditions . . . reinforce stereotypes by limiting communication between Roma and non-Roma, and contributing to a vicious circle of isolation and marginalization.”).

<sup>63</sup> Madeleine Leonard, *Bonding and Bridging Social Capital: Reflections from Belfast*, 38 SOC. 927, 941 (2004), available at <http://soc.sagepub.com/cgi/content/abstract/38/5/927> (arguing that the relationship between bonding and bridging capital is far more complex than Putnam believed).

<sup>64</sup> See, e.g., Janet McLellan & Marybeth White, *Social Capital and Identity Politics Among Asian Buddhists in Toronto*, 6 J. INT'L MIGRATION & INTEGRATION 235 (2005) (arguing that Lao refugees needed to build bonding capital before they could effectively build bridges to Canadian society).

<sup>65</sup> Mel Edwards & Jenny Onyx, *Social Capital and Sustainability in a Community Under Threat*, 12 LOC. ENV'T 17 (2007).

As social justice lawyers working with our clients to develop positive, client-centered, social capital outcomes, we must necessarily take a rather pragmatic position on the values of bonding and bridging social capital. We should support those types of social capital that are beneficial to our clients and work to alter those forms of social capital that our clients find harmful or exclusionary. In practice, this can be complex. We believe that both bridging and bonding capital are necessary for a healthy society,<sup>66</sup> and that the relative values of bonding versus bridging capital are subtle and highly context-dependent. Rather than arguing that one is always more important than another, we suggest that the bridging and bonding terminology provides a new perspective from which to understand disagreements within the social justice community.

Social justice lawyers might work with their clients to oppose exclusionary bonding networks that deny their clients access to resources, while simultaneously supporting exclusionary bonding networks that empower clients to resist external threats.<sup>67</sup> As a result, we anticipate that client populations will often be divided as to the value of these distinct social capital goals.

A classic example of a disagreement over the differential valuing of bonding and bridging social capital comes from the strategy debates preceding *Brown v. Board of Education*. Segregation represented insular bonding social capital possessed by whites, to the exclusion of blacks. Although the dominant thread of civil rights thinkers proposed to challenge segregation directly, others, including W.E.B. Du Bois, argued that black children would benefit more from excellent black schools and stronger black communities.<sup>68</sup> Du Bois believed that school integration was likely to cause the abuse and denigration of black children.<sup>69</sup> Without using our modern terms, Du Bois valued bonding capital over bridging capital. While many consider *Brown* to be the ultimate social justice lawyering accomplishment, debates continue within the African American community over the relative values of bonding

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<sup>66</sup> See Delia Baldassarri & Mario Diani, *The Integrative Power of Civic Networks*, 3 AM. J. SOC. 735 (2007) (arguing that both types are desirable); see also Nicholas Young & Binod Sundararajan, *The Social Structure of Freedom: A Structural Analysis of the New York Underground Railroad as an Entrepreneurial Effort* (Aug. 11, 2006) (unpublished manuscript, online at [http://www.allacademic.com/meta/p104697\\_index.html](http://www.allacademic.com/meta/p104697_index.html)) (arguing that various types of social capital among African Americans were crucial in maintaining the Underground Railroad that freed slaves before the Civil War).

<sup>67</sup> See *supra* note 37, and accompanying text (discussing the *St. Bernard* case).

<sup>68</sup> For a discussion of the broader debate between these positions, see RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS* 233 (2007), and MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950*, at 8-12 (1987).

<sup>69</sup> See KLUGER, *supra* note 39, at 170 (discussing a controversial Du Bois article that argued against integration as a primary strategy).

and bridging capital.<sup>70</sup> Derrick Bell argues that “better schooling, not integrated schools, was what the black parents . . . needed and wanted.”<sup>71</sup>

The struggle over public housing in New Orleans also illustrates many of the same themes. Plaintiffs in *Anderson v. Jackson* attempted to stop the demolition of the four largest public housing developments in New Orleans after Katrina.<sup>72</sup> The Housing Authority of New Orleans and the U.S. Department of Housing and Urban Development had decided to demolish the developments, replace them with mixed income redevelopments, and give private rental vouchers to those residents who were not permitted to return. The plaintiffs argued that it was illegal and inequitable to demolish thousands of units of unoccupied public housing while tens of thousands of people remained displaced.

Two of the plaintiffs’ two principal arguments fit well into a social capital framework. First, they argued that abolishing major public housing projects was tantamount to “exiling the poor” from New Orleans.<sup>73</sup> In social capital terms, the plaintiffs argued that government institutions were complicit in perpetuating insular, discriminatory bonding capital among other New Orleans residents. Second, the plaintiffs argued that the government overvalued the integration of public housing residents into the wider community, and undervalued the pre-existing resident communities in their own right. This argument put greater value on the residents’ internal bonding capital than on the bridging capital that a new plan might create. As the *Anderson* plaintiffs’ lawyers argued,

[A]n integration approach to the redevelopment of public housing does not account for the importance of community – relationships solidified by ties providing a feeling of collective identity, self-awareness, and affiliation. In fact, “[i]t is usually at the expense of community that Blacks improve their housing package in integrated settings dominated by Whites.”<sup>74</sup>

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<sup>70</sup> Compare DERRICK BELL, *SILENT COVENANT: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform* (2004) (arguing that integration is neither necessary nor always desirable to empower blacks) with Shaun R. Harper, *Realizing the Intended Outcomes of Brown: High-Achieving African American Male Undergraduates and Social Capital*, 51 AM. BEHAV. SCI. 1030, 1050 (2008) (arguing that *Brown* worked for some, though its benefits still need to be expanded).

<sup>71</sup> Derrick Bell, *Racism as the Ultimate Deception*, 86 N.C. L. REV. 621, 630 (2008).

<sup>72</sup> *Anderson v. Jackson*, No. 06-3298, 2007 WL 4163669 (E.D. La. Nov. 17, 2007); see also Docket, *supra* note 3.

<sup>73</sup> See Judith Browne-Dianis & Anita Sinha, *Exiling the Poor: The Clash of Redevelopment and Fair Housing in Post-Katrina New Orleans*, 51 HOW. L.J. 481, 484-85 (2008).

<sup>74</sup> *Id.* at 501 (quoting John O. Calmore, *Spatial Equality and the Kerner Commission Report: A Back-to-the-Future Essay*, 71 N.C. L. REV. 1487, 1501, 1505 (1993)); see also Susan Greenbaum, *Comments on Katrina*, 5 CITY & COMMUNITY 109, 111 (2006) (arguing that excluding former public housing residents ignored the value of their prior communities); Susan Greenbaum, *Poverty and the Willful Destruction of Social Capital: Displacement and Dispossession in African American Communities*, 20 RETHINKING MARXISM 42, 51 (2008) (arguing that programs like HOPE VI improperly ignore the value of bonding capital).

In contrast, other advocates for social justice supported the proposed move to “mixed income” housing and vouchers on the grounds that this would permit former residents to move out of public housing developments that had significant social problems, including violent crime, extreme poverty, and racial isolation. In social capital terms, these advocates believed that the potential for building bridging capital in a move to mixed income developments outweighed the value of insular and isolating bonding capital that existed in pre-Katrina public housing developments. Affected former public housing residents were also divided on the future of public housing.<sup>75</sup>

#### IV. NEW DIRECTIONS FOR SOCIAL CAPITAL IN NEW ORLEANS

This article has argued that a client-centered social capital framework can illuminate the ongoing debates between social justice lawyers. We now provide three brief recommendations to apply these concepts to the situation in New Orleans.

##### A. *Use Social Network Analysis to Build a Lawyering Strategy*

In Part III.A, we showed how social capital network analysis helps advocates decide whether community lawyering or impact litigation is more suitable for addressing a specific legal problem. We suggested that advocates use this analysis consistently to make strategic and tactical advocacy decisions. To the extent that the following factors are present, we would expect community lawyering and organizing tools to be most effective:

- Membership in the affected group is relatively stable, or easily identifiable
- Group members share some form of common identity (whether geographic, economic, cultural, ethnic, or otherwise)
- Group members have some forum or means of communication
- Group members have repeated interactions with relevant institutions (providing an opportunity for building relationships)
- Political solutions are preferable to judicial solutions
- The legal environment is relatively stable

To the extent these factors are not present, an impact litigation strategy may be a more effective vehicle for addressing injustice.

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<sup>75</sup> While many former residents clearly wished to return to the public housing developments, there were a significant number who supported the demolition plan. The supporters included some of our own clients at New Orleans Legal Assistance, as well as other former residents who spoke publicly in favor of the demolition. *See, e.g.,* Coleman Warner & Gwen Filosa, *Unanimous Council Votes To Raze 4,500 Units*, NEW ORLEANS TIMES-PICAYUNE, Dec. 21, 2007, at 1, available at 2007 WLNR 25192134.

*B. Find Creative Ways to Build Racially Bridging Capital in New Orleans*

We have several qualitative conjectures about how social capital in New Orleans may presently be structured. First, New Orleans and Louisiana present classic patterns of low society-level social capital: weak democratic institutions, high levels of corruption, high levels of crime and violence, and low levels of generalized trust. Second, despite these problems, New Orleans has some indicators of significant bonding social capital: Mardi Gras krewes, social aid and pleasure clubs, and many other civic groups. Third, the major dearth of social capital in New Orleans, and a major cause of social injustice in the region, appears to be a lack of bridging capital between blacks and whites. This pattern has deep historical roots, principally more than three centuries of slavery followed by almost a century of racial segregation that is still remembered by many people alive today.

We challenge social justice advocates in the region and elsewhere to look for creative ways to build racially bridging social capital while working to eliminate injustice for our clients. Social justice lawyers need tools that they can operationalize for real-time strategy decisions. Unfortunately, empirical work on social capital is still in an early stage and does not make well-established prescriptive recommendations for how social capital can and should be built.

*C. Expand Recent Efforts to Create Linking Capital*

Recall from Section III.B that linking capital connects citizen social networks vertically to major institutions like government agencies, large corporations, and national NGOs. A model for this is the Louisiana Housing Alliance (“LHA”), a statewide coalition of housing advocates, non-profit housing providers, homeless service providers, fair housing organizations, and local housing coalitions. Formed after Hurricane Katrina, LHA has more than 100 member organizations and is the Louisiana state partner of the National Low Income Housing Coalition. LHA has pulled together not just NGO advocates but also government officials from the Louisiana Housing Finance Agency, which distributes federal low-income tax credits. LHA is designed to effectively advocate for more, and better, low-income housing policies throughout the state. During its formation after Katrina, LHA developed with help from PolicyLink, a national policy group, and the Louisiana Association of Nonprofit Organizations. LHA can bring together unlikely allies by creating effective “linking” capital between local housing groups, national NGOs, and state and federal agencies.

We believe that there is room to expand the LHA-type model, focused on “linking” capital between civic groups and government agencies, into

other issue areas such as health care, criminal justice,<sup>76</sup> and the environment. We hope that the framework of client-centered social capital can help social justice advocates to find creative solutions for their clients.

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<sup>76</sup> The City Council made movements in this direction after Katrina with two Crime Summits, but this process has apparently been abandoned.