

## WORKER-OWNED AND UNIONIZED WORKER-OWNED COOPERATIVES: TWO TOOLS TO ADDRESS INCOME INEQUALITY

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*This article evaluates worker-owned and unionized worker-owned cooperatives as alternatives to the conventional corporate structures for businesses in the United States. With their focus on democratic governance and shared ownership, worker-owned cooperatives offer an antidote to the extreme inequality of income and deterioration of working conditions that workers are experiencing. These are inequities for which corporate prioritization of executive compensation and shareholder enrichment are at least partly responsible. While questions have been raised concerning the sustainability of the cooperative form, two examples of large, well established cooperatives – Mondragon and Cooperative Home Care Associates – demonstrate how capitalization strategies, cooperative ecosystems, and strategic affiliations with unions can leverage resources to start and keep cooperative businesses functioning. The article also documents the growth of municipal and institutional support for the cooperative form of business ownership, and the role that the City University of New York’s Community Economic Development Law Clinic (CEDC) has played in supporting that movement domestically and internationally. That support has included developing curricula to build the capacity of worker cooperatives, participating in creating and sustaining the creation of a city-wide advocacy coalition, organizing annual conferences, and successfully working with local legislatures to increase funding for cooperatives. Law students in CEDC have gained skills of transactional lawyering, movement lawyering and coalition-building through their representation of individual worker cooperatives and their work with a city-wide advocacy coalition for cooperatives. Of particular note in the pedagogy of this representation are the advanced skills of integrative counseling and inclusive problem solving that assistance for complex actors requires.*

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## INTRODUCTION

Income inequality<sup>1</sup> is prevalent throughout the globe. In the United States income inequality has reached extremes not seen since the Great Depression.<sup>2</sup> And similar to what occurred in the labor market during the Great Depression, living-wage jobs today have become scarce and wages have steeply declined, resulting in an increasing number of Americans who are unable to provide for themselves and their families.<sup>3</sup>

Even as the U.S. economy starts to rebound, income inequality remains stark.<sup>4</sup> A crisis of wage stagnation and middle class erosion, combined with increased corporate power may even threaten our political system. As a new report from the Commission on Inclusive Prosperity notes, these economic problems threaten to become a serious problem for our democracy:

[T]he ability of free-market democracies to deliver widely shared increases in prosperity is in question as never before. . . . [F]or the first time since the Great Depression, many industrial democracies are failing to raise living standards and provide social mobility to a

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<sup>1</sup> Economic inequality includes both income and wealth inequality. The difference between the two is important. "Income refers to a flow of money over time [often earned through one's labor]. . . . Wealth is a stock of assets owned at a particular time [and is often not tied to having to work]." MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH / WHITE WEALTH* 5 (2d ed. 2006). See also Christopher Ingraham, *If You Thought Income Inequality Was Bad, Get a Load of Wealth Inequality*, WASH. POST, WONKBLOG, May 21, 2015, <http://www.washingtonpost.com/news/wonkblog/wp/2015/05/21/the-top-10-of-americans-own-76-of-the-stuff-and-its-dragging-our-economy-down/>. While wealth inequality is greater and even more disproportionately skewed against workers than income inequality, this article focuses on income inequality because as a society we can more immediately address income inequality and bring about desperately needed quality of life changes. In addition, addressing income inequality is an important first stage in any process designed to ultimately address wealth inequality through the purchase of assets. For more details on the wealth and income distribution distinctions see also LAWRENCE R. MISHEL, JOSH BIVENS & ELISE GOULD, *THE STATE OF WORKING AMERICA* 99-100 (12th ed. 2012) [hereinafter MISHEL ET AL., *STATE OF WORKING AMERICA*]; Jesse Bricker, Lisa J. Dettling, Alice Henriques, Joanne W. Hsu, Kevin B. Moore, John Sabelhaus, Jeffrey Thompson & Richard A. Windle, *Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances*, 100 Fed. Res. Bull. Sept. 2014, at 1, 10, available at <http://www.federalreserve.gov/pubs/bulletin/2014/pdf/scf14.pdf>.

<sup>2</sup> See Drew DeSilver, U.S. Income Inequality on the Rise for Decades is Now Highest Since 1928, PEW RESEARCH CENTER/FACTTANK, (Dec. 5, 2013), <http://www.pewresearch.org/fact-tank/2013/12/05/u-s-income-inequality-on-rise-for-decades-is-now-highest-since-1928/> (last visited Feb. 5, 2016).

<sup>3</sup> See DAVID B. GRUSKY, MARYBETH J. MATTINGLY & CHARLES VARNER, *STATE OF THE STATES: THE POVERTY AND INEQUALITY REPORT* 8 (2015).

<sup>4</sup> See Neil Irwin, *The Benefits of Economic Expansions Are Increasingly Going to the Richest Americans*, N.Y. TIMES, Sept. 26, 2014 at B1, available at [http://www.nytimes.com/2014/09/27/upshot/the-benefits-of-economic-expansions-are-increasingly-going-to-the-richest-americans.html?\\_r=0&abt=0002&abg=0](http://www.nytimes.com/2014/09/27/upshot/the-benefits-of-economic-expansions-are-increasingly-going-to-the-richest-americans.html?_r=0&abt=0002&abg=0) (referring to research that shows that over 90 percent of all income growth between 2009 and 2012 went to the 1%).

large share of their people. Some of those countries that have produced economic growth have done so in a manner that has left most of its citizens no better off.<sup>5</sup>

Although many U.S. businesses have regained healthy profit margins,<sup>6</sup> such profits are still not equitably shared with workers.<sup>7</sup> Instead, profits are disproportionately distributed among CEOs and shareholders.<sup>8</sup> For instance, today's worker to CEO pay ratio is 1:354.<sup>9</sup> This ratio is inequitable but not inevitable.<sup>10</sup>

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<sup>5</sup> See LAWRENCE H. SUMMERS & ED BALL, CENTER FOR AMERICAN PROGRESS, REPORT OF THE COMMISSION ON INCLUSIVE PROSPERITY 1 (2015), available at <https://www.americanprogress.org/issues/economy/report/2015/01/15/104266/report-of-the-commission-on-inclusive-prosperity/>.

<sup>6</sup> Robert B. Reich, *Why the Economy is Still Failing Most Americans* (September 28, 2014) available at <http://robertreich.org/post/98668011635> (former Secretary of Labor Robert B. Reich reporting that, as of late 2014, all economic gains since the U.S. recovery began in 2009 have been allocated to the wealthiest 10%). See also Neil Irwin, *The Benefits of Economic Expansions Are Increasingly Going to the Richest Americans*, N.Y. TIMES, Sept. 26, 2014, at B1, available at [http://www.nytimes.com/2014/09/27/upshot/the-benefits-of-economic-expansions-are-increasingly-going-to-the-richest-americans.html?\\_r=0&abt=0002&abg=0](http://www.nytimes.com/2014/09/27/upshot/the-benefits-of-economic-expansions-are-increasingly-going-to-the-richest-americans.html?_r=0&abt=0002&abg=0).

<sup>7</sup> See SUMMERS et al., *supra* note 5 at 40 (explaining that, while worker productivity is increasing, “. . . the incomes of the vast majority of households have not grown alongside their productivity.”). Both wage income growth and capital income growth have accrued at the top of the income distribution. “This shift from labor to capital incomes between 1979 and 2007 is significant: The share of personal, market-based income accruing to capital owners rose from 15.0 to 19.7 percent during this time. This 4.7 percentage-point increase came mainly from a 5.3 percentage-point reduction in the share of overall income accounted for by wages and benefits of employees.” MISHEL, et al., STATE OF WORKING AMERICA, *supra* note 1 at 99-100.

<sup>8</sup> See JOSH BIVENS, ELISE GOULD LAWRENCE MISHEL & HEIDI SHIERHOLZ, ECON. POL'Y INST., RAISING AMERICA'S PAY: WHY IT'S OUR CENTRAL ECONOMIC POLICY CHALLENGE, Briefing Paper No. 378 (June 4, 2014), available at <http://s1.epi.org/files/2014/raising-americas-pay-report-final.pdf>. In their analysis of comprehensive household income including wages, capital gains, employee benefits, government transfers, the authors found that the comprehensive income of top 1% of households saw larger gains between 1979 and 2007 than did the aggregate incomes of bottom 80%. *Id.* at 22. See also Huasheng Gao et al., *A Comparison of CEO Pay in Public and Private US Firms, 2010*, (September, 2010), available at [https://www.researchgate.net/profile/Kai\\_Li5/publication/228239667\\_Are\\_CEOs\\_in\\_Public\\_U.S.\\_Firms\\_Overpaid\\_New\\_Evidence\\_from\\_Private\\_Firms/links/02e7e53304b92d43a7000000.pdf](https://www.researchgate.net/profile/Kai_Li5/publication/228239667_Are_CEOs_in_Public_U.S._Firms_Overpaid_New_Evidence_from_Private_Firms/links/02e7e53304b92d43a7000000.pdf).

<sup>9</sup> Sorapop Kiatpongsan & Michael I. Norton, *How Much (More) Should CEOs Make? A Universal Desire for More Equal Pay*, 9 PERSP. PSYCHOL. SCI. 587 (2014).

<sup>10</sup> See, e.g., THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY, 237-467, 244 (Arthur Goldhammer transl., 2014) (arguing that “. . . inequality with respect to capital is always greater than inequality with respect to labor” and that the “. . . distribution of capital ownership (and of income from capital) is always more concentrated than the distribution of income from labor.”). This article does not argue for an exact equal distribution of income but a more equitable distribution of income based on worker labor and profitability. See also Interview by Lynn Parramore [LP] with Lance Taylor (LT), *What Thomas Piketty and Larry Summers Don't Tell You About Income Inequality*, Institute for New Economic Thinking Blog (Feb. 15, 2015) <http://ineteconomics.org/ideas-papers/blog/what-thomas-piketty-and-larry-summers-dont-tell-you-about-income-inequality>: [LP]: “Your research suggests that it's not just some natural process that's causing more wealth to flow

Despite wide-ranging legal discretion to choose their form of entity and governance structure, the vast majority of businesses choose a governance structure the author will refer to as “traditional corporate governance”- which results in inattention to the interests of most workers, unjust distribution of profits in the form of dividends instead of wages and undemocratic workplaces.<sup>11</sup> Traditional corporate governance operates under the “standard shareholder-oriented model,”<sup>12</sup> a model that provides flexibility for corporations to be guided by the principles of maximizing the wealth of shareholders<sup>13</sup> and prioritizing executive compensation. Workers pay for these priorities, almost always in the form of suppressed wages.

Thus, an important strategy for addressing income inequality more effectively would be to re-examine and institute changes to (or departures from) the traditional corporate model. One promising structural change to the traditional form of business organization is the worker-owned cooperative and its more democratic ownership and governance structure. This article argues that worker-owned cooperatives and unionized worker-owned cooperatives are important alternatives to corporate ownership and governance structures that strongly tend to depress workers’ wages.

While worker-owned cooperatives have existed for many years,

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towards the rich. . . . How is it happening?” [LT:] “It remains hard to explain skyrocketing executive pay on purely economic grounds. There is no reason to believe that top managers or other highly paid individuals circa 2015 are more or less essential than, say, in 1975 when comparable pay was ten times lower. The best explanation I can come up with is that a social contract or unwritten law against exorbitant executive income has disappeared in the U.S. We will only get this contract back by social consensus and/or seriously progressive taxation.”

<sup>11</sup> See Section II, *infra*, for a further description of traditional corporations and the dominant form of corporate governance in the United States.

<sup>12</sup> See HENRY HANSMANN & REINIER KRAAKMAN, REFLECTIONS ON THE END OF HISTORY FOR CORPORATE LAW 1 (August 15, 2011), Yale Law & Economics Research Paper No. 449, reprinted in CONVERGENCE OF CORPORATE GOVERNANCE: PROMISE AND PROSPECTS (Abdul Rasheed and Toru Yoshikawa, eds., Palgrave-MacMillan, 2012), available at SSRN: <http://ssrn.com/abstract=2095419> (explaining that “. . . there is increasing consensus among the relevant actors, around the globe, that what we term the ‘standard shareholder-oriented model’ (‘SSM’) of the business corporation is the most attractive social ideal for the organization of large-scale enterprise.”). This article, does not seek to dispute their argument that corporate governance has converged around the SSM. It does, however, dispute that the SSM is “the most attractive social ideal” for business enterprises. SSM is not the most attractive model because of its gross inequities in the distribution of value generated by productivity gains in recent decades. See Summers et al., *supra* note 5, at 12 (“Corporations have come to function less effectively as providers of large-scale opportunities. Increasingly, their dominant focus has been on maximization of share prices and the compensation of their top employees”).

<sup>13</sup> Hansmann & Kraakman, *supra* note 12 at 3: “We asserted that the SSM has four principal elements: [and the fourth is] the market value of the publicly-traded corporation’s shares is the principal measure of its shareholders’ interests.”

now is a critical moment to press for widespread expansion of worker-ownership as a tool to stem the surge of income inequality. Recognition of and support for worker-owned cooperatives and union coops are gaining traction from diverse quarters. City governments fund worker-owned cooperative expansion and pass legislation to assist worker-owned cooperatives in growing to scale and in achieving sustainability by successfully gaining access to municipal procurement processes.<sup>14</sup> Following the United Nations' Year of the Cooperative, the International Cooperative Alliance has proposed a blueprint for a cooperative decade.<sup>15</sup> Pope Francis has called for an end to the "gig economy."<sup>16</sup> Last, in a list that could include many more examples, New York Mayor Bill DeBlasio specifically has stated that ". . . worker-owned cooperatives embody the democratic spirit on which our nation was built, offering every worker the right to self determination and an equal say in how their organization is run."<sup>17</sup>

This growing support reflects a recognition that worker-owned cooperatives and union coops offer a critically important alternative to traditional corporate governance. The governance structures of cooperatives mandate equitable distribution of earnings, in the form of distribution of profits based on patronage, and democratic operation of the entity, in the form of one person, one vote.<sup>18</sup> Serving as models of business organizations that counteract severe income inequality, worker-owned cooperatives and union coops are enjoying success worldwide,<sup>19</sup> and have garnered increased political support in the United States. The growing interest in cooperative business entities that provide for profit sharing and democratic governance presents a meaningful opportunity for attorneys and law students to engage in transactional social justice lawyering and participate in a movement to expand this progressive form of business organization. It also provides an occasion to reflect upon strategies for teaching community economic development and lawyering skills.

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<sup>14</sup> See *infra* at note 112 and accompanying text.

<sup>15</sup> The blueprint outlines the International Co-operative Alliance's "2020 Challenge" and came on the heels of the United Nation's year of the Cooperative.

<sup>16</sup> Catholic Scholars for Worker Justice recently requested that the author and her clinic assist with organizing, drafting and presenting an encyclical on worker-owned cooperatives and the importance of unions to Pope John Francis in 2016.

<sup>17</sup> Office of the Mayor City of New York, Proclamation Declaring June 21st, 2014 "Worker-Owned Cooperative Day," on file with Author.

<sup>18</sup> For further detail concerning the governance structures of worker cooperatives, see Section III, *infra*.

<sup>19</sup> For interesting articles on international cooperatives see, e.g. DAVID F. ELLERMAN, HARV. BUS. SCH., THE MONDRAGON COOPERATIVE MOVEMENT, Case No. 1-384-270, (1984), <http://www.ellerman.org/Davids-Stuff/The-Firm/Mondragon-HBS-Case.pdf>; G. Mitu Gulati, T.M. Thomas Isaac & William A. Klein, *When a Workers' Cooperative Works: The Case of Kerala Dinesh Beedi*, 49 UCLA L. REV. 1417, 1427-28 (2002).

Section I of this article discusses current U.S. income inequality and its impact on workers and their communities. Section II describes the traditional corporation and some of its detrimental impacts, including its contribution to the current economic crises. This section also suggests the need for alternative, more egalitarian forms of business organization. Section III describes worker cooperatives and union coops and argues that such business formations offer better alternatives to traditional business organizations in that they operate to maximize wages and benefits of workers, provide democratic workplaces, demonstrate more responsible corporate behavior, and create a positive impact for communities. Section IV describes how worker-ownership has operated successfully in practice, providing as two examples Mondragon in Spain<sup>20</sup> and Cooperative Home Care Associates<sup>21</sup> in the United States. Section V highlights an initiative taking place in New York City, in which a coalition composed of the author's Community & Economic Development Clinic (CEDC) and community partners secured substantial economic and political support from the New York City government to expand worker-owned cooperatives and union coops in the City and to help address the challenge of bringing worker-owned cooperatives to scale.<sup>22</sup> Section VI focuses on CEDC's pedagogical goal of equipping tomorrow's transactional social justice lawyers with expertise in cooperative forms of business organization and skills to counsel clients in creating democratic and participatory decision-making structures. It highlights CEDC's integral role in training legal advisors to cooperatives, garnering governmental support and funding, disseminating public information on cooperative formations, and coalition-building among worker-owners, technical support organizations, educational institutions, and community-based organizations to combat income inequality and its impacts. The article concludes by reflecting upon the lessons learned.

#### I. SOME CAUSES AND IMPACTS OF INCOME INEQUALITY

The report by the Commission on Inclusive Prosperity provides an important reminder that income inequality is not just about pay. It

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<sup>20</sup> See Section IVA, *infra*, for more information on Mondragon, one of the largest networks of worker-owned cooperatives in the world. See generally, WILLIAM FOOTE WHYTE & KATHLEEN KING WHYTE, MAKING MONDRAGON: THE GROWTH AND DYNAMICS OF THE WORKER-OWNED COOPERATIVE COMPLEX (1991).

<sup>21</sup> Cooperative Home Care Associates (CHCA) is the largest unionized cooperative in the U.S. For a discussion of CHCA, see Section IVB, *infra*.

<sup>22</sup> See National Cooperative Business Association CLUSA International (NCBA CLUSA), *New York City Invests \$1.2 Million in Worker-owned Cooperatives* (2014), <http://www.ncba.coop/ncba-media/press-releases/610-new-york-city-invests-1-2-million-in-worker-cooperatives>.

is also about how one's pay affects one's standard of living. Income inequality creates a lack of food security, stable shelter, educational opportunities, access to health services, and meaningful life chances. The report explains "[c]ountries with more inequality are also countries with less opportunity for those with low and middle incomes."<sup>23</sup>

For the past several decades, the United States has been gripped by a deepening economic crisis in the form of inequitable income distribution, the disappearance of living wage jobs, and the hollowing out of the middle class.<sup>24</sup> Many Americans from all walks of life, not just the poor, have experienced the ill effects of this crisis, much of which may be attributed to the failings of the traditional corporation and its prevailing practices. These ills include, principally, low and stagnant wages that prevent a large proportion of working people in the U.S.<sup>25</sup> from supporting themselves and/or their families and declining social and economic mobility that exacerbates and cements their condition.<sup>26</sup>

The specific problem of low wages, when discussed in the context of income inequality, "is often oversimplified" or submerged all together.<sup>27</sup> Economic inequality may be defined as the unequal distribution of income and wealth,<sup>28</sup> but this framing alone, does not capture the most devastating impacts of income inequality in the U.S. Eco-

<sup>23</sup> SUMMERS et al., *supra* note 5 at 45. In the report, Summers, former U.S. Secretary of the Treasury, and Balls, former Shadow Chancellor of the Exchequer in the British Parliament, further explain that income inequality translates into a multitude of injustices, with perhaps the most disturbing injustice being inequality of life expectancy.

<sup>24</sup> Between 1979 and 2012, the bottom 90% of wage earners saw real wage growth of 17.1% - largely due to increased working hours, while the top 1% saw real wage growth of 153.6% over the same period, and the top 0.1% saw growth of 337%. Bivens et al., *supra* note 8, 18-20. See also DeSilver, *supra* note 2; Thomas Piketty & Emmanuel Saez, *Income Inequality in the United States, 1913-1998*, 118 Q. J. ECON. 1 (2003); Thomas Piketty & Emmanuel Saez, *The Evolution of Top Incomes: A Historical and International Perspective*, 96 Am. Econ. Rev. 200 (2006); Anthony B. Atkinson, Thomas Piketty & Emmanuel Saez, *Top Incomes in the Long Run of History*, 49 J. Econ. Literature 3 (2011); Thomas W. Volscho & Nathan J. Kelly, *The Rise of the Super-Rich Power Resources, Taxes, Financial Markets, and the Dynamics of the Top 1 Percent, 1949 to 2008*, 77 AM. SOC. REV. 679 (2012).

<sup>25</sup> See Deborah Povich, Brandon Roberts, & Mark Mather, *Low-Income Working Families: The Racial/Ethnic Divide*, THE WORKING FAMILIES PROJECT POLICY BRIEF 2 (Winter 2014-2015), [http://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WP-FP-2015-Report\\_Racial-Ethnic-Divide.pdf](http://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WP-FP-2015-Report_Racial-Ethnic-Divide.pdf).

<sup>26</sup> See City University of New York, Law Review Symposium, *The Long Crisis: Economic Inequality in New York City: A Conversation between Fahd Ahmed, Tom Angotti, Jennifer Jones Austin, Shawn Blumberg, & Robin Steinberg*, 18 CUNY L. REV. 153, 157 (2014) [hereinafter, CUNY, *The Long Crisis*] (stating that. . ."social mobility and upward economic mobility—the phenomena that are said to make vast disparities of income and wealth tolerable in a democracy are on the decline."). See generally ROBERT B. REICH, *BEYOND OUTRAGE: WHAT HAS GONE WRONG WITH OUR ECONOMY AND OUR DEMOCRACY, AND HOW TO FIX IT* (2012).

<sup>27</sup> See CUNY, *The Long Crisis*, *supra* note 26 at 158.

<sup>28</sup> *Id.*

conomic inequality, especially in the context of greatly diminished government programs, often has a cascading effect, resulting in a multitude of injustices that ultimately results in inequality of opportunity and loss of social mobility.<sup>29</sup>

While income inequality in the U.S. has reached levels not seen since the Great Depression,<sup>30</sup> corporate profits have climbed to an all eighty-five-year high<sup>31</sup>. At the same time, the real value of wages has stagnated or, in many cases, declined.<sup>32</sup> Wage stagnation is not the result of flat or decreasing productivity.<sup>33</sup> To the contrary, as former Secretary of Labor Robert Reich has noted, wages have stagnated despite substantial increases in productivity; even larger shares of that increased value has been appropriated for corporate profits.<sup>34</sup> Although the economy generates more wealth more efficiently, workers are working longer hours for less pay than their counterparts thirty to forty years ago.<sup>35</sup>

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<sup>29</sup> *Id.* at 159-160.

<sup>30</sup> See DeSilver, *supra* note 2.

<sup>31</sup> Floyd Norris, *Corporate Profits Grow and Wages Slide*, N.Y. TIMES, Apr. 5, 2014, at B3, available at <http://www.nytimes.com/2014/04/05/business/economy/corporate-profits-grow-ever-larger-as-slice-of-economy-as-wages-slide.html>.

<sup>32</sup> Robert B. Reich, *Higher Wages Can Save America's Economy — And Its Democracy* (September 13, 2013), available at [http://www.salon.com/2013/09/03/higher\\_wages\\_can\\_save\\_americas\\_economy\\_and\\_its\\_democracy\\_partner/](http://www.salon.com/2013/09/03/higher_wages_can_save_americas_economy_and_its_democracy_partner/) (observing that “[e]mployee pay is now down to the smallest share of the economy since the government began collecting wage and salary data sixty years ago; and corporate profits, the largest share.”)

<sup>33</sup> *Id.* See also Mishel et al., *The State of Working America*, *supra* note 1 at 7 (explaining that productivity refers to “the ability to produce more goods and services per hour worked . . .”).

<sup>34</sup> Reich, *supra* note 32; see also LAWRENCE MISHEL, ELISE GOULD & JOSH BIVENS, *Econ. Pol’y Inst., WAGE STAGNATION IN NINE CHARTS 10*, (January 6, 2015), <http://s1.epi.org/files/2013/wage-stagnation-in-nine-charts.pdf>; see also ELISE GOULD, *ECON. POL’Y INST., WHY AMERICA’S WORKERS NEED FASTER WAGE GROWTH – AND WHAT WE CAN DO ABOUT IT*, Briefing Paper No. 382, (Aug. 27, 2014), available at <http://s4.epi.org/files/2014/why-americas-workers-need-faster-wage-growth-final.pdf> (observing that, while non-supervisory compensation tracked productivity increases from 1948 to 1979, productivity from 1979 to 2013 has increased approximately eight times faster than has compensation).

<sup>35</sup> See *ECON. POL’Y INST., THE TOP 10 CHARTS OF 2014* (December 18, 2014), <http://www.epi.org/publication/the-top-10-charts-of-2014> (explaining that, as of 2014, “. . .there is a growing recognition that the root of rising American inequality is the failure of hourly pay for the vast majority of American workers to keep pace with economy-wide productivity. . . . When hourly pay for the vast majority tracked productivity. . . the American income distribution was stable and growth broadly shared. Since the late 1970s, [however,] the link between typical workers’ pay and productivity has broken down and allowed capital owners (rather than workers) to claim a larger share of income and allowed those at the very top of the pay distribution to claim a larger share of overall wages.” See also Bivens et al., *supra* note 8: “Between 1979 and 2007, annual hours worked by bottom fifth working-age households rose by 165 hours, while (inflation-adjusted) average hourly wages of the bottom fifth rose by \$0.28. . . . [T]he late 1990s was the only period of sustained wage growth over the last four decades. Outside of this period, wages were either stagnant or fell for low-wage workers. This can be seen by comparing the actual 1979–2007 outcomes with

It cannot be a coincidence that the current trend of wage stagnation is occurring at a time when union membership is at an historic low.<sup>36</sup> Indeed, commentators have noted the direct correlation between union membership and equitable income distribution in the U.S.<sup>37</sup> When union membership was at its highest, organized labor exercised significant bargaining power, resulting in a more equitable wage distribution, not only within organized industries but also through labor market effects that influenced wage rates throughout the economy.<sup>38</sup> Expanded corporate power (and the increased inequality it has generated) is both cause and effect of the greatly reduced influence unions have in the U.S., and of their diminishing ability to counteract income inequality. This trend – and the unlikelihood that it will be reversed anytime soon – underscores the need to pursue parallel strategies for changes that advance economic equity, including, cooperative forms of enterprise organization, as argued below.

Because a large proportion of the population is experiencing the economic and social struggles associated with structural income inequality, there is an increasing recognition of an urgent need for such changes. Even those more aligned with maintaining the current capitalist structure have expressed misgivings about extreme inequality, recognizing that U.S. capitalism itself depends on rising middle class consumerism for 75% of its GNP<sup>39</sup> and that the current trends

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those that would have prevailed had the late 1990s boom not occurred. Without the late 1990s, annual hours of bottom-fifth workers still would have increased, though only by 24 rather than 165 hours. In contrast, hourly wages of the bottom fifth would have actually fallen by \$0.57.”

<sup>36</sup> Union membership in the United States has declined markedly since the 1970s: the percentage of the workforce represented by unions in 2011 (13.0%) was less than half that of 1973 (26.7%). See MISHEL ET AL., *THE STATE OF WORKING AMERICA*, *supra* note 1, at 268-9.

<sup>37</sup> Private sector union membership in the United States declined from 34% to 8% for men and from 16% to 6% for women between 1973 and 2007, while wage inequality increased by over 40% during the same period. Bruce Western & Jake Rosenfeld, *Unions, Norms, and the Rise in U.S. Wage Inequality*, 76 AM. SOC. REV. 513 (2011). It is important to note that deunionization has a disparate impact across demographic groups. Mishel et al. calculated a “union wage premium” – differences in hourly wages between unionized and nonunionized workers (controlled for industry, occupation, region, experience, education, and marital status). They found that the union premiums are especially pronounced for workers of color – especially black and Latino men, as well as for immigrants. See MISHEL ET AL., *THE STATE OF WORKING AMERICA*, *supra* note 1 at 268-9.

<sup>38</sup> At the time, union workers did not face as much competition from the ability of corporations to exploit workers (e.g. nominal pay) from the global south and/or face the same extent of the challenges caused by increasing technological advances that replace the need for labor.

<sup>39</sup> See generally, Thomas W. Mitchell, *Growing Inequality and Racial Economic Gaps*, 56 How. L. J. 849 (2013); see *Income Inequality in the United States: Testimony before the Joint Economic Committee, United States Congress*, (statement of Robert R. Reich) (Jan-

threaten this critical source of demand. More generally, and reminiscent of the Great Depression, many people in the U.S. have come to realize that hard work and playing by the rules no longer guarantee economic security or even the ability to make ends meet.<sup>40</sup> In the United States, previously strong linkages between working class jobs and middle class benefits no longer seem to exist and hard working people still experience poor social mobility.<sup>41</sup>

As income inequality accelerates across occupations and classes, it also correlates with increased percentages of households relying almost exclusively on wages as opposed to the small cohort of wealthy individuals and families with inherited wealth who rely on investment income.<sup>42</sup> This is why the Occupy movement's framing of the 1% versus the 99% helped bring together and mobilize a broad coalition that cut across work classifications, professional qualifications, or social beliefs. Stark income inequality is not only threatening the existence of future middle-class sustainability, it also delegitimizes capitalism and democracy for current and future middle-class populations. If necessity is truly the parent of invention, current and seemingly intractable societal inequalities present a unique opportunity to re-examine different corporate structures and re-imagine different possibilities and outcomes stemming from a change in traditional corporate ownership to worker ownership.

The next section discusses the traditional corporation and how its corporate governance structure influences the harmful depression of wages for many of its workers and discusses the need for more democratic forms of business, specifically worker-owned cooperatives and union coops.

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uary 16, 2014), available at [http://www.jec.senate.gov/public/\\_cache/files/3455c373-7557-4581-8cd8-34b43b759f53/reich-testimony.pdf](http://www.jec.senate.gov/public/_cache/files/3455c373-7557-4581-8cd8-34b43b759f53/reich-testimony.pdf).

<sup>40</sup> See SUMMERS ET AL., *supra* note 5 at 7: "People are no longer confident in the expectation that hard work will be rewarded or have their children live better than they did. Most families find it harder to raise their living standards than they did generations ago, and there are ground for concern about stagnation in living standards. Those that are in work are working longer for less. . ." See generally CUNY, *The Long Crisis*, *supra* note 26.

<sup>41</sup> See Miles Corak, *Income Inequality, Equality of Opportunity, and Intergenerational Mobility*, 27 J. ECON. PERSP. 79 (2013) (observing that increased income inequality is associated with less intergenerational mobility).

<sup>42</sup> The top 1% of households by income dramatically increased the share of their income deriving from capital-based sources (including realized capital gains, dividends, and rents), with the average capital income for the top 1% rising 309.3% from 1979-levels by 2007. The top 1% received 65.0% of all capital income in 2007, up from 39.4% in 1979. Over the same period, average capital income declined by 59.2% for the bottom 20% of income households, and the bottom 90% of households received only 14.8% of all capital income – less than half of the 32.2% figure they received in 1979. MISHEL ET AL., *THE STATE OF WORKING AMERICA*, *supra* note 1, at 96-99.

## II. STRUCTURAL ILLS OF THE TRADITIONAL CORPORATE FORM AND NEED FOR MORE EGALITARIAN FORMS OF BUSINESS ORGANIZATION

Although income inequality, low wages, and wage stagnation undoubtedly flow from a complex of interacting causes, it seems apparent that a significant cause is the traditional corporate structure – with its focus on profit maximization – coupled with the absence of an effective labor-centered counterweight to corporate power. In the U.S., state laws authorize the formation of business corporations and establish standards and parameters that corporations must abide by when adopting governance structures<sup>43</sup>. These laws impose guidelines on the type of governance structure a corporation may adopt, but allow corporations a great degree of discretion in determining decision-making power, including how and on whose behalf those powers are exercised.<sup>44</sup> Such governance structures, in turn, influence ownership, control, and corporate culture.

Generally in a corporation, ownership is based on capital investment and comes with two main rights: the right to share in profits (usually proportional to shareholders' capital investment) and the right to participate in governance.<sup>45</sup> As noted earlier, a “traditional corporation” is one that is organized under a state's business corporation laws, that adheres to the ownership definition above, and that operates under the Standard Shareholder Oriented Model (hereinafter “SSM”).<sup>46</sup> SSM is characterized by four principal features:

- . . . [First, T]he ultimate control over the corporation should rest with the shareholder class; the managers of the corporation should be charged with the obligation to manage the corporation in the interests of its shareholders;
- [Second] other corporate constituencies, such as creditors, em-

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<sup>43</sup> See 46 AM. JUR. 2d *Corporations* §14 (2015) (stating, “. . . A corporation acquires its existence and authority to act from the state. . .”) citing *Baldwin County Electric Membership Corp. v. Lee*, 804 So. 2d 1087 (Ala. 2001); *Community Bd. 7 of Borough of Manhattan v. Schaffer*, 84 N.Y.2d 148, 615 N.Y.S.2d 644, 639 N.E.2d 1 (1994); *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 85 Ohio St. 3d 156 (1999)); (further noting, “. . . The general corporation law of the state, in force at the time of the incorporation, is just as much a part of the contract between the corporation and its stockholders as are any other documents. . .”, citing *Middleburg Training Center, Inc. v. Firestone*, 477 F. Supp. 2d 719 (E.D. Va. 2007) (applying Virginia law).

<sup>44</sup> Sometimes referred to as “corporate constituency statutes,” these laws enumerate stakeholders other than shareholders to whom a corporate board of directors may owe a duty. See Lawrence E. Mitchell, *A Theoretical and Practical Framework for Enforcing Corporate Constituency Statutes*, 70 TEX. L. REV. 579, 587-88 (1992); see also, N.Y. Bus. Corp. Law § 717 (McKinney 2015).

<sup>45</sup> See Henry Hansmann, *When Does Worker-ownership Work? ESOPS, Law Firms, Co-determination and Economic Democracy*, 99 YALE L.J. 1749 (1990).

<sup>46</sup> See Hansmann & Kraakman, *supra* note 12 at 1.

ployees, suppliers, and customers, should have their interests protected by contractual and regulatory means rather than through participation in corporate governance;

[Third] noncontrolling shareholders should receive strong protection from exploitation at the hands of controlling shareholders; and

[Fourth] the market value of the publicly-traded corporation's shares is the principal measure of its shareholders' interests.<sup>47</sup>

The SSM essentially subordinates the interests of all corporate stakeholders who are not shareholders<sup>48</sup> — including workers — to the goal of maximizing shareholder interests. SSM is so embedded in the governance traditional corporation that corporate officers' fiduciary duties are often interpreted by managers to include a duty to minimize costs, even at the expense of workers<sup>49</sup>. Because providing employment at a living wage is not necessarily a priority for a traditional corporation, the labor necessary to produce the corporation's goods or services and carry on its business is frequently viewed as just another component of the costs that should be reduced to the lowest level the market will bear in order to maximize shareholder interests.<sup>50</sup>

Business corporation laws allow, but do not mandate, such a severe approach to labor relations and wage setting. Corporate officers may, consistent with their fiduciary responsibilities, adopt more equitable and enlightened approaches to employee compensation. And

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<sup>47</sup> *Id.* at 1-2.

<sup>48</sup> *Id.*

<sup>49</sup> *See, e.g.*, *Dodge v. Ford Motor Co.*, 204 Mich. 459, 507 (1919) (“A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the non distribution of profits among stockholders in order to devote them to other purposes.”); *ECA, Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187, 200 (2d Cir. 2009) (“Earning profits for the shareholders is the essence of the duty of loyalty[.]”).

<sup>50</sup> Contract is the prevailing method of dealing with labor. As Hansmann and Kraakman state: “Simple contracts, and the basic doctrines of contract law, are inadequate in themselves to govern the long-term relationships between workers and the firms that employ them — relationships that may be afflicted by, among other things, substantial transaction-specific investments and asymmetries of information.” Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 *GEO. L. J.* 439, 444 (2001). They go on to say that: “In general, contractual devices, whatever their weaknesses, are (*when supplemented by appropriate labor market regulation*) [emphasis added] evidently superior to voting and other collective choice mechanisms in resolving conflicts of interest among and between a corporation's investors and employees.” *Id.* at 446. Assuming this statement is true without defending it, current levels of income inequality imply, among other things, a lack of “appropriate labor market regulation.” While it is worthwhile to pursue more effective labor market regulation, given the current levels of income inequality it seems prudent to pursue more than one solution to the problem.

government may, through direct regulation or economic policy, encourage or require such choices. A combination of these factors likely explains the interval between the close of World War II and the mid 1970s known as “The Great Compression” – a period marked by broadly shared prosperity and large reductions in income inequality.<sup>51</sup> Tax, trade and labor policies, high union density and a different corporate ethos all counteracted the severe logic of SSM — and workers experienced a far more equitable income distribution.

Today, unfortunately, the landscape looks quite different. Union membership has plummeted, in part as a result of hostile state and federal policies, government has significantly relaxed regulation of corporations and instituted tax policies that disproportionately favor the wealthy, and trade policies have placed domestic workers in competition with highly exploited, low-paid workers from developing nations across the globe. In the new climate, with external constraints removed, the inherent logic of SSM has re-emerged in its severe form, providing incentives for traditional corporations to select the approach of unmitigated profit maximization. This incentive to devalue labor, while always present to some degree, has led to increased corporate profiteering, with many businesses rejecting the notion that the hourly pay of their workers should increase with increased productivity and profitability.<sup>52</sup> Simply stated, pay and productivity – which once moved in tandem — are no longer linked; the idea of shared prosperity holds little, if any, sway in the corporate calculus.<sup>53</sup> The SSM has carried the day and, in the process, contributed mightily to income inequality, wage exploitation and the myriad ills that attend these phenomena.<sup>54</sup>

Prevailing SSM corporate governance practices should be changed to reduce or eliminate incentives that contribute to excessive income inequality and wage exploitation in the United States. Since productivity and profits are increasing while the wage share of workers continues to decrease, it is an opportune time to reassess organizational practices to emphasize wage gains that track productivity gains and to promote more equitable income distribution. Mechanisms should be implemented to help to narrow the gap between productiv-

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<sup>51</sup> See Claudia Goldin and Robert A. Margo, *The Great Compression: The Wage Structure in the United States at Mid-Century*, 107 Q.J. ECON. 1 (1992) (coining the term).

<sup>52</sup> See LAWRENCE MISHEL AND ROSS EISENBREY, ECON.POL'Y INST., HOW TO RAISE WAGES: POLICIES THAT WORK AND POLICIES THAT DON'T, Briefing Paper No. 391 at 7 (March 19, 2014).

<sup>53</sup> *Id.*

<sup>54</sup> Patricia Cohen, *Counting Up Hidden Costs of Low Pay*, N.Y. TIMES, Apr. 13, 2015, at B1, available at <http://www.nytimes.com/2015/04/13/business/economy/working-but-need-ing-public-assistance-anyway.html>.

ity and pay and to ensure that a worker today need not work longer and harder for less pay than his or her counterpart from years ago.<sup>55</sup>

Admittedly, any such efforts to reform corporate governance and priorities would face severe obstacles. There are, however, a growing number of alternative, democratic business structures that can and do distribute income and wealth in a more sustainable and equitable fashion.<sup>56</sup> Such structures include worker-owned cooperatives and union coops.<sup>57</sup> The next section discusses worker-owned cooperatives and union coops as significant and transformative alternatives, with equitable governance practices that can stem the tide of income inequality.

### III. PRINCIPLES AND PRACTICES OF COOPERATIVE ENTERPRISES

Worker-owned cooperatives and union coops represent innovative and viable forms of worker-ownership that are based on principles of democratic governance and equitable distribution of income and wealth.<sup>58</sup> In New York City, worker-owned cooperatives are formed under the Business Corporations Statute, Limited Liability

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<sup>55</sup> *INEQUALITY FOR ALL* (72 Productions 2013)(a documentary film raising awareness about widening income inequality in the U.S. and approaches needed to reverse this trend). The documentary shows that the cause of widening income inequality is not that workers are not working hard and shows that in fact workers are actually working longer and harder for less. The documentary also suggests ways of addressing income inequality.

<sup>56</sup> In addition to worker-owned cooperatives, such alternative business structures include, but are not limited to, Social Enterprises and Benefit Corporations. Social Enterprises are generally for-profit businesses whose primary purpose is to serve the common good. *See generally* SOC. ENTERPRISE ALLIANCE, *WHAT'S A SOCIAL ENTERPRISE?* (2014), available at <https://www.se-alliance.org/why#whatsasocialenterprise>. Benefit Corporations (B Corporations) are a subset of Social Enterprises and are generally structured as for-profit enterprises incorporated under a state's business corporation law. B Corporations, however, include among their purposes the creation of public benefits, such as protecting the environment or providing services to underserved communities. Because B Corporations have purposes beyond profit-maximization, directors are both permitted and required to pursue the public benefit purpose(s) as part of their fiduciary duties to act in the best interests of the corporation. At present, twenty-six states and the District of Columbia have enacted legislation recognizing the corporate structure of Benefit Corporations. *See* BENEFIT CORP. INFO. CTR., *STATE BY STATE LEGISLATIVE STATUS*, <http://www.benefitcorp.net/state-by-state-legislative-status> (last visited Feb. 21, 2015), (also indicating that legislation is pending in an additional eight states).

<sup>57</sup> To be sure, there are other forms of employee ownership, e.g., Employee Stock Ownership Plans ("ESOPs"); however, this article focuses on worker-owned cooperatives and union co-ops as more transformative forms of ownership. For a brief discussion of these differences, *see* Carmen Huertas-Noble, *Promoting Worker-Owned Cooperatives as a CED Empowerment Strategy: A Case Study of Colors and Lawyering in Support of Participatory Decision-Making and Meaningful Social Change*, 17 *CLIN. L. REV.* 255 (2010) [hereinafter Huertas-Noble, *Promoting Worker-Owned Cooperatives*].

<sup>58</sup> *See, generally*, Jessica Gordon Nembhard, *Cooperatives and Wealth Accumulation: Preliminary Analysis*, 92 *AM. ECON. REV.* 325 (2002); Peter Molk, *The Puzzling Lack of Cooperatives*, 88 *TUL. L. REV.* 899 (2014).

Company Statute and the NY Cooperative Statute.<sup>59</sup> Not all states have cooperative statutes. Even where a state may have a cooperative statute, prospective worker-owners, upon advice of counsel, may choose to form under the state's limited liability company law, the choice of most NYC worker-owned cooperatives because of its flexibility, or the business corporation law. The point is not to put form over substance. Each statute has its own strengths and limitations. Once the needs of the prospective worker-owned cooperative are known, lawyers can counsel prospective worker-owned cooperatives on the options for entity formation that work best for that particular group.

In a worker-owned cooperative each worker has one share<sup>60</sup> and one vote. Such cooperatives are governed by democratic principles of shared governance.<sup>61</sup> Unlike traditional business organization structures, where ownership (including both profit sharing and governance rights) is based primarily on capital investment, ownership in a worker-owned cooperative is based primarily on labor and the democratic principle of one person, one vote.<sup>62</sup> In a worker-owned cooperative, worker-owners share governance responsibilities and profits. Profits are typically distributed equitably based on patronage.<sup>63</sup>

Worker-owned cooperatives have a long history, especially in marginalized communities. It has been observed that throughout history worker-owned cooperatives have tended to develop during severe economic crises.<sup>64</sup> Worker-owned cooperatives "have also been intertwined with workers' movements, nationalist movements, social-

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<sup>59</sup> For a detailed discussion of entity formation options for worker-owned cooperatives see Edward W. De Barbieri & Brian Glick, *Legal Entity Options for Worker-Owned Cooperatives*, 2 Grassroots Economic Organizing (GEO) Newsletter (2011), available at <http://www.geo.coop/node/628>.

<sup>60</sup> The mechanism of the share only applies to C corporations and Cooperative corporations. In an LLC worker-owners would have equal membership interest.

<sup>61</sup> See generally David Ellerman & Peter Pitegoff, *The Democratic Corporation: The New Worker-owned cooperative Statute in Massachusetts*, 11 N.Y.U. REV. L. & SOC. CHANGE 441 (1982); Peter Pitegoff, *Worker-ownership in Enron's Wake-Revisiting A Community Development Tactic*, 8 J. SMALL & EMERGING BUS. L. 239 (2004); John Pencavel, Luigi Pistaferrri & Fabiano Schivardi, *Wages, Employment, and Capital in Capitalist and Worker-Owned Firms*, 60 INDUS. & LAB. REL. REV. 23 (2006).

<sup>62</sup> New York Cooperative Corporations Law §§ 89(2), 88(2) (2015), <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>:

<sup>63</sup> Typically, worker-owned cooperatives distribute net income in proportion to each worker-owner's labor contribution; this distribution is called a patronage dividend. See, The ICA Group, PATRONAGE DIVIDEND (2015) <http://ica-group.org/patronage-dividend>; see generally Melanie Conn, *No Bosses Here: Management in Worker Co-Operatives*, 9 J. BUS. ETHICS 373 (1990).

<sup>64</sup> Gowri J. Krishna, *Worker-Owned Cooperative Creation as Progressive Lawyering? Moving Beyond the One-Person, One-Vote Floor*, 34 BERKELEY J. EMP. & LAB. L. 65 (2013)

religious movements, and political movements<sup>65</sup>,” all seeking to find job security and to avoid exploitation. As noted more fully below, worker-owned cooperatives and union coops are based on principles designed to support inclusive governance and equitable sharing of responsibilities and profits.

A. *Worker-Owned Cooperatives As An Alternative Model  
To Traditional Corporations*

The worker-owned cooperative model offers a meaningful alternative to the traditional corporation that is of particular import in the quest to reduce income inequality. The worker-owned cooperative model makes capital subordinate to labor and puts a premium on labor rights. Ownership is primarily based on labor and not solely on purchasing shares. To help ensure capital remains subordinate to labor, shares are also generally kept affordable. The worker-owned cooperative model also tends to keep jobs locally based and keep profits circulating in the community.<sup>66</sup> In addition to keeping most profits in hosting communities, worker-owned cooperatives are also more likely to be environmentally friendly and more attuned to environmental injustice because worker-owners live in or near the very communities where their businesses are located.<sup>67</sup>

A union coop is a worker-owned cooperative that is unionized.<sup>68</sup> There is an array of reasons for which cooperatives choose to unionize. Cooperatives may unionize in order to acquire clear structures and processes for democratic workplace governance, including handling workplace disputes. They may also join unions in order to take

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<sup>65</sup> *Id.* at 114.

<sup>66</sup> See Carmen Huertas-Noble, Jessica Rose & Brian Glick, *The Greening of Community and Economic Development: Dispatches from New York City*, 31 W. NEW ENG. L. REV. 645 (2009) (explaining that worker-owned cooperatives tend to anchor businesses in the local community in part, because worker-owners are likely to live in the communities in which their businesses are located and are more likely to hire and purchase their goods and services locally. Such owners are also less likely to disinvest during economic downturns.) See also WILLIAM H SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW BUSINESS, & THE NEW SOCIAL POLICY* 69-72 (2001). Unions can also help in connecting worker-owned cooperatives to larger economic justice movements.

<sup>67</sup> Cooperatives also operate under the principle of concern for community. See JESSICA NEMBHARD, *COLLECTIVE COURAGE: A HISTORY OF AFRICAN AMERICAN COOPERATIVE ECONOMIC THOUGHT AND PRACTICE* (2014); Jessica Nembhard, *Principle and Strategies for Reconstruction: Models of African American Community Based Cooperative Economic Development*, 12 HARV. J. AFR. AM. PUB. POL'Y 39, 44 (2006); and Simon, *supra* note 66 at 69-72.

<sup>68</sup> For an example of a union co-op model collaboratively developed by Mondragon USA, the Ohio Employee Ownership Center (OEOC), and United Steelworkers (USW), see Rob Witherell et al., *Sustainable Jobs, Sustainable Communities: The Union Co-op Model* (March 26, 2012), available at <http://assets.usw.org/our-union/coops/The-Union-Co-op-Model-March-26-2012.pdf>.

advantage of the unions' resources, in order to improve the cooperatives' sustainability. I will address, first, the advantages with regard to dispute resolution and governance, and then the advantages relating to sustainability.

At first, unionization of worker-owned cooperatives may seem counter-intuitive, primarily because it is perceived that owners would be bargaining against their own interests. However, that assumption implies that the interests of the various owners are always aligned, which is not the case. Conflicts between worker-owners and their selected management can mirror conflicts in other workplaces and conflicts may also arise among worker-owners in non-management roles. In one rarely occurring but conceivable example, individual worker-owners can lose their membership by a vote of a majority of other worker-owners and thus lose their ownership interest. Being part of a union, in this context, can serve as a trusted added layer of protection for worker-owners, offering worker-owned cooperatives an external option of conflict resolution by an organization that is mission aligned and has expertise in conflict resolution.

Worker-owned cooperatives may also elect to unionize for non-governance reasons. These reasons include the possibilities that unions offer to increase the cooperatives' sustainability. Union coops can leverage many attractive features of union affiliation: for instance, union purchasing power to secure better benefits packages for worker-owners and union political clout to obtain limited training opportunities<sup>69</sup> to enhance the quality of services or products they provide to the membership. Worker owned cooperatives also may unionize in order more fully to integrate into larger economic justice movements. In addition, the union emphasis on creating and maintaining solidarity and the structures which unions have formed to achieve solidarity can also help inform/shape the creation of inter-cooperation among cooperatives, which can help worker-owned cooperatives scale up by creating a steady demand and consumer base.

### *B. Worker-Owned Cooperatives as Contributors To Economic Justice Movements*

The current connection of the worker-owned cooperative movement to economic justice movements, and the diversity of people and groups that are interested in creating such alternatives, represent exciting developments. This resurging interest in expanding worker-owned cooperatives is occurring at a time when various economic justice movements are coming together in a shared struggle to fight for

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<sup>69</sup> For examples, see Section III C, *infra*.

human dignity and rights of workers.<sup>70</sup> Many view worker ownership as a major way to address income inequality. As I will note below, a significant proportion of worker-owned cooperatives are based on the Mondragon Principles. These Principles include payment solidarity, which means “sufficient and fair pay for work as a basic principle of its management.”<sup>71</sup>

Participants extend beyond the few expected advocates for these alternatives; the movement supporting these cooperatives is broad and is growing. For example, government officials,<sup>72</sup> educational institutions with leading academics<sup>73</sup> and bankers<sup>74</sup> are joining social and economic justice activists, in advocating for alternatives and are increasingly supporting these alternative models. A strong and growing national movement of both advocates and government officials is creating more worker-owned cooperatives and union cooperatives and bringing them to scale. This development is taking place across the United States. It includes California, where organizations like Prospera<sup>75</sup> partner with low-income Latina women to build and maintain cooperative businesses; Jackson, Mississippi, where recently the late mayor, Chokwe Lumumba, had referred to his economic plan as creating the Mondragon<sup>76</sup> of the South<sup>77</sup>; and Madison, Wisconsin, where

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<sup>70</sup> For example, the coalition is made up of various individuals and organizations, including the Clinic, the Federation of Protestant Welfare Agencies, the Urban Justice Center, Make the Road New York, etc. which are all active participants in larger economic justice movements.

<sup>71</sup> See Section IV A, *infra*, for a discussion of the Mondragon Principles.

<sup>72</sup> See Cameron Keng, *If Apple Were a Worker-owned Cooperative Each Employee Would Earn at Least 403k*, (stating that Prof. Huertas-Noble and 1Worker1Vote have taken their success with promoting worker-owned cooperatives and securing New York City government funding to help spur other communities and governments such as Madison, Wisconsin to make similar pledges of financial support for worker-owned cooperatives) <http://www.forbes.com/sites/cameronkeng/2014/12/18/if-apple-was-a-worker-cooperative-each-employee-would-earn-at-least-403k/> Last visited on 7/23/2015.

<sup>73</sup> For a discussion of the involvement of leading educational institutions in developing curricula for training cooperatives, see Section VI, *infra*.

<sup>74</sup> Left Forum, *Union-Coops: A Powerful Tool in a Broad-Based Movement to End Income Inequality and Create Transformative Economic Justice* (June 1, 2014). Panelists included David Levine, Co-Founder and CEO of the American Sustainable Business Council; Michael Peck, Mondragon North American Delegate; Stephen Edel, Green & Equitable Economies Organizer, The Center for Working Families; Carmen Huertas-Noble, CUNY, and Missy Risser, Co-Founder, 1 Worker 1 Vote. The audience, included Citibank representatives and other bankers, activists and educators. The diversity of the audience was exciting. As one of the author’s lawyer colleagues said, when you get the bankers in the room, then you know you’re making progress.

<sup>75</sup> Prospera was formerly known as Women’s Action to Gain Economic Security (WAGES).

<sup>76</sup> Mondragon is one of the largest networks of worker-owned cooperatives in the world, and is highly profitable. For further description of the Mondragon Cooperative, see Section IVA, *infra*.

<sup>77</sup> See Malcolm X Grassroot Movement, *The Jackson Plan: A Struggle for Self-Determi-*

worker-owned cooperative advocates were able to secure \$5 million over the course of five years to expand worker-owned cooperatives as a key to economic revitalization and social justice.<sup>78</sup> These examples, and others like them, raise the prospect of expanding the proportion of worker-owned cooperatives, possibly helping them stem the growth of income inequality. This would respond to some of the critiques of worker-owned cooperatives noted below.

### C. *Critiques Of Worker-Owned Cooperatives And The Union Coop Model*

There are two main critiques of cooperatives: <sup>79</sup> (1) they do not always reach their transformative potential to create successful democratic workplaces that are an alternative to a capitalist economy (2) they operate at a small scale (partly because they are difficult to capitalize) and scaling up has proven difficult. As to the first critique, the failure to reach transformative potential to contest capitalism can be addressed through governance strategies such as unionization that put cooperative principles into operation.<sup>80</sup> For example, by creating more union cooperatives, unions can help create and/or bolster solidarity and integrate worker-owned cooperatives into the larger economic justice movement.<sup>81</sup>

The second challenge, to build a successful cooperative movement of sufficient scale to make a real difference, can be addressed by including businesses where capitalization is less of an issue as well as by improving access to capital for businesses that need investment capital. Unlike the very successful Mondragon cooperatives in Spain, which provide, among other benefits, access to financing, the U.S. has

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*nation, Participatory Democracy, and Economic Justice* (July 2012), <https://mxgm.org/the-jackson-plan-a-struggle-for-self-determination-participatory-democracy-and-economic-justice/>.

<sup>78</sup> See Keng, *supra* note 72 (stating that The City of Madison has approved a plan to provide \$1 million over the course of five years to support worker-owned cooperatives).

<sup>79</sup> See, e.g., Krishna, *supra* note 64 (arguing that the one-person, one vote principal is not enough to make the worker-owned cooperative model transformative). Other critiques, outside the scope of this article, concern cooperatives' ability to compete in the market place and the drawbacks of participatory decision-making structures as a tax on workers time (if governance work is not paid) and inefficiency based on the amount of work that could be accomplished if each person specialized. *But see generally* Carmen Huertas-Noble, *Promoting Worker-Owned Cooperatives*, *supra* note 57 (arguing that worker-owned cooperatives promote collaboration and a more communally productive workplace).

<sup>80</sup> See Krishna, *supra* note 64 at 76-77 (noting that some cooperatives “. . . seem to merely transform labor(ers) into Capital(ists) without aggregating worker power”). The applicability of this statement depends on how the cooperative is set up and governed.

<sup>81</sup> This idea is developed further in the discussion of the Community Economic Development Clinic described more fully below. See Section V, *infra*.

no robust network of cooperatives and no real inter-cooperation exists in the form of worker cooperatives doing business with each other as way to increase demand for their products and services and remain sustainable. To address the capitalization issue, the New York City cooperative movement described below is trying to learn from Mondragon and create more worker-owned cooperatives based on the Mondragon model, seeking funding from cities as well as banks that were created to lend to cooperatives.

Scale can also be increased when unions bring additional purchasing power and political clout to obtain contracts that serve to increase demand and revenue for the cooperative businesses. As demand increases, worker-owned cooperatives can also bring on additional worker-owners, moving from relatively small businesses with few worker-owners to more sizeable businesses with greater numbers of worker-owners. Unions also open up slots for job licensing training. For example, with Make the Road New York, the United Steel Workers were instrumental in securing OSHA training slots for Make the Road New York members. These members took the training together to form a worker-owned cooperative that would inspect and ensure building compliance post Hurricane Sandy.

Below are two examples that address the critiques that cooperatives fail to effect meaningful transformation in the workplace and fail to achieve sufficient scale for such transformation to be widespread.

#### IV. SUCCESSFUL EXAMPLES OF WORKER-OWNERSHIP: MONDRAGON AND CHCA

As the worker-owned cooperative movement grows, advocates are looking to successful examples abroad and at home from which to draw lessons, including what worked, did not work and why, as well as to learn how successful models have overcome the critiques listed above. Two successful examples are Mondragon in Spain and CHCA in the Bronx.

##### A. *The Mondragon Corporation*<sup>82</sup>

Mondragon, the world's largest network of worker-owned industrial cooperatives, is the top Basque region industrial group, ranked tenth in Spain with 80,000 personnel, a presence in 70 countries, and winner of the 2013 Financial Times "Boldness in Business" award.<sup>83</sup>

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<sup>82</sup> Mondragon does not refer to itself as a Model. It speaks of the Mondragon experience. This recognizes the importance of always needing to improve.

<sup>83</sup> As of 2013, Mondragon had over \$34 billion in assets across 103 Cooperatives, 122 production plants, 8 foundations, 1 mutual society, 10 support entities and 13 international service companies. See Mondragon Corporation, *Annual Report 2013*, available at <http://>

Mondragon's more than sixty-year-old mission is to generate wealth for society through business development and job creation under the "one worker, one vote" cooperative framework, where labor is sovereign and capital, while essential, is subordinate to sustainable job creation. Mondragon is an entrepreneurial socioeconomic entity inspired by the Basic Principles founding its Co-operative Experience, which include Open Admission and Neutrality, Democratic Organization, Sovereignty of Labor, Instrumental and Subordinate Nature of Capital, Participatory Management, Wage Solidarity, Inter-cooperation, Social Transformation, Universality of the Cooperative Experience, and Education.<sup>84</sup>

Mondragon was "developed through the spirit and work carried out by José Maria Arizmendiarieta, a young priest who in 1941 came to Arrasate-Mondragón, which at the time was living through the painful aftermath of the Spanish civil war in the form of poverty."<sup>85</sup> Father Arizmendiarieta started to address the issues of poverty by first focusing on health needs and on educational training with the idea that it was first necessary to share knowledge before democratizing power. Father Arizmendiarieta trained Mondragon's first graduates to create Mondragon's first cooperative, Falgor, based on the ten Mondragon principles.<sup>86</sup>

All of Mondragon's cooperative enterprises are driven by the following ten principles:<sup>87</sup>

1. Open Admission: open to all who agree to the cooperative principles regardless of age, ethnicity, political orientation, spiritual practice or gender.
2. Democratic Organization: All workers must be members, with a few exceptions and the organization is democratically controlled by the workers on the basis of one worker receiving one vote in electing leadership.

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[www.mondragon-corporation.com/eng/about-us/economic-and-financial-indicators/annual-report/](http://www.mondragon-corporation.com/eng/about-us/economic-and-financial-indicators/annual-report/)

<sup>84</sup> Interview with Michael Peck, Mondragon's North American Delegate and co-founder of 1Worker1Vote (May 21, 2015)(on file with Author).

<sup>85</sup> See Mondragon Cooperative Corporation, *Mondragon: 1956-2014*, available at <http://www.mondragon-corporation.com/wp-content/themes/mondragon/docs/History-MONDRAGON-1956-2014.pdf>.

<sup>86</sup> Although Falgor's cooperative recently "failed," its ability to re-employ almost all its worker-owners by retraining them and placing them at other Mondragon cooperatives and the decision by the Mondragon Network's worker-owners to take a 1.5% (?) cut in their salaries illustrate Mondragon's commitment to its individual worker-owners. Despite the attention paid to the owner-members of the cooperative, an important critique that Mondragon faces is that it is a multinational corporation and has many subsidiaries where most or all of the workers are not members.

<sup>87</sup> See Greg MacLeaod, FROM MONDRAGON TO AMERICA, EXPERIMENTS IN COMMUNITY ECONOMIC DEVELOPMENT 40-41 (1997).

3. Sovereignty of Labor: The cooperatives renounce wage labor and give primacy to workers in distribution of surpluses and attempt to extend the cooperative to all members of society.
4. Instrumental Character of Capital: Capital is necessary factor in business and savings, however, return on capital investment or savings is not directly tied to surpluses or losses of the cooperatives.
5. Self-Management: cooperation is the manifestation of individual responsibility and collective effort. Clear information on the organization's operations must be available to members in order to facilitate both the collective effort of participation in management and individual requirements of ongoing skills development for self-management.
6. Pay Solidarity: Internally this means the ratio between highest and lowest paid worker cannot exceed 6 to 1. Externally this means that wages should be comparable to prevailing wages in neighbouring conventional firms.
7. Group Cooperation: Individual cooperatives organized in groups, between groups and between Mondragon and other movements.
8. Social Transformation: Mondragon is an instrument for social transformation.
9. Universal Nature: The co-ops proclaim their solidarity with all who labor for economic democracy, peace, justice, human dignity, and development.
10. Education: "It is fundamentally important to devote sufficient human and economic resources to cooperative education, professional training, and general education of young people for the future."

The Mondragon model addresses the two main critiques of worker-owned cooperatives. Mondragon has put into effect the transformative tenets expressed in the Principles, and is not just another business structure that replicates the status quo. Workers participate in democratic decision-making in businesses that are economically successful. The workers themselves earn living wages. Mondragon also maintains a small CEO to worker pay ratio.

By example, Mondragon has met the critique that cooperatives fail to achieve sufficient scale to put their principles into meaningful practice. Mondragon, while starting out small, has successfully scaled through its unique capitalization strategies, including creating its own bank and creating a network of worker-owned cooperatives that serve to implement its principle of inter-cooperation. By creating its own bank, Mondragon cooperatives were/are able to gain access to loans with non-traditional lending criteria, especially in Mondragon's early stages and by creating different types of worker-cooperatives that exist and operate in a network that purchases good and services from

among its network, they were able to help increase and stabilize demand for their products and services.

### B. *Cooperative Home Care Associates (CHCA)*

CHCA, located in the Bronx, is currently the largest unionized worker-owned cooperative in the US and is very successful. The Community Service Society (CSS) formed CHCA in 1985 as a cooperative under the Business Corporation Law. “CHCA has over 1,600 members and revenues of \$40 million.”<sup>88</sup>

CHCA works in home health care, an industry that is notorious for exploiting its workers both in terms of low pay and poor working conditions.<sup>89</sup> CSS founded CHCA in 1985 “. . . on the premise that if workers owned their own company they could maximize wages and benefits, and if workers were better trained and better treated, they’d offer better care for their clients.”<sup>90</sup> CHCA exemplifies a business example that can be started with little capitalization and grow by leveraging union clout and securing government contracts. This health-care cooperative also provides a good example of unionization’s contribution to the transformative potential of worker-owned cooperatives. CHCA focused on industry-wide change.

To that end, CHCA worked on several connected tracks. To raise industry standards, not just for CHCA workers but across the field, CHCA started the worker-run Paraprofessional Health care Institute (PHI) that trains agencies across the country while also fighting policy shifts. (PHI was instrumental in the campaign that recently expanded the Fair Labor Standards Act.)<sup>91</sup>

The union played a major part in securing government contracts, thus strengthening CHCA’s continued existence, which in turn raised the worker-owners’ earnings. Currently, CHCA worker-owners who labor as home health aides earn approximately \$16 an hour with benefits, double the industry standard. CHCA’s worker-owners are also guaranteed an average of 36 hours per week – significantly more hours than the 25 to 30 hours that prevail in the industry. Together, guaranteed hours and increased pay promote work-life balance

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<sup>88</sup> See Krishna, *supra* note 64 at 92 (quoting American Worker-Owned Cooperative, a Brief History of CHCA).

<sup>89</sup> *Id.* at 101 (citing ANNE INSERRA, MAUREEN CONWAY & JOHN RODAT, THE ASPEN INSTITUTE, *Cooperative Home Care Associates: A Case Study of a Sectoral Employment Development Approach*, 18-19 (2002)), available at <http://www.aspenwsi.org/resource/chca/>.

<sup>90</sup> Laura Flanders, *The Kind of Jobs That Lift You Up: Finally, New York City Invests in Worker Co-ops*, YES! Magazine Fall 2014

<sup>91</sup> *Id.* at 35.

among worker-owners.<sup>92</sup> These increased wage and benefits are made possible, in part, by a relatively equitable income distribution of pay: the CEO earns just 11 times as much as the average worker.

CHCA worker-owners, who are over 90% women,<sup>93</sup> have consistently commented on their improved quality of life. Worker-owners frequently note that participation in CHCA allows them to spend more time with their families and be more present in their children's lives. CHCA worker-owners, many who formerly received public assistance, also note the upward mobility opportunities worker-ownership provides. For example, one worker-owner Zaida Ramos, who was raising her children on public assistance before CHCA, recently celebrated her daughter's college graduation and is also able to partially pay for her son's Catholic school education.<sup>94</sup> Mrs. Ramos not only experienced upward mobility herself but significantly increased the possibility of the same for her children.

Individual worker-owners also note that unionization provides them with additional benefits. For example, prior to unionization, workers tended not to utilize CHCA's grievance procedure. They attribute their reluctance to feelings of workplace vulnerability, despite the fact that they were also owners of the enterprise. A worker-owner who complained about the worker-owner who was responsible for assigning cases, for example, feared that she would thereafter be assigned to unfavorable cases in retribution. After CHCA unionized, the worker-owners felt more comfortable utilizing the grievance procedure and, in fact, did.<sup>95</sup>

V. AN EXAMPLE OF BUILDING ON PRIOR SUCCESSES: NEW YORK CITY WORKER- AND UNION-COOPERATIVE INITIATIVE AND CUNY SCHOOL OF LAW'S COMMUNITY AND ECONOMIC DEVELOPMENT CLINIC

Advocates for worker-owned cooperatives in NYC, like advocates in other cities nationwide, are looking to successful models from abroad, like Mondragon, and domestically, like CHCA, to inform their strategies for creating a local cooperative ecosystem. The NYC Worker Cooperative Coalition (The Coalition), of which CUNY School of Law's Community and Economic Development Clinic has

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 34.

<sup>95</sup> Interviews with Michael Elsas, President, Cooperative Home Care Associates (Apr. 29, 2013 and Nov. 4, 2013) and Keith Joseph, Vice President, Service Employees International Union Local 1199 (Sept. 19, 2013).

been an active and essential member, secured \$1.2 million in 2014<sup>96</sup> and \$2.1 million in 2015 from the NYC Council to fund worker-owned cooperative expansion.<sup>97</sup>

### A. *Community And Economic Development Clinic*

Community Economic Development efforts adopt one of three basic approaches, primarily emphasizing either the community empowerment aspect (termed “Ced”), the economic growth aspect (“cEd”), or the institutional development aspect (“ceD”).<sup>98</sup> CUNY’s CEDC<sup>99</sup> deliberately emphasizes the “community” and “development” aspects of community economic development in its client representation. CEDC’s approach is guided by the belief that social justice lawyering is most effective when strategically delivered to help build the power of low-income and marginalized communities. To that end, CEDC uses an empowerment-driven approach in its teaching and representation of clients.<sup>100</sup> CEDC represents both start-up and established organizations that envision and implement vibrant neighborhood institutions and social and economic justice programs.

CEDC<sup>101</sup> has a growing worker-owned cooperative law docket and is part of a number of worker-owned cooperative development

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<sup>96</sup> See Flanders, *supra* note 90 (noting that, at the time of the allocation, this was the largest amount ever allocated by a city in the United States).

<sup>97</sup> New York City Council Finance Division, Latonia McKinney, Acting Director, *Fiscal Year 2015 Adopted Expense Budget Adjustment Summary / Schedule C*, June 25, 2014, 121, available at: [http://council.nyc.gov/html/budget/fy15\\_documents.shtml](http://council.nyc.gov/html/budget/fy15_documents.shtml) (last viewed July 1, 2015).

<sup>98</sup> See Huertas-Noble, *Promoting Worker-Owned Cooperatives*, *supra* note 57 at 257-261.

<sup>99</sup> CUNY School of Law’s Community and Economic Development Clinic (“CEDC”) is part of Main Street Legal Services’ clinical program, which is ranked 3rd in the nation and 1st in NY.

<sup>100</sup> For informative and interesting articles on CED legal practice, see Brian Glick & Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience*, 23 N.Y.U. REV. L. & SOC. CHANGE 105 (1997); Scott L. Cummings, *Community Economic Development as Progressive Politics: Towards a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399 (2001); Carmen Huertas-Noble, Jessica Rose & Brian Glick, *supra* note 66; Alicia Alvarez, *Community Development Clinics: What Does Poverty Law Have to Do with Them?* 34 FORDHAM URB. L.J. 1269, 1275 (2007); Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLIN. L. REV. 195, 202-07 (1997); Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLIN. L. REV. 217, 217-22 (1999); Krishna, *supra* note 64.

<sup>101</sup> CEDC has four main project areas: The Worker-owned Cooperative Law Project, The Nonprofit Legal Support Project, The Labor Law and Organizing Project and the Tenant Law and Organizing Project. For more info on CEDC, see Beryl Blaustone & Carmen Huertas-Noble, *Lawyering at the Intersection of Mediation and Community and Economic Development; Interweaving Inclusive Legal Problem Solving Skills in the Training of Effective Lawyers*, 34 WASH. U.J.L. & POL’Y 157 (2010).

initiatives in New York City and across the nation.<sup>102</sup> To promote job creation, CEDC's lawyering strategy extends beyond helping individual small businesses, which is needed and important work in and of itself, to creating more democratized and empowering forms of collective ownership.<sup>103</sup> As the author has noted in a previous article:

Empowerment driven CED lawyering, in a transactional context, is an emerging approach to progressive lawyering that fosters the collective action and active democratic participation of low-income and working class people to reshape our social, economic and political system.<sup>104</sup>

CEDC is playing a key role with its clients, community partners, and their members in designing an ecosystem in New York City to expand and support the worker-ownership movement. The Clinic's efforts include raising awareness of the worker-owned cooperative model and representing worker-owned cooperative clients in formation and on-going legal issues. This work includes CEDC's role in the New York City Worker Cooperative Coalition (the Coalition).

### B. *The Coalition*

The Coalition is comprised of organizations and individuals advocating for increased government commitment to and support for worker-owned cooperatives. The Coalition is comprised of individuals, including several CEDC alumni, and community based organizations, including several CEDC organizational clients such as Make the Road New York, New York City Network of Worker Cooperatives, and Green Worker Cooperatives. These members of the Coalition are at the forefront of forming or expanding worker-owned cooperatives and union coops.<sup>105</sup>

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<sup>102</sup> CEDC locally represents such organizations such as Make the Road New York, Green Worker-owned cooperatives and 1Worker1Vote. Outside of NYC, CEDC serves as co-counsel with Regional Legal Housing Services of Pennsylvania to represent Pittsburgh's Clean and Green Laundry, which is in the process of becoming a worker-owned cooperative that will most likely be unionized. 1Worker1Vote is also a national nonprofit that helps create union coops across the United States.

<sup>103</sup> Additional law clinics that employ a similar strategy are, *e.g.*, Fordham Law's CED Clinic, Hofstra Law's CED Clinic, Brooklyn Law's CED Clinic, and University of Michigan Law's CEDC Clinic.

<sup>104</sup> For an explanation of the different approaches to CED, and an argument for an empowerment driven approach, see Huertas-Noble, *Promoting Worker-Owned Cooperatives*, *supra* note 57 at 265. See also *id.* at 257-61 for additional articles written by scholars that view CED lawyering as a way to collaborate with and empower clients and communities.

<sup>105</sup> Coalition members include: SCO Family of Services-Center For Family Life, Green Worker Cooperatives, ICA Group, The Working World, Make the Road New York, Urban Upbound, Democracy at Work Institute, NYC Network of Worker Cooperatives, Commonwise Education, Inc., Business Outreach Center Network, Inc., Urban Justice Center,

The Coalition has accomplished a great deal in 2014 and 2015. In January of 2014, the Coalition produced a report titled *Worker-owned Cooperatives for New York City: A Vision for Addressing Income Inequality*<sup>106</sup> in order to raise awareness of the worker-owned cooperative model and its benefits. The Report outlined the benefits by documenting that worker-ownership leads to living wages, self-governance and determination, asset accumulation, and quality working conditions to a much greater extent than do other forms of business organization.<sup>107</sup> The Report's publication was celebrated with a standing-room only conference, also co-organized and sponsored by the CEDC, entitled "Worker-Owned Cooperatives: Jobs for New York City's Future."<sup>108</sup> The conference included presentations by the author, CEDC alums, CEDC clients, and community partners and was attended by several New York City Council members, including Councilwoman Maria Carmen del Arroyo, the Chairperson of the Committee on Community Development.

Following the Report and conference, Councilwoman Arroyo held a public hearing in February 2014, entitled "Worker-owned cooperatives – Is this A Model That Can Lift Families Out of Poverty?"<sup>109</sup> At the request of the City Council, CEDC clients, community partners, and students and alums presented testimony in support of expanding worker-owned cooperatives in New York City as a tool to reduce poverty. The Coalition collectively organized the order of the testimonies to be as inclusive and comprehensive as possible, ensuring that testimony was provided by worker-owners, academics, technical assistance providers, and community based organizations that incu-

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CUNY Law School, Federation of Protestant Welfare Agencies and Third Sector New England. See New York City Council Finance Division, Latonia McKinney, Director, *Fiscal Year 2016 Adopted Expense Budget Adjustment Summary / Schedule C*, June 26, 2015, 121, available at: [http://council.nyc.gov/html/budget/fy16\\_documents.shtml](http://council.nyc.gov/html/budget/fy16_documents.shtml) (last viewed July 1, 2015)

<sup>106</sup> Report is on file with Author.

<sup>107</sup> See, e.g., Saioa Arando et al., *Efficiency in Employee-Owned Enterprises: An Econometric Case Study of Mondragon*, Institute for the Study of Labor Discussion Paper No. 5711 (May 2011), available at <http://ssrn.com/abstract=1849466>; [http://online-library.wiley.com/journal/10.1111/\(ISSN\)1467-8292](http://online-library.wiley.com/journal/10.1111/(ISSN)1467-8292).

<sup>108</sup> The conference was held on January 30, 2014 at the Federation of Protestant Welfare Agencies. For more information on the conference, see John W. Lawrence, *A Call to Develop a Worker Cooperative Sector in New York City: How the City Can Create Jobs and Address Inequality at Its Roots*, available at <http://www.geo.coop/story/call-develop-worker-cooperative-sector-new-york-city>. This Initiative started with the Federation of Protestant Welfare Agencies convening a group of NYC worker-owned coops, worker-owned coop technical assistance providers and the CEDC to brainstorm how we could create more worker-owned cooperatives in the City and eventually bring them to scale.

<sup>109</sup> See *Oversight – Worker Cooperatives – Is This a Model That Can Lift Families Out of Poverty? Hearing Before the N.Y.C. Council Comm. on Community Development* (Feb.2014) available at <http://legistar.council.nyc.gov/Departments.aspx>.

bate worker-owned coops. The Hearing was so well attended due to the Coalition's outreach that it required an overflow room.

The CED Clinic and New York City Network of Worker Cooperatives also hosted the first annual worker-owned coop conference in New York City in mid-2014.<sup>110</sup> The conference began with a celebration of securing the 1.2 million and included panels by worker-owners, technical assistance providers, resource allies and academics. The Conference culminated in a plenary that addressed the growing and needed role of government in supporting worker-owned cooperatives. The author moderated a discussion between Councilwoman Arroyo and Assemblyman Carl Heastie, then the Chair of the New York State Assembly's Labor Committee. The conference ended with proclamations from the Mayor, the Public Advocate and the Manhattan Borough President.<sup>111</sup>

In 2015, New York City Council funding for the Coalition to create new worker-owned cooperatives and help support pre-existing worker-owned cooperatives has nearly doubled. In its second year, the Coalition has expanded to include new groups (an intentional decision to ensure greater access) and has secured \$2.1 million. Additionally, Councilwoman Helen Rosenthal of the New York City Council successfully introduced legislation, Int. 0423-2014, that requires city agencies to report on their outreach and contracts with worker-cooperatives.<sup>112</sup> Drafted with the assistance of a former student attorney in CEDC, and supported by CEDC's efforts, this legislation is seen as one of the first steps in facilitating worker-owned cooperatives access to the City's procurement process.

## VI. EDUCATING TOMORROW'S TRANSACTIONAL LAWYERS IN ESTABLISHING EFFECTIVE WORKER-OWNED COOPERATIVES AND UNIONIZED COOPERATIVES

This is a critical moment to develop and support the teaching of integrated legal and business skills around worker-ownership, especially in a social justice context. With income inequality reaching a destructive tipping point, new organizational solutions are needed to reverse the trend. As noted above and by various scholars and observers, worker-ownership presents a more balanced approach to entre-

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<sup>110</sup> The inaugural conference was held on June 21, 2014 at the City University of New York School of Law. More information on the annual conference, now in its third year, is available at <http://www.nycworker.coop/conference>.

<sup>111</sup> Proclamations on file with Author.

<sup>112</sup> Int. 0423-2014 is available at <http://nycprogressives.com/2015/02/26/progressives-pass-bill-to-support-worker-co-operatives/>.

preneurship that has many strengths.<sup>113</sup> In addition, this business organization form can improve the lives of people who might otherwise work in exploitative industries that fail to pay legally-mandated wages and maintain substandard working conditions. Finally, and importantly, this structure also gives workers a voice and a vote and distributes equity throughout the enterprise.

Once students recognize these benefits, they often ask, “why don’t more worker-owned cooperatives exist?” In part, the answer is that cooperatives are more prevalent than the public is aware. Although a significant number of cooperative businesses exist, including ACE Hardware stores<sup>114</sup> and Florida’s Natural orange juice growers,<sup>115</sup> most people are not aware that these businesses operate as cooperatives. Many people and the lawyers advising them are also unacquainted with the nuances of options for entity formation, such as incorporating under worker-owned cooperative statutes, and, in New York, forming as LLCs or B corporations. In addition, many entrepreneurs and workers are not aware of the worker-owned cooperative model in part because the model to date has not been widely publicized or taught in schools.

To address this void, CEDC teaches lawyering for worker-owned cooperative models as part of its empowerment - driven CED practice. CEDC teaches law students the basic tenets of worker-ownership and the challenges that worker-owned cooperatives face in their start-up phases (e.g., capitalization and scaling up). Students also learn how to counsel clients on their options for entity formation, as well as on creating governance structures that will ensure meaningful, democratic, participatory decision-making.

CUNY Law’s CEDC is also collaborating with Mondragon’s North American Delegation and cooperative incubator, Saiolan, to collaboratively develop a worker-owned cooperative curriculum. CEDC is interested in making the Mondragon educational model available in the U.S. to provide opportunities for students to earn certificates in social economy and cooperative development. To date, CEDC is collaborating with 1 Worker 1 Vote, Saiolan and other

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<sup>113</sup> See generally, Paulette L. Stenzel, *The Pursuit of Equilibrium as the Eagle Meets the Condor: Supporting Sustainable Development Through Fair Trade*, 49 AM. BUS. L. J. 557 (2012).

<sup>114</sup> See Press Release, *Ace Hardware Reports First Quarter 2012 Financial Results* (May 11, 2012), available at <http://ourcompany.acehardware.com/pdfs/2012Q1pressrelease.pdf> (describing Ace Hardware Corporation as the largest retailer-owned hardware cooperative in the industry).

<sup>115</sup> See Citrus World, Inc., “Who We Are” (2014), available at <http://www.floridasnatural.com/who-we-are> (describing Florida’s Natural Growers as one of the largest cooperatives of citrus growers with one thousand grower-owners).

CUNY schools, such as Medgar Evers College, to develop curriculum packages and programs to teach organizational practices that support community empowerment. Students will learn the legal, structural, transactional, and community-building skills and perspectives necessary to support worker-owner models that are economically viable and that effectively meet the challenges often associated with these models.

Many leading educational institutions such as MIT and Harvard have already expressed interest in the curriculum being developed. The pedagogical goal of the curriculum is to support people interested in being part of or running a worker-owned cooperative based on Mondragon principles. CEDC is also working with Catholic Scholars for Worker Justice to draft an encyclical for the Pope of the Catholic Church and will present the encyclical in Rome in 2016.

*A. Student Lawyering Lessons Learned In Legal Work Supporting CEDC's Participation In The Coalition*

As one of the founding members of the Coalition, CEDC has, to date, been working with the Coalition for two years. Through this collaboration, students engage in many traditional lawyering tasks by representing clients in the Coalition that were incubating worker-owned cooperatives. Such tasks include:

- Conducting policy advocacy<sup>116</sup> and formulating and drafting legislation;<sup>117</sup>
- Counseling clients on entity formation options, e.g. a limited liability company or a cooperative under the New York Cooperative Statute and forming the respective entities;<sup>118</sup> and
- Counseling clients regarding governance structures and drafting governance documents,<sup>119</sup> including counseling on the intersection between client governance documents and

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<sup>116</sup> See Hina Shah, *Notes From the Field, The role of Lawyer in Grassroots Policy Advocacy*, 21 CLIN. L. REV. 393 (2015).

<sup>117</sup> See *id.* at 407, 408 (citing Chai Rachel Feldblum, *The Art of Legislative Lawyering and the Six Circles Theory of Advocacy*, 34 MCGEORGE L. REV. 785,805 (2003)). Shah explains that while Feldman focuses on top down, hierarchical models staffed by outside experts, which is antithetical to grassroots campaigns that are often but not always democratic, Feldman “nonetheless provides a useful dissection of the specific skills necessary for an effective advocacy campaign”. These skills include the skillset of strategist, lobbyist, legislative lawyer, policy researcher, outreach strategist, and communications director.

<sup>118</sup> See N.Y. Ltd. Liab. Co. Law § 101 et seq. (McKinney 2015) and N.Y. Coop. Corp Law § 80 (McKinney 2015). See also De Barbieri & Glick, *supra* note 59.

<sup>119</sup> See Section VI B, *infra*, for a discussion of the various counseling approaches taken, including collaborative counseling and integrative counseling. See also WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

unionization, particularly the intersection between their governance documents and collective bargaining agreements.

In counseling the CEDC clients in the coalition on entity formation options and setting up the coalition's governance structures, students also learned how to navigate the intersection of labor law and entity formation options, not often taught in an integrated way in law schools.

In addition to the lawyering task above, students helped with:

- Movement-building<sup>120</sup> and creating the Coalition's own governance structure and committees;
- Providing community education not only for clients but elected officials e.g. providing testimony to City Council;
- Advocating for and securing funding for the Coalition; and
- Serving as co-strategists in the Coalition internally and externally and facilitating meetings and negotiations among members.<sup>121</sup>

One major lesson was for the students to learn to serve in multiple roles, including strategist in support of broad efforts to advance a cause such as worker-owned cooperatives in ways that benefit specific clients and many others.<sup>122</sup>

### *B. Applying The Skills of Integrative And Collaborative Counseling To An Empowerment-Driven CED Practice*

Students in CEDC learned that CEDC's role as both member and counsel to some organizational clients within the coalition required that they exercise a unique combination of legal counseling skills, non-legal strategic advice and problem-solving skills. Perhaps one of the students' most important lessons, in this regard, involved identifying and making explicit that they were not counsel to the coalition, but were counsel to certain organizations within the coalition and identifying and making explicit when their input was based on which role (e.g. as lawyer to one of the members or solely as a coalition member not giving legal advise but strategic input). To accomplish this, students learned and used intentional counseling skills of collabo-

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<sup>120</sup> See generally Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355 (2008).

<sup>121</sup> For comprehensive perspectives on the lawyer's role, see Blaustone & Huertas-Noble, *supra* note 101 at 2; Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions*, 36 LAW & SOC. INQUIRY 620 (2011); Sullivan et al, *supra* note 119; Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CAL. L. REV. 1999 (2007).

<sup>122</sup> This is a key lesson with strong precedent in the civil rights movement as well as the LGBTQ movement and the early stages of the labor movement.

rative and integrative lawyering when counseling their organizational clients that were also part of the coalition in forming worker owned cooperatives.

Collaborative counseling engages the client as a shared decision-maker in every phase of the counseling process and “. . .requires lawyer and client to collaboratively identify: the decisions that need to be made, the people empowered to make those decisions and the process for engaging decision-makers in making and evaluating those decisions. This includes involving the client in the generation of strategies and the development of options to choose from.” In this context, students made sure to amplify the organizational client’s voice, including the voices of its members, by including them in every step of the decision making process.<sup>123</sup>

The students also used the integrative counseling approach as part of their coalition work.<sup>124</sup> Integrative counseling requires an advanced appreciation of the multiple roles that a lawyer may play as both member of and lawyer for a coalition. According to Brian Glick and Sheila Forster, integrative counseling is a form of counseling that integrates the lawyers’ work in two necessary interconnected ways:

[L]awyers-like their clients-need to integrate flexibly and functionally a broad range of practice areas, skills and ?roles. And they need to make sure that all of their work is thoroughly integrated into the overall strategy, program and process of the organization so that their lawyering is closely tied to the organization’s efforts to build community capacity and power. Each form of integration shapes the other.<sup>125</sup>

Borrowing from the integrative counseling approach, students learned to be intentional about when to contribute and how to make clear whether or not their communications were based on the law and offered as legal advice. In working with the Coalition as a whole, Inclusive Legal Problem Solving Skills, which include robust information gathering, active listening, language reframing, facilitation, problem-solving, and consensus building skills,<sup>126</sup> were also particularly helpful. This was particularly true when the Clinic served as facilitator and consensus builder within the coalition context.

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<sup>123</sup> See Huertas-Noble, *Promoting Worker-Owned Cooperatives*, *supra* note 57 at 274; see also Ascanio Piomelli, *Foucault’s Approach to Power: Its Allure and Limits for Collaborative Lawyering*, 2004 UTAH L. REV. 395, 446-50 (supporting the idea of engaging clients throughout every phase of counseling and lawyers and clients working as partners to determine strategy and implementation and to assess its effectiveness).

<sup>124</sup> See Foster & Glick, *supra* note 121. While CEDC did not represent the coalition as a whole, it did represent some of the coalition members. As lawyers in the coalition, we did provide brief advice when we saw the coalition headed for legal pitfalls.

<sup>125</sup> *Id.* at 2055.

<sup>126</sup> See Blaustone & Huertas-Noble, *supra* note 101.

C. *Substantive Lessons Learned About How Best To Leverage Governmental And Institutional Support to Create And Expand Sustainable Worker-owned Cooperatives*

The coalition learned that, in addition to directly funding worker-owned cooperatives and union cooperative incubators, government could play other major roles in helping worker-owned cooperatives establish and sustain themselves. For example, government contracts often provide a stable and continuous demand for services and a source of revenue that can act as a hedge against fluctuations in demand as cooperatives get started. Governments can also support worker-owned cooperatives and union cooperatives by making cooperatives preferred contractors in the city's procurement process.<sup>127</sup> This is somewhat similar to the Cleveland model,<sup>128</sup> which also uses private or educational anchor institutions, as a way to scale up the worker-owned cooperative model by increasing incomes and assets as well by ensuring demand. Cities themselves can serve as needed anchor institutions. Anchor institutions are large service institutions, such as hospitals and universities, that are not easily relocated and are themselves major consumers that can use their purchasing power to create sustained demand for worker cooperatives.

Another way for governments to support scaling up worker-owned cooperatives is to promote and support business conversions.<sup>129</sup> One major target has been businesses owned by baby boomers whose children do not want to take over the family business. These businesses, currently profitable, can be converted to worker-ownership and help further ensure a cooperative's success and have the business sustain a local presence.<sup>130</sup>

## CONCLUSION

Worker-owned cooperatives are countering severe income inequality. They can counter inequality on a larger scale if we create greater strategies for base building, mobilization and bringing the operations of cooperatives to a sustainable scale. These strategies can include government funding and legislative support. Today's stark ine-

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<sup>127</sup> NEW YORK CITY SMALL BUSINESS ADMINISTRATION, SELLING TO GOVERNMENT, <http://www.nyc.gov/html/sbs/html/procurement/mwbe.shtml> (last visited July 1, 2015).

<sup>128</sup> See generally Gar Alperovitz et al., *The Cleveland Model*, *The Nation* (Mar. 1, 2010), available at <http://www.thenation.com/article/cleveland-model>.

<sup>129</sup> ICA is currently working on business conversions as a main priority. See THE ICA GROUP, WHAT WE DO, <http://ica-group.org/what-we-do/> (last visited July 1, 2015).

<sup>130</sup> *Id.* For more information on conversion, see Ohio Employee Ownership Center, *Small Business Ownership Succession: The Cooperative Solution*, at <http://www.oeockent.org/download/cooperatives/1042coopbrochure.pdf.pdf>; ICA Group, <http://ica-group.org/the-conversion-process/>.

quality and the growing interest in cooperative business entities that democratize the workplace and equitably distribute profits present a meaningful opportunity to advocate for the expanding and scaling up worker-owned cooperative models. These conditions also invite lawyers to participate in CED empowerment lawyering that can bring about needed systemic change.

Anchor institutions, whether they be private or public or entire cities, are critical to meet the challenge of making worker-owned cooperatives sustainable in the marketplace. Trying to advocate that governments give worker-owned and union coops preferences in their procurement processes and create more public banks, as in Denver<sup>131</sup> and banks like the National Cooperative Bank would be tremendously helpful. The Mondragon Cooperative's own Bank has recently collaborated with the National Cooperative Bank to think of ways of funding U.S. cooperatives as well as advocating for legislation. And, again, there are a number of states that have cooperative statutes. In some states that do not or recently did not have cooperative statutes, legal services providers are in the course of or recently drafted such legislation.<sup>132</sup> These developments are promising. They mean that there will be a growing role for law students in working with these entities — not just in terms of entity formation options, but also in terms that meld corporate law, transactional law, and labor law, a practice which the author has found to be the most challenging and rewarding.

Again, for law school graduates, there will be more worker-owned cooperatives and union cooperatives that will be their client-base. Law graduates who are interested in this work will need to know the intersection between labor law and transactional law. They will need to have the skills to work with state cooperative statutes and to adapt other corporate structures to incorporate cooperative values, to draft legislation to work with government officials. These new lawyers will be like any other corporate lawyer who goes beyond the basics of the field to become strategists and planners — they will be an integral part of their client's team, just as we already are and will continue to be.<sup>133</sup>

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<sup>131</sup> See BANKING ON COLORADO, ABOUT THE COLORADO INITIATIVE TO ESTABLISH A STATE-OWNED BANK, , <http://bankingoncolorado.org/colorado-initiative/> (last visited July 1, 2015).

<sup>132</sup> See 2015 Legis. Bill Hist. CA A.B. 816 available at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB816](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB816) (amending California corporations law to recognize worker cooperatives).

<sup>133</sup> See Glick & Rossman, *supra* note 100.