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FOREWORD: CRITICAL LEGAL EMPOWERMENT

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INTRODUCTION

“Historically, pandemics have forced humans to break with the past and imagine their world anew. This one is no different. It is a portal, a gateway between one world and the next. We can choose to walk through it, dragging the carcasses of our prejudice and hatred, our avarice, our data banks and dead ideas, our dead rivers and smoky skies behind us. Or we can walk through lightly, with little luggage, ready to imagine another world. And ready to fight for it.”

—Arundhati Roy, 2020¹

In 2019, 5.1 billion people worldwide were found to live outside the protection of the law.² Global pandemics, climate emergencies, threats to democracy, and income inequality continue to exacerbate this justice crisis.³ Take, for example, the United States, where tens of millions of Americans face civil justice problems.⁴ For those living on the margins, a medical emergency, an eviction notice, or a change in immigration status can hurl families deeper into poverty, putting them at risk of incarceration, family separation, or death.⁵ The COVID-19 pandemic laid this bare, with serious illness and job losses overwhelmingly “affect[ing] low-wage, minority workers.”⁶

And yet, when injustice arises, most people in the United States are left to navigate a highly technical labyrinth of laws, regulations,

¹ Arundhati Roy, “*The Pandemic Is a Portal*,” *FIN. TIMES* (April 3, 2020), <https://www.ft.com/content/10d8f5e8-74eb-11ea-95fe-fcd274e920ca> [<https://perma.cc/7LU6-ZBEN>].

² THE TASK FORCE ON JUSTICE, JUSTICE FOR ALL – FINAL REPORT 18 (2019), <https://www.justice.sdg16.plus> [<https://perma.cc/7TXH-M8DR>] (“In total, 5.1 billion people—two-thirds of the world’s population—lack meaningful access to justice.”). These are people who “live in the most extreme conditions of injustice,” “try and fail to solve problems that have a legal dimension,” and “lack the legal protections that allow them to claim their rights, fulfill their potential, and participate in shaping the future of their countries.” *Id.* at 32.

³ Joseph E. Stiglitz, *COVID Has Made Global Inequality Much Worse*, *SCI. AM.* (Mar. 1, 2022), <https://www.scientificamerican.com/article/covid-has-made-global-inequality-much-worse> [<https://perma.cc/EHJ9-NEQY>] (“Global billionaire wealth grew by \$4.4 trillion between 2020 and 2021, and at the same time more than 100 million people fell below the poverty line.”).

⁴ Rebecca L. Sandefur, *Access to What?*, 148 *DAEDALUS* 49, 49 (2019) (“Tens of millions of Americans face justice problems that place them at risk of devastating outcomes.”); *see also* John G. Levi & David M. Rubenstein, *Introduction*, 148 *DAEDALUS* 7, 8 (2019) (“The 2017 report found that some 71 percent of low-income households had experienced at least one civil legal problem in the previous year.”).

⁵ Sandefur, *supra* note 4, at 49.

⁶ Heather Long, Andrew Van Dam, Alyssa Flowers & Leslie Shapiro, *The Covid-19 Recession Is the Most Unequal in Modern U.S. History*, *WASH. POST* (Sept. 30, 2020), <https://www.washingtonpost.com/graphics/2020/business/coronavirus-recession-equality> [<https://perma.cc/5CQD-VXMS>].

and court systems without any meaningful support.⁷ Indeed, eighty-six percent of low-income Americans reported inadequate or no legal help to address their civil legal problems, and ninety percent of tenants facing eviction reported having no lawyer, while more than ninety percent of the landlords reported having one.⁸ 2022 statistics from the American Bar Association show that only 7.7% of lawyers who graduated from law school in 2021 work in the public interest sector.⁹

These numbers, while shocking, do not capture the human impact of the many injustices the Black, Brown, low-income, LGBTQI+, and other marginalized people in the United States face each day. This is a crisis of injustice, and it calls for a deep change in approach to alter the basic conditions of those who experience persistent injustice. In our current legal ecosystem, lawyers place themselves at the center of efforts to resolve justice problems. Legal empowerment—a global movement led by the grassroots, with lawyers and other professionals in supporting, rather than leading, roles—is a crucial part of the justice transformation that is needed.¹⁰ Inspired by grassroots justice efforts in the United States and around the globe, the 2022 annual *New York University (N.Y.U.) Law Review* Symposium volume, *Critical Legal Empowerment: Strategies for Community Built Justice*, is a partnership between the *N.Y.U. Law Review* and the Bernstein Institute for Human Rights. The collaboration is rooted in a desire to

⁷ See Gillian K. Hadfield, *More Markets, More Justice*, 148 DAEDALUS 37, 38–39 (2019) (“[M]ore complex systems require more expertise and specialization, which means people can’t access the system of rules if they can’t afford to hire expert help.”); see also Beenish Riaz, *Envisioning Community Paralegals in the United States: Beginning to Fix the Broken Immigration System*, 45 N.Y.U. REV. L. & SOC. CHANGE 82, 85 (2021) (“The access-to-justice crisis is especially acute in the U.S. immigration context. In deportation cases . . . ‘only 37% of all immigrants, and a mere 14% of detained immigrants’ have legal representation.”).

⁸ Levi & Rubenstein, *supra* note 4, at 8; see also James Barron, *A Legal Challenge to Rules Against Legal Advice from Nonlawyers*, N.Y. TIMES (Jan. 26, 2022), <https://www.nytimes.com/2022/01/26/nyregion/legal-advice-volunteers-consumer-debt.html> [<https://perma.cc/QB23-ZANX>] (“In 2018 and 2019, a total of 265,000 consumer debt suits were filed . . . in New York State. Over 95 percent of the defendants were not represented by a lawyer, and of those, 88 percent did not respond to the suit.”).

⁹ AM. BAR ASS’N, EMPLOYMENT OUTCOMES AS OF APRIL 2022 (CLASS OF 2021 GRADUATES) 1 (2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2022/class-2021-online-table.pdf [<https://perma.cc/GF75-Y7YF>].

¹⁰ Margaret Satterthwaite, *Critical Legal Empowerment for Human Rights*, in LEGAL MOBILIZATION FOR HUMAN RIGHTS: COLLECTED COURSES OF THE ACADEMY OF EUROPEAN LAW 1, 2 (Grainne de Búrca ed., 2022). This Section and the next one draws on and integrates language from the piece without formally citing all passages from which the concepts come.

uplift the knowledge, voices, and demands of those directly impacted in the building of an American legal ecosystem that is truly just.¹¹

Legal empowerment is a rights-based methodology that democratizes laws and centers people in their own fight for justice by creating opportunities for people to “know, use, and shape” the laws that impact their lives.¹² The field has iterated and evolved, drawing insights from trade-union and feminist movements, which saw the “emancipatory power of popular education and therefore embedded rights awareness with self-reflection and collective action.”¹³ It also finds roots in anti-apartheid movements where community members partnered with lawyers, NGOs, and churches to document violations, provide legal assistance, and bear witness to the injustice endured by communities of color.¹⁴ Legal empowerment emerged as a principal strategy to increase access to justice.¹⁵ However, as it was adopted by the development and international aid sector, legal empowerment took on an increasingly technocratic character.¹⁶ When used by these global actors, the term was often associated with property rights and the formalization of assets and transactions in the informal sector.¹⁷ The term gained prominence with the 2008 UN Commission on Legal

¹¹ To realize this vision and ensure we practice the values we espouse, the Bernstein Institute and the *N.Y.U. Law Review* invited a dynamic group of community justice advocates to serve as Advisory Committee members: Nixon Boumba, Ariadna Godreau-Aubert, Antonio Gutierrez, Lam Ho, Jay Monteverde, Jhody Polk, Alejo Rodriguez, and Jayshree Satpute. The Committee contributed valuable collective inquiry and reflection, as we co-designed a symposium that solidifies the knowledge that comes from lived experience.

¹² Sukti Dhital & Tyler Walton, *Legal Empowerment Approaches in the Context of COVID-19*, 19 J. HUM. RTS. 582, 582 (2020). This Section draws on and integrates language from the piece without formally citing all passages from which the concepts come.

¹³ FRANCESCA FERUGLIO, *DO MORE EMPOWERED CITIZENS MAKE MORE ACCOUNTABLE STATES? POWER AND LEGITIMACY IN LEGAL EMPOWERMENT INITIATIVES IN KENYA AND SOUTH AFRICA* 6 (2017); see also Margaret Levi, *Organizing Power: The Prospects for an American Labor Movement*, PERSPS. ON POL., Mar. 2003, at 45–68 (discussing labor union organizing strategies).

¹⁴ See Jackie Dugard & Katherine Drage, *‘To Whom Do the People Take Their Issues?’ The Contribution of Community-Based Paralegals to Access to Justice in South Africa* 11, 14 (Just. and Dev. Working Paper, Paper No. 21, 2013) (providing an overview of the evolution of the community paralegal movement in South Africa).

¹⁵ Stephen Golub, *Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative* 3 (Carnegie Endowment Working Paper, Paper No. 41, 2003).

¹⁶ See *id.* (noting the value of legal empowerment as an essential strategy to advance socioeconomic development); see also Rachel M. Gisselquist, *Legal Empowerment and Group-Based Inequality*, 55 J. DEV. STUD. 333, 333, 343–44 (2019) (noting different realms legal empowerment has been used in, arguing that legal empowerment can inform research and practice, and explaining the weaknesses of understanding legal empowerment only through an evidence-based policy perspective).

¹⁷ See Bård A. Andreassen, *The Right to Development and Legal Empowerment of the Poor*, 33 BANGL. DEV. STUD. 311, 313 (2010) (“The legal empowerment agenda assumes that secure property to means of production . . . can help improve people’s opportunity to

Empowerment of the Poor (CLEP), which defined “legal empowerment” as “the process through which the poor become protected and are enabled to use the law to advance their rights and their interests.”¹⁸ Today more than 2,900 organizations in over 170 countries are part of a global network dedicated to legal empowerment.¹⁹

I

CRITICAL LEGAL EMPOWERMENT

A growing community of practitioners and academics reject technocratic approaches to legal empowerment, as those approaches assume the “existence of a legal system that dispenses justice.”²⁰ This pursuit “obscure[s] the current distribution of economic, social, and political power, and how that distribution favors those who have power and burdens those who do not.”²¹ In its place, we call for critical legal empowerment, an approach that embraces community-based efforts to redistribute legal power and demands space for communities to engage directly in legal work and the legal profession.²² We suggest that the potential of legal empowerment will be more fully realized when it embraces a “critical” shift to understanding that social change—and transformations in major economic, social, and cultural structures—will come only when legal efforts effectively build the power of communities facing human rights violations to transform those systems. It necessitates a shift from viewing directly impacted people as “recipients of services provided by lawyers and other professionals into change agents who force greater transparency, accountability, and fairness” from legal systems.²³ Inspired by scholars of critical race theory, this quality of critique requires self-reflection, humility, and a commitment to critical praxis grounded in the grassroots.²⁴

invest in production of marketable goods and hence, contribute to a long-term reduction or abolition of property.”).

¹⁸ COMM’N ON LEGAL EMPOWERMENT OF THE POOR & UNITED NATIONS DEV. PROGRAMME, MAKING THE LAW WORK FOR EVERYONE: REPORT OF THE COMMISSION ON LEGAL EMPOWERMENT 26 (2008).

¹⁹ *About the Network*, NAMATI, <https://www.namati.org/network> [<https://perma.cc/N4UL-KMN3>].

²⁰ Sameer Ashar & Annie Lai, *Access to Power*, 148 DAEDALUS 82, 83 (2019).

²¹ *Id.* at 82.

²² For a brief summary of legal empowerment methods used in immigrant rights, see JUST. POWER, <https://www.justicepower.org> [<https://perma.cc/CJF4-72J4>].

²³ Janet Moore, Marla Sandys & Raj Jayadev, *Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform*, 78 ALB. L. REV. 1281, 1281 (2015).

²⁴ See Angela P. Harris, *Racing Law: Legal Scholarship and the Critical Race Revolution*, 52 EQUITY & EXCELLENCE IN EDUC. 12, 17–19 (2019); see also Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-*

In this way, critical legal empowerment serves to help isolated communities in the United States by acting as “a safe road for . . . me and my family, for me and my community, for me and my neighbors, for me and our youth, for me and my local leaders, for me and institutions, for me and my incarcerated communities to think about the law.”²⁵ From community-driven litigation to community paralegals to accompaniment programs (among others), these strategies envision community participation as essential to the legal work—inside and outside of the courtroom. Community paralegals (also known as “barefoot lawyers,” community legal workers, or justice advocates) are individuals who are informally trained on law and skills²⁶ and become agents of social change who serve as a bridge between their community and the systems they navigate, lifting up new community-generated demands.²⁷ Community-driven litigation is an approach to lawyering that transfers legal power into the hands of community members and reimagines the position of attorneys relative to their clients and community partners as “collaborators” rather than “experts.”²⁸ Immigration and criminal courts across the country

Civil Rights America, 95 MICH. L. REV. 821, 829, 874 (1997) (noting that “[c]ritical race praxis combines critical pragmatic, socio-legal analysis with political lawyering and community organizing to practice justice by and for racialized communities” and that “[i]ts central idea is that racial justice requires antistatist practice,” with the praxis a way of “infusing antiracism practice with aspects of critical inquiry and pragmatism, and then recasting theory in light of practical experience”).

²⁵ Jhody Polk, Founder and Dir., Legal Empowerment and Advoc. Hub, Bernstein Institute for Human Rights and *N.Y.U. Law Review* Symposium: Critical Legal Empowerment, What Is Critical Legal Empowerment? (Feb. 24, 2022), <https://www.youtube.com/watch?v=DIImPXJoFoA> [<https://perma.cc/7P48-CVWY>].

²⁶ Many community justice workers receive training from grassroots and community-based organizations. Some of these training programs are in-depth, substantial, and challenging. However, these advocates do not usually receive training in accredited, license-certifying institutions like law schools. See Vivek Maru & Varun Gauri, *Paralegals in Comparative Perspective: What Have We Learned Across These Six Countries?*, in COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE 1–42 (Vivek Maru & Varun Gauri eds., 2018).

²⁷ Conducting a comparative study of the work of community paralegals across six countries, Maru and Gauri note that “the most effective [community] paralegals served as educators, demystifying law and equipping people to advocate for themselves” and that “[a]t their best, paralegals help people journey from powerlessness to hope.” *Id.* at 29.

²⁸ See Antonio Gutierrez, Co-Founder, Org. Cmty. Against Deportations, Bernstein Institute for Human Rights and *N.Y.U. Law Review* Symposium: Critical Legal Empowerment, Community-Driven Litigation: Transferring Legal Power to Community (Feb. 25, 2022), <https://www.youtube.com/watch?v=8xfvB8udug> [<https://perma.cc/AU9N-F5YX>]. (“Attorneys need to understand that these conversations, these litigation projects are not for them, [it] is not their time to shine, but it is really a time for the narrative of those directly impacted to be amplified, to create a platform for them because they have never had that.”); see also Jules Lobel, *Participatory Litigation: A New Framework for Impact Lawyering*, 74 STAN. L. REV. 87, 92, 96 (2022) (noting that participatory litigation involves plaintiffs “in all aspects of the suit,” including “choosing class representatives,

increasingly recognize the power of accompaniment, a strategy that promotes the rights and dignity of immigrants and challenges power dynamics by bearing witness, expressing solidarity, and transforming power within legal settings.²⁹ The use of popular rights education continues to be a powerful legal empowerment strategy; when laws are translated into a language that the community can engage and use, rights awareness becomes a tool of self-reflection and collective action.³⁰

It is with this backdrop that we—three activist lawyers and professors—share our respective journeys towards critical legal empowerment. Each of us saw the law as a tool to advance human rights and social justice in the United States and around the world. And while we secured important legal victories for our clients and their communities, we experienced a reckoning—a sometimes painful acknowledgement of the ways the legal system and the legal profession actively harm and silence community voices and participation.³¹ From regulations that bar community members from offering advice to each other,³² to rules that limit who can speak in court,³³ or negotiations conducted without the presence of clients and communities,³⁴ many structures within the legal system marginalize community voices.³⁵ Legal education and the legal profession exalt attorneys as

deciding on claims to present, making important tactical decisions, negotiating and ratifying a settlement agreement, and monitoring the settlement decree,” and envisions “participation as a fundamental component of class-action, impact, and movement litigation”).

²⁹ See *Accompaniment*, JUST. POWER, <https://www.justicepower.org/accompaniment> [<https://perma.cc/DPB7-FBJ4>] (defining accompaniment and detailing how it is used in the immigration space); see also Moore et al., *supra* note 23, at 1283, 1289.

³⁰ See Feruglio, *supra* note 13, at 21, 23, 35 (“Education programmes help citizens to grapple with the political and juridical systems which, coupled with increasing awareness of rights and building their skills, provides them with a language and a platform to engage with the state.”).

³¹ See Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 544 (1988) (“The gap between what poor people want to say and what the law wants to hear often seems enormous.”).

³² See MODEL RULES OF PRO. CONDUCT r. 5.5(a), (b) (AM. BAR ASS’N 2018).

³³ See Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G*, 38 BUFF. L. REV. 1, 4 (1990) (“[B]ureaucratic institutions disable all citizens—especially those from subordinated social groups—from meaningful participation in their own political lives.”).

³⁴ See Lobel, *supra* note 28, at 94, 128 (stating that “[i]n class-action lawsuits, plaintiffs are often excluded from any role, with courts even allowing lawyers to settle claims despite the opposition of most named plaintiffs or class members” and that the legal code of ethics places “ultimate legal decisionmaking power in the lawyer’s hands”).

³⁵ See Todd A. Berger, *The Constitutional Limits of Client-Centered Decision Making*, 50 U. RICH. L. REV. 1089, 1108 (2016) (noting that current ethics rules “leave the lawyer relatively free to decide strategic and tactical questions as he or she sees fit, even in the face of a client’s objections”).

the “experts” or project them as “saviors”—those uniquely qualified to “diagnose people’s problems as legal, and to provide the services that treat them.”³⁶ The combination of rules that exclude communities and trainings that teach attorneys to see themselves as the protagonists³⁷ in justice stories place lawyers at the center of a monopolistic legal ecosystem with minimal input from the clients and communities impacted by injustice.³⁸ This lawyer-centered approach limits imagination and carries harmful consequences.³⁹ It is in this place of humility, embrace of collective problem solving, and recognition of lived experience as expertise where critical legal empowerment begins.

II

SUKTI

As a first-generation Nepali immigrant, I was drawn to the law as a tool to advance social change, particularly for women and other marginalized communities. Years after becoming a lawyer, I was living and working in New Delhi, India, at a local human rights organization directing its Reproductive Rights unit. It was exhausting, creative work—with legal petitions filed across the country addressing maternal mortality, unsafe abortions, and forced sterilizations and their devastating impacts on women. Our team secured legal victories

³⁶ Sandefur, *supra* note 4, at 49–50 (noting “the key assumption that any problem with legal implications requires the involvement of a legally trained professional for a just, fair, or successful resolution”); *see also* White, *supra* note 31, at 544 (“[T]he professional culture of legal training and practice leads advocates to compound the isolation and dependency that clients already feel.”); William L.F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447, 1451–52 (1992) (“The predominant image of the lawyer-client relationship is one of professional dominance and lay passivity. The lawyer governs the relationship [and] defines the terms of the interaction Lawyers resent and resist the few clients who take an active role in their cases, considering them hostile.”).

³⁷ *See* Jennifer Gordon, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CALIF. L. REV. 2133, 2133 (2007) (noting that the “conventional narrative” frames the lawyer as the protagonist called to solve a social problem).

³⁸ *See* Robert W. Gordon, *Lawyers, the Legal Profession & Access to Justice in the United States: A Brief History*, 148 DAEDALUS 177, 187 (2019) (noting that professional organizations like bar associations “are primarily guilds whose aim is to protect and expand monopoly domains for their members’ work, demand for their services, and their fees and profits”); *see also* Felstiner & Sarat, *supra* note 36, at 1452 (referencing a study by Spangler that found “private practitioners and corporate counsel are less likely to dictate action to their clients than are legal services lawyers”).

³⁹ Ashar and Lai have expressed skepticism with the premise that more lawyers are the answer to the access-to-justice crisis. *See* Ashar & Lai, *supra* note 20, at 83 (“[T]raditional access-to-justice approaches ha[ve] not in fact produced justice. Those initiatives missed a crucial point. Legal process is a means by which the powerful are able to legitimize the system’s outcomes, violent as they may be.”).

that recognized these issues as human rights violations, and yet, the groundbreaking decisions failed to translate to real changes on the ground.

I'll never forget our client Fatima, who delivered her baby under a tree in public view because the local hospital denied her medical care. We filed a case in the Delhi High Court arguing that the government violated Fatima's constitutional and human rights by failing to provide her life-saving pregnancy care. A year later we secured the first decision by a national court to recognize maternal mortality as a human rights violation and award constitutional damages.⁴⁰ We were overjoyed by the victory and what it meant for women around the world. However, six months later Fatima was still living under a tree, barely able to care for her mother and children, and largely unaware of her rights under the law. This happened time and time again. Governments would disregard our court orders, and affected communities remained unaware of their rights. We recognized the limits of our legal approach and an accompanying need to redistribute legal power to directly impacted communities. Even though community leaders carried generational wisdom—a deep understanding of cultural context and strategies to navigate oppressive systems—they rarely were brought into discussions with lawyers around legal advocacy. We wondered: Could we create an organization that built community power and centered grassroots legal education and empowerment?

These questions led to the co-founding of Nazdeek, a legal empowerment organization dedicated to bringing access to justice closer to marginalized communities in India.⁴¹ In partnership with indigenous and Dalit⁴² women, we helped build collectives of community paralegals in the most unexpected of places. Nazdeek taught basic laws, rights, and skills (such as data collection, advocacy, and complaint drafting) to indigenous women in the tea gardens of Assam and

⁴⁰ See *Laxmi Mandal v. Deen Dayal Harinagar Hosp.*, 172 (2010) DLT 9 (India); see also Ximena Andión Ibañez, *The Role of National and International Courts: Human Rights Litigation as a Strategy to Hold States Accountable for Maternal Deaths*, in *MATERNAL MORTALITY, HUMAN RIGHTS AND ACCOUNTABILITY* 49 (Paul Hunt & Tony Gray eds., 2013) (noting that the decision will have “major implications for future public interest litigation combating maternal mortality”).

⁴¹ See *About Us*, NAZDEEK, <https://www.nazdeek.org> [<https://perma.cc/8F9R-TX74>].

⁴² See Thenmozhi Soundararajan, *A New LawsUIT Shines a Light on Caste Discrimination in the U.S. and Around the World*, WASH. POST (July 13, 2020), <https://www.washingtonpost.com/opinions/2020/07/13/new-lawsuit-shines-light-caste-discrimination-us-around-world> [<https://perma.cc/9LEE-DYA4>] (“Caste is a structure of oppression that affects more than 260 million people[.] . . . determining every aspect of their life . . . Dalits, who are at the bottom of this system, are branded ‘untouchable’ and sentenced to a caste apartheid . . . [and] in South Asia, the impunity surrounding this oppressive system is unyielding.”).

Dalit women in the informal settlements of Delhi.⁴³ Over time, they became community paralegals who collected data on human rights violations, filed cases, organized protests, and accompanied community members through their justice journeys. And we became collaborators who learned to listen, embrace collective problem solving, and translate laws into an accessible language that our community partners could use. We were not familiar with the vocabulary then, but we were practicing critical legal empowerment. We worked in partnership with women leaders to create opportunities to learn, activate, shape, and ultimately transform the laws that impact their lives.⁴⁴ And it worked. Through collaborative advocacy, litigation, and organizing, creative community-rooted solutions emerged that resulted in higher wages, better hospitals, and a moratorium on forced evictions.⁴⁵ Crucially, at the center of these efforts were women who saw themselves as agents of change.

After nearly a decade in India, in 2016 I moved back to the United States and joined the newly established Bernstein Institute for Human Rights at the NYU School of Law.⁴⁶ I was charged with creating a compelling mission and vision for the Institute—and legal empowerment felt like the natural place to begin. In so many countries around the world, as my experience in India had shown, there were diverse and dynamic roles for community members to engage in legal work. And yet here in the United States, our profession actively excluded community participation in legal work and reinforced a system of hierarchy that was not only costly and inaccessible, but also continued to marginalize those directly impacted by injustice. In response, we built a center dedicated to advancing human rights through critical legal empowerment, and embraced a participatory approach to human rights research, education, and advocacy. Our

⁴³ Francesca Feruglio, *Legal Empowerment as a Path Towards Social Justice and Inclusion: The Work of Nazdeek*, ADVICENOW, https://www.advicenow.org.uk/sites/default/files/uploads/F-Feruglio_Nazdeeks-work.pdf [<https://perma.cc/46PW-8SU3>].

⁴⁴ See Maru & Gauri, *supra* note 26, at 35 (“Community paralegals have the potential to turn law into something people can understand, use, and shape. . . . [W]e found paralegals applying a combination of six broad approaches to help people exercise their rights: (1) education, (2) mediation, (3) organizing, (4) advocacy, (5) monitoring, and, with the help of lawyers, (6) litigation.”); see also Riaz, *supra* note 7, at 89 (“Many community paralegals have experienced the system themselves or have had family members experience the system, so they understand where immigrants come from and can help individuals exercise their agency, make informed decisions, and better participate in their cases.”).

⁴⁵ *Nazdeek*, Rts. CoLAB, https://www.rightscolab.org/case_study/nazdeek [<https://perma.cc/3DJ3-Y3RT>].

⁴⁶ ROBERT & HELEN BERNSTEIN INST. FOR HUM. RTS., <https://www.law.nyu.edu/centers/bernstein-institute> [<https://perma.cc/9CZ4-CW3H>].

north star remains a deep commitment to uplifting and supporting community-based efforts to redistribute legal power. This means creating opportunities for community members to share their expertise and wisdom with traditional legal actors, advocating for reform of regulations that limit community participation, and modeling a way of collaboration between attorneys, community members, and justice allies that is rooted in trust, humility, and creative problem solving.

III

LAM

In early 2022, I represented a Vietnamese immigrant woman in a divorce case. During a hearing, as she painstakingly and painfully testified about her brutal rape by her husband, the judge repeatedly interrupted, telling her to stop speaking. She should only speak to answer questions asked by her lawyer: Even when I asked questions that she did not want to answer, my questions failed to elicit the suffering she experienced, or they did not give her an opportunity to say what she wanted—needed—to say. After her direct testimony concluded, her husband attempted a cross examination. The judge rejected every question he tried to ask because he could not phrase them in the proper form or establish their relevance. When it was his turn to present his testimony, the judge rejected every effort he made to present his case because he could not frame it within the scope of the hearing. Flustered, frustrated, and resigned, he stopped trying. Chastened into silence, not able to offer any defense, he waited for the judge to make a decision that would radically alter his life. While I was satisfied with the outcome of the hearing and the protections we secured for our client, I felt complicit in denying her husband any opportunity to defend himself. Both parties were effectively silenced by the legal system that was supposed to be a platform for fairness.

The hearing brought back memories of another Vietnamese immigrant couple and their forced silence. When I was in elementary school, my mother didn't have a say in her divorce. Without an attorney, she signed papers giving away everything—all rights to her children and the little money that my parents had saved working overnight shifts on an assembly line—due to mistaken fears of being deported back to Vietnam. When I was in college, my father stood silently in court facing criminal charges in a different case. There were no Vietnamese interpreters, so he didn't say anything. I'm not sure if he fully understood what was happening in the legal proceeding. The judge spoke only to me, asking a few brief questions about the allegations, even though I was not there to witness the incident. Based

solely on my responses, he ruled on my father's case. What could be more credible and probative than my English words? Certainly not those of a Vietnamese immigrant who couldn't speak English—even if they belonged to the one whose actions were being judged and whose life could be ruined.

I became a lawyer because of my parents. I thought I could become a lawyer who could empower people like my parents to use their voices as effective self-advocates in our legal system. But after I started practicing law, I realized that as a lawyer, I actually played a large role in how the legal process strips people of their agency. From the moment we take on a case, lawyers are expected to take over speaking for their clients. Judges appear to prefer the “decorum” and “efficiency” of communicating through attorneys, so they typically expect to only hear from lawyers, except in controlled situations like when we conduct highly regulated direct and cross examinations of people. Frequently, litigants are discouraged, or even prohibited,⁴⁷ from attending their own hearings. So we translate their stories into legal language, effectively rewriting our clients into caricatures of the most victimized and helpless versions of themselves. To garner sympathy from judges and juries, we routinely portray women as battered and powerless, desperately needing the court's intervention—focusing on what they suffered while ignoring all they have done to fight back. We present immigrants and refugees as suppliant targets of persecution fleeing dangerous, poor countries—disregarding their resilience in escaping a bad situation and ignoring the rich, fulfilling lives they lived in their native countries.

These realizations catalyzed my search for an approach to law that recognized how hierarchical, marginalizing, and silencing the American legal system is, including the very practice of law by direct legal services and other public interest lawyers. It led me to critical legal empowerment and the founding of Beyond Legal Aid, an organization that collaborates with activists and organizers to empower underserved communities to create their own community-located, community-owned and operated, and, most importantly, community-directed legal aid programs.⁴⁸

Indeed, my journey toward legal empowerment was marked by mistakes that reveal how insidious legal practices can be in prioritizing

⁴⁷ Judges generally can set rules and procedures regarding who may participate in proceedings before them. Some examples of court appearances at which parties may be prohibited from attending include mediations in federal appellate cases, state court pre-trial conferences, and judicially overseen settlement conferences.

⁴⁸ *Mission and Model*, BEYOND LEGAL AID, <https://www.beyondlegalaid.org> [<https://perma.cc/BG38-E37S>].

the work done by lawyers and undervaluing the agency of their collaborators. One of the greatest mistakes—and most critical moments in my career—occurred at the end of my second year as a community lawyer on the west side of Chicago. After eighteen months of operating two community-based legal clinics in North Lawndale, I met with my main community contact. He thanked me for my hard work and for proving the benefits of having a legal clinic in the neighborhood. He then introduced me to my replacement, a lawyer who was also a member of the community, and asked me to support him as he set up a new clinic. The new clinic would be operated purely by the North Lawndale church and would replace the two I had started.⁴⁹

It took me several years to overcome the sense of failure, hurt, and betrayal from being so abruptly dismissed, without any discussion or notice. It was critical legal empowerment that provided me with the vocabulary and perspective to think about the important legal work that can be—and is—done by communities. It also prompted me to reconsider the power inequities that exist between lawyers—even those dedicated to public interest—and the communities with which they work. By reframing the church’s decision to replace my clinic and me with their own program and attorney as an example of a community powerfully being in charge of and meeting its own needs, I finally understood that what had happened was the pinnacle of community-driven change. As a community and movement lawyer, my focus had been on my work, the so-called “lawyering,” instead of recognizing and supporting the community’s inspiring achievement: building its own legal aid program for its members and no longer needing to rely upon an outside lawyer. This achievement exemplifies the spirit of legal empowerment and inspired Beyond Legal Aid’s founding. As lawyers, we should be as committed—even more driven—to support what communities and their members can do to resolve their own problems, including legal issues, than what we personally can do.

But this requires a willingness to change how the legal system, courts, and the legal profession operate, and for lawyers to be constantly vigilant of our own behavior. For example, several years after founding Beyond Legal Aid, I made a mistake while representing a group of tenants after a fire occurred in their building in Chicago. Their landlord attempted to mass-evict families with as little as ten days’ notice. Working with our community partner, the Autonomous Tenants Union, we not only represented them in their eviction proceedings, but we also supported the tenants to form a “tenant union”

⁴⁹ *Our History*, LAWNDALÉ CHRISTIAN LEGAL CTR., <https://www.lclc.net> [<https://perma.cc/9R4M-LZ22>].

for solidarity and collective bargaining. This empowered the tenant union to organize a public shaming campaign, including speaking out in rallies, press conferences, and social media. Their organizing caused such embarrassment for the landlord that he capitulated to all their demands. His attorney called me, and we discussed terms for a settlement agreement far greater than legal remedies available under the law. Altogether, the tenants obtained over \$25,000 in waived rent, relocation assistance, and reimbursement for utilities and property damage. They also obtained first refusal for yearly leases (even when they did not have leases) after the renovation of their units at their prior rates.⁵⁰ The victory was a testament to the power of community-driven litigation, using the law in collaboration with organizing, under the direction and leadership of community members and organizers.

However, I also made a critical mistake in the case, taking for granted how legal practice defaults to attorneys being in charge and speaking for their clients. In debriefing about the victory, an organizer challenged my rote action of negotiating with the opposing attorney without the participation of any of the tenants. Even though the tenants had formed a union to negotiate collectively, and it was their organizing that catalyzed the landlord's concession, I had immediately fallen into the standard practice of negotiating privately with the landlord's attorney. I had taken away the tenants' opportunity to come up with their own terms and broker their own deal.

Why had I so automatically negotiated for them? Do lawyers have to be bound by court rules and procedures when they prevent articulate, passionate clients from speaking their authentic truths? And what would it mean for lawyers to shift the power of the law into the hands of impacted communities? How can we ensure that, in court, parties are able to tell their own stories and are empowered to fight their legal struggles against injustice in their own way? What would it look like for the United States to have a better legal system: one that empowers, rather than harms, and amplifies, rather than silences, the voices of those facing injustice? These are the questions that I have faced, and continue to face, on my mistake-defined journey to critical legal empowerment.

IV MEG

For many years, I worked to name the approach to human rights work that I was trying to learn, to practice, and to share with my stu-

⁵⁰ See Jackie Casey, *Beyond Legal Aid: Transforming How Legal Services to the Poor Are Delivered*, 28 J. AFFORDABLE HOUS. 357, 358 (2019).

dents in the Global Justice Clinic, which I teach at NYU.⁵¹ Was it enough to say that we worked “in solidarity,” that we were “rights-based,” or that we endeavored to be “client-centered”? Those terms felt too clinical, and insufficiently disruptive. While I was out on maternity leave, I had a bit more space than usual to mull over these questions.

When I returned from maternity leave in 2010, I renamed the clinic. Frustrated with the old structures and many of the grounding rules for human rights advocacy, I wanted to de-center the legal framing of “rights,” re-center “justice” in its place, and situate our fraught endeavor in a global—rather than an “international”—context. The work I was interested in teaching my students to do was less about international courts and tribunals and more about forging partnerships to end violations that crossed borders. Instead of returning to the International Human Rights Clinic I had co-taught for many years, I began to build the “Global Justice Clinic.”⁵² The focus would be projects and cases—or, perhaps more precisely, engagements—in which our place in the world, as law students and lawyers inside a U.S.-based law school, would be part of the story.

I wanted to reject the disembodied, free-floating sense of being “international actors” who roamed the world seeking “projects.” I was eager to take on board the longstanding critiques by TWAIL⁵³ scholars and anti-racist activists. I focused on working within what I came to call the Clinic’s “moral jurisdiction”—those places and spaces where institutions based in the Global North (governments, companies, cultural practices, and discourses) were actively and directly implicated in human rights violations, and where we brought value to the efforts led by those directly impacted. These places, of course, include a broad swath of geographically, economically, and culturally defined communities on the losing end of neoliberal global capitalism, from New York City itself to the Amazon basin to the hills of Haiti.

Since 2013, the Global Justice Clinic (GJC) has partnered with a social movement in Haiti that organized itself to assert Haitian self-

⁵¹ This Section is drawn from Meg Satterthwaite, *Critical Legal Empowerment for Human Rights*, OPEN GLOB. RTS. (May 27, 2021), <https://www.openglobalrights.org/critical-legal-empowerment-for-human-rights> [<https://perma.cc/9WX9-C9G3>].

⁵² *Global Justice Clinic - for JDs*, NYU LAW, <https://www.law.nyu.edu/academics/clinics/globaljustice-jd> [<https://perma.cc/H6ZQ-SRQW>].

⁵³ TWAIL is an acronym for Third-World Approaches to International Law. As Makau Mutua explains, TWAIL scholars seek to “understand, deconstruct, and unpack the uses of international law as a medium for the creation and perpetuation of a racialized hierarchy of international norms and institutions that subordinate non-Europeans to Europeans.” Makau W. Mutua, *What is TWAIL?*, 94 PROC. AM. SOC’Y INT’L L. ANN. MEETING 31, 31 (2000).

determination over the emerging question of industrial gold mining. Made up of numerous Haitian social movement, peasant, and human rights groups, by January 2013, the Kolektif Jistis Min (KJM) had uncovered important information about U.S. and Canadian companies that held permits to research, explore, and exploit gold in Haiti.⁵⁴ However, they also had many open questions and sought support in advancing their objectives. The Clinic and KJM began to hold exploratory discussions aimed at determining how we might work together. At first, we framed the engagement as one aimed at advancing human rights in the gold mining sector. Now, many years later, we see the work as joint opposition to the development of the Haitian gold mining sector itself. This shift, from a position held out as “neutral” concerning extractives in Haiti, to one in which we jointly voice our opposition to extractivism itself, encapsulates our learning over these past years.

During this time, we have done much together.⁵⁵ Some of our work has looked like traditional human rights advocacy, including a hearing before the Inter-American Commission on Human Rights,⁵⁶ a comprehensive report on the mining sector,⁵⁷ shadow reports sub-

⁵⁴ Kolektif Jistis Min Ayiti, FACEBOOK, <https://www.facebook.com/Kolektif-Jistis-Min-ayiti-1731000047135737> [<https://perma.cc/EXS2-BLAE>]; see also *Extraction minière en Haïti, le pays pourra-t-il supporter les conséquences environnementales ?*, LE NOUVELLISTE (Mar. 8, 2021), <https://www.lenouvelliste.com/article/227029/extraction-mini%C3%A8re-en-ha%C3%ACI-le-pays-pourra-t-il-supporter-les-cons%C3%A9quences-environnementales> [<https://perma.cc/NG75-36E9>] (describing the founding, purpose, and work of KJM); *Contre la publication d'un décret sur les mines*, LE NOUVELLISTE (Oct. 1, 2015), <https://www.lenouvelliste.com/article/150573/contre-la-publication-dun-decret-sur-les-mines> [<https://perma.cc/FA92-QLWY>] (concerning KJM resistance to executive decree on mining).

⁵⁵ It is important to note that much of our joint work was made possible through the leadership of Haitian activists including Nixon Boumba, who is coauthor of an Article in this Volume. See Margaret Satterthwaite & Nixon Boumba, *Tout Moun se Moun: Critical Legal Empowerment for Human Rights in Haiti*, 97 N.Y.U. L. REV. 1566 (2022). It was also the result of the visionary work of a talented American lawyer and former GJC student: Ellie Happel, now Associate Director of the GJC and directing the Clinic's Haiti and Caribbean Climate Justice work, who lived in Port-au-Prince for more than five years. This proximity was both crucial and rare.

⁵⁶ *Global Justice Clinic Student Testifies Before Inter-American Commission on Human Rights*, NYU LAW (Apr. 3, 2015), <https://www.law.nyu.edu/news/Global-Justice-Clinic-IACHR-testimony-Haiti-mining-Etienne-Chenier-Lafleche> [<https://perma.cc/6XDU-4U9C>]; *Global Justice Clinic and Haitian Partners Granted Hearing Before IACHR*, CTR. FOR HUM. RTS. & GLOB. JUST. (Mar. 6, 2015), <https://www.chrgj.org/2015/03/06/global-justice-clinic-and-haitian-partners-granted-hearing-before-iachr> [<https://perma.cc/8JJT-KGYH>].

⁵⁷ GLOB. JUST. CLINIC, N.Y. UNIV. SCH. OF L. & HAITI JUST. INITIATIVE, UNIV. OF CAL. HASTINGS COLL. OF THE L., BYEN KONTE, MAL KALKILE? HUMAN RIGHTS AND ENVIRONMENTAL RISKS OF GOLD MINING IN HAITI (2015) [hereinafter BYEN KONTE], https://www.chrgj.org/wp-content/uploads/2016/09/byen_konte_mal_kalkile_human_rights_and_environmental_risks_of_gold_mining_in_haiti.pdf [<https://perma.cc/X4P2-NRF2>].

mitted to various UN mechanisms,⁵⁸ careful analysis of a pro-company draft mining law,⁵⁹ and a complaint about the World Bank's role in advancing that bill lodged with the Inspection Panel (the complaint was thrown out on a technicality).⁶⁰ Other activities have been more innovative and obviously empowering, such as support for KJM's "10 Days of Action," in which KJM hosted anti-mining activists from Latin America and Africa for ten days of collective learning and exchange,⁶¹ and a rights-based, participatory baseline study on water that we conducted with local communities sitting inside a gold mining permit.⁶²

Although it would be possible to identify varying levels of "success" and "failure" for different aspects of this work, what seems most important at this time of great tumult—in Haiti and the world more broadly—is that we have found ways to create bonds of true solidarity across vast divides of privilege, geography, language, culture, education, and more. We have been able—through humility, listening, and the forging of a collective through honest grappling with issues of power—to collaborate in ways that feel, at times, like a little bit of justice.

The language of critical legal empowerment gives us a new framework to articulate the goals we seek and the ways we do our work. Not only do we engage in a collective effort, but we also endeavor to ensure those whose rights are most impacted are in the lead, that they can use and shape the law, and that they can demand transformation in systems enacting injustice. In order to equip law students to partner

⁵⁸ See, e.g., FRANCISCANS INT'L & GLOB. JUST. CLINIC, N.Y. UNIV. SCH. OF L., CONTRIBUTION TO THE LIST OF ISSUES ON HAITI (Mar. 27, 2020).

⁵⁹ BYEN KONTE, *supra* note 57, at 164–99; Glob. Just. Clinic, N.Y. Univ. Sch. of L., *Haiti's Emerging Mining Sector*, CTR. FOR HUM. RTS. & GLOB. JUST., https://www.chrgj.org/wp-content/uploads/2017/08/Brief-Analysis-of-2014-Mining-Law_Global-Justice-Clinic_8.2017-1.pdf [<https://perma.cc/QP2C-VMB7>].

⁶⁰ Press Release, Ctr. for Hum. Rts. & Glob. Just., Haitian Communities File Complaint About World Bank-Supported Mining Law (Jan. 7, 2015), <https://www.chrgj.org/2015/01/07/haitian-communities-file-complaint-about-world-bank-supported-mining-law-2> [<https://perma.cc/4AQQ-GAKV>]; Letter from Kolektif Jistis Min to Dilek Barlas, Exec. Sec'y, WBG Inspection Panel (Jan. 7, 2015), https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/ENG-Complaint_FINAL.pdf [<https://perma.cc/7P4M-YSD4>]; Memorandum from Gonzalo Castro de la Mata, Chairman, WBG Inspection Panel, to Exec. Dirs., Int'l Dev. Ass'n (Feb. 6, 2015) <https://www.inspectionpanel.org/sites/www.inspectionpanel.org/files/ip/PanelCases/100-Notice%20of%20Non-Registration%28English%29.pdf> [<https://perma.cc/B64P-RSAE>].

⁶¹ *Momentum on Halting Mining*, AM. JEWISH WORLD SERV., <https://www.ajws.org/stories/momentum-on-halting-mining> [<https://perma.cc/9ZXS-DBDP>].

⁶² Press Release, Glob. Just. Clinic, N.Y. Univ. Sch. of L., Industrial Gold Mining Poses Serious Risks to Water in Northern Haiti (Dec. 11, 2018), https://www.chrgj.org/wp-content/uploads/2018/12/181211_Press-Release_GJC.pdf [<https://perma.cc/CC77-DFKQ>].

with communities, we must identify the skills, methods, and approaches that will enable them to do so. Is it possible to teach humility, self-critique, and deep commitment—all while ensuring students are prepared to engage in legal analysis, argument, and writing? I believe it is possible—though it demands a shift in how we conceive of the curriculum, teaching, and work of the Clinic. We now spend more time learning directly from our community partners, thinking about how to shift material, intellectual, and legal resources, and asking when and where we could make more space for legal work to be democratized.

CONCLUSION

These three stories are woven together by a need for lawyers to recognize—and follow—the leadership of those who are the targets of injustice, demand accountability of lawyers to rights-holders, and require engagement with community demands—whether supported by the existing law or not. These relationships are “grounded in acts of translation, trust, and transformation” and foundational to “shifting power, building individual and collective agency, and protecting human rights.”⁶³

The collection of Articles in this special Volume brings forward the themes and strategies discussed in the *Critical Legal Empowerment* Symposium. We hear directly from frontline organizers, attorneys, and researchers who call for the redistribution of legal power to the grassroots level. The pieces broaden our collective understanding of how communities and movements in the United States are engaging with the law and legal systems to advance their rights and to resist exclusion and oppression. Such political power is needed to change the global systems that have led to radical inequality

⁶³ Dhital & Walton, *supra* note 12, at 584 (“Translation . . . democratizes laws and legal systems into a language that communities can understand Trust . . . is an act of inclusive decision making and is foundational to thriving relationships between organizations and community partners. Transformation is . . . [when] individuals and communities reclaim their power . . . and rebuild systems that work for everyone.”); *see also* Krystina François, Sec’y, The Black Collective, Bernstein Institute for Human Rights and *N.Y.U. Law Review* Symposium: Critical Legal Empowerment, Community-Driven Litigation: Transferring Legal Power to Community (Feb. 25, 2022), <https://www.youtube.com/watch?v=8fxfvB8udug> [<https://perma.cc/AU9N-F5YX>] (“Trust and that relationship building is, I believe, the secret sauce to really great lawyer-organizer collaboration.”); Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 *HASTINGS L.J.* 861, 917 (1992) (“The lawyer as translator also does not act as mere intermediary between the client and the legal system. Instead, the lawyer acts as facilitator, one who enables dialogue across lines of social difference between the client, law, and legal decisionmaker[,] . . . to establish connection and understanding between clients and decisionmakers.”).

and build a more diverse and just legal ecosystem. In these instances, critical legal empowerment can ensure that those who are directly impacted are the authors of their own liberation and can demand transformation of the law.⁶⁴

⁶⁴ See Gerardo Reyes Chavez, Member Leader, Coal. of Immokalee Workers' Union, Bernstein Institute for Human Rights and *N.Y.U. Law Review* Symposium: Critical Legal Empowerment, Looking Ahead: Building Alternatives, Transforming Structures (Feb. 25, 2022), <https://www.youtube.com/watch?v=84AUsE7rDYQ> [<https://perma.cc/S9C2-JURW>] (“This is not an issue of us wanting to do the right thing because it is moral. . . . It’s about building the power that’s necessary for workers so that they can have their autonomy in terms of what’s needed on codes like the [Universal Declaration of Human Rights].”).