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**WORKER COOPERATIVE CREATION AS PROGRESSIVE  
LAWYERING? MOVING BEYOND THE ONE-PERSON,  
ONE-VOTE FLOOR**

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# Worker Cooperative Creation As Progressive Lawyering? Moving Beyond the One-Person, One-Vote Floor

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*Community Economic Development (CED) scholars posit that creating worker cooperatives—businesses owned and managed by their workers—is a progressive approach to CED with the potential to go beyond job creation and spur grassroots political activism. Yet many workers’ rights organizations and workers’ rights advocates, especially those serving low-wage immigrant workers, struggle with connecting worker cooperatives to broader efforts for economic, political, or social change. This Article argues that forming a worker cooperative that acts as a change agent requires more than simply structuring the business as a worker cooperative. Although cooperative corporation laws and cooperative principles set a floor—typically, one person, one vote—that floor alone does not guarantee political activism or broader change; collective organization does not inherently lead to collective action. Worker cooperatives face challenges in connecting to broader movements and serving as more than job-creation vehicles. These challenges include the inherent tension between a cooperative’s identity as a business and that of a values-oriented association of people, the limited scale of cooperatives, the significant resources required to start and maintain them, and concerns over member priorities and retention. Creating worker co-operatives as progressive institutions requires surmounting these challenges and actively prioritizing broader aims when incubating, recruiting for, structuring, governing, and operating cooperatives.*

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#### INTRODUCTION

Thanks in part to the Occupy Wall Street movement, conversations about the increasing inequality in the United States have entered

mainstream discourse.<sup>1</sup> Many now see how economic, political, and social conditions of globalization and neoliberal policies over the past four decades have led to diminished tax burdens on corporations and the wealthy, reduced enforcement of government regulation over workplace health and safety matters, the exertion of strong downward pressures on wages, a demand for low-wage workers in insecure and contingent jobs, and a stripping away of organizing and collective bargaining rights that has left workers “less able to defend their interests in the workplace than at any time since the Depression.”<sup>2</sup> Spurred by a desire to create alternative institutions that curb these trends and provide sustainable and democratic job opportunities, a growing interest in worker cooperatives—businesses owned and managed by their workers—has developed. In a worker cooperative, or co-op, governance rights are not tied to capital investment but are based on the democratic principle of one person, one vote, regardless of the extent of a worker’s economic interest in the cooperative.<sup>3</sup> Due to the recent global economic crisis, worker cooperatives are growing in popularity. Exemplifying this trend, the United Nations declared 2012 to be the International Year of the Cooperatives, urging governments to work

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1. Katrina vanden Heuvel, *The Occupy Effect*, THE NATION, Jan. 26, 2012, <http://www.thenation.com/blog/165883/occupy-effect#> (stating that Occupy Wall Street changed the national conversation to include income inequality, downward mobility, and economic fairness, and citing an increase in the number of U.S. newspaper stories using the term “inequality” after the movement began); Christopher Alessi, *Weighing Occupy Wall Street’s Impact*, COUNCIL ON FOREIGN RELATIONS, Nov. 22, 2011, [available at](http://www.cfr.org/united-states/weighing-occupy-wall-streets-impact/p26576) <http://www.cfr.org/united-states/weighing-occupy-wall-streets-impact/p26576> (noting that though the trajectory of Occupy Wall Street remains uncertain, it galvanizes debate over economic inequality in the developed world); David Carr, *For a Movement, a Question: What Now?*, N.Y. TIMES, Nov. 20, 2011, [available at](http://www.nytimes.com/2011/11/21/business/media/the-question-for-occupy-protest-is-what-now.html) <http://www.nytimes.com/2011/11/21/business/media/the-question-for-occupy-protest-is-what-now.html> (arguing that Occupy Wall Street’s message of unfair wealth distribution will have a lasting and significant impact on national debate).

2. Joseph A. McCartin, Op-Ed., *The Strike That Busted Unions*, N.Y. TIMES, Aug. 2, 2011, [available at](http://www.nytimes.com/2011/08/03/opinion/reagan-vs-patco-the-strike-that-busted-unions.html?_r=1&hp) [http://www.nytimes.com/2011/08/03/opinion/reagan-vs-patco-the-strike-that-busted-unions.html?\\_r=1&hp](http://www.nytimes.com/2011/08/03/opinion/reagan-vs-patco-the-strike-that-busted-unions.html?_r=1&hp); see also Joyce Rothschild, *Workers’ Cooperative and Social Enterprise: A Forgotten Route to Social Equity and Democracy*, 52 AM. BEHAVIORAL SCIENTIST 1023, 1025 (2009); JOHN CURL, FOR ALL THE PEOPLE: UNCOVERING THE HIDDEN HISTORY OF COOPERATION, COOPERATIVE MOVEMENTS, AND COMMUNALISM IN AMERICA, 244 (2009); Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879, 1882-83 (2007); ROGER A. CLAY, JR. & SUSAN R. JONES, *What is Community Economic Development?*, in BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY ECONOMIC DEVELOPMENT FOR ADVOCATES, LAWYERS, AND POLICYMAKERS 10 (2009).

3. Carmen Huertas-Noble, *Promoting Worker-Owned Cooperatives as a CED Empowerment Strategy: A Case Study of Colors and Lawyering in Support of Participatory Decision-Making and Meaningful Social Change*, 17 CLINICAL L. REV. 255, 264-65 (2010); see Scott L. Cummings, *Developing Cooperatives as a Job Creation Strategy for Low-Income Workers*, 25 N.Y.U. REV. L. & SOC. CHANGE 181, 200 (1999) [*hereinafter* Cummings, *Developing Cooperatives*]; David Ellerman & Peter Pitegoff, *The Democratic Corporation: The New Worker Cooperative Statute in Massachusetts*, 11 N.Y.U. REV. L. & SOC. CHANGE 441, 441 (1982-1983).

in partnership with cooperatives to reduce poverty and grow more productive societies.<sup>4</sup>

Worker centers and other community-based organizations in the U.S. have recently turned to worker cooperatives in an effort to create jobs for their largely immigrant members, enlisting the help of Community Economic Development (CED) lawyers in setting up the cooperatives.<sup>5</sup> For immigrant workers in low-wage workforces, membership in a worker cooperative often provides greater, steadier income and better working conditions than the often-exploitative environments of their prior work situations. The domestic work industry, for example, which includes house cleaning, child care, and care for the elderly and disabled, highlights the vulnerabilities of other low-wage, largely immigrant workforces. Substandard working conditions pervade the industry, and workers have little recourse to improve their conditions.<sup>6</sup> According to a 2012 report, the first national survey of domestic workers in the U.S., low pay is a systemic problem; workers rarely receive employment benefits, and they experience acute financial hardships, such that basic needs are unmet for many.<sup>7</sup> Additionally, the private sphere of the home, which is their workplace, and the casual nature of the work heighten the risks of racial discrimination, economic exploitation, and physical abuse taking place.<sup>8</sup> As a largely unregulated industry, domestic work frequently occurs in the “underground economy” outside the realm of the law, where many employers neither

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4. Immanuel Ness, *Worker Cooperatives in the United States* (Mar. 16, 2012), <http://www.workerscontrol.net/authors/worker-cooperatives-united-states-historical-perspective-and-contemporary->; see *United Nations International Year of Cooperatives*, UNITED NATIONS, <http://social.un.org/coopsyear/> (last visited Mar. 10, 2013).

5. Community and Economic Development (CED) is a strategy that includes a broad array of economic activities and programs focused on improving the quality of life in low- and moderate-income communities. CLAY & JONES, *supra* note 2, at 3; Alicia Alvarez & Paul R. Tremblay, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE (forthcoming 2013). CED lawyers work on a wide variety of matters including the creation of affordable housing, small businesses, affordable child care and health care, community development banks and credit unions, as well as the promotion of economic justice initiatives such as living wages and equitable development. CLAY & JONES, *supra* note 2, at 4. They have worked in partnership with community organizers and other advocates. *Id.* at 5.

6. Linda Burnham & Nik Theodore, *Home Economics, The Invisible and Unregulated World of Domestic Work*, NATIONAL DOMESTIC WORKERS ALLIANCE, xi, (2012), available at <http://www.domesticworkers.org/pdfs/HomeEconomicsEnglish.pdf>.

7. See *id.* (noting that twenty-three percent of workers surveyed were paid below the state minimum wage; seventy percent were paid less than thirteen dollars per hour; less than two percent received retirement or pension benefits; less than nine percent worked for employers who paid into Social Security; sixty-five percent did not have health insurance; and twenty percent reported that there were times in the previous month when there was no food to eat in their homes because they did not have money to buy food).

8. See Elizabeth J. Kennedy, *The Invisible Corner: Expanding Workplace Rights for Female Day Laborers*, 31 BERKELEY J. EMP. & LAB. L. 126, 129 (2010); Peggie R. Smith, *Organizing the Unorganizable: Private Paid Household Workers and Approaches to Employee Representation*, 79 N.C. L. REV. 45, 47 (2000).

comply with labor laws nor pay taxes to the government.<sup>9</sup> Banding together as a cooperative provides protection to members and helps deter abuse. Members often cite the “legitimacy” that a cooperative offers as an advantage over doing work alone, without ties to a cooperative. Additionally, domestic worker cooperatives, usually through the efforts of members themselves, provide training, educate workers on their rights, and publicize, solicit, and distribute jobs to members.

Beyond these benefits, CED scholars highlight worker cooperatives as viable means of job creation for low-wage workers.<sup>10</sup> The values inherent in cooperatives—cooperation, democratic decision making, and responsibility to the larger community—dovetail with CED’s emphasis on grassroots organizing, community accountability, leadership development, and creative problem solving.<sup>11</sup> In addition to job creation, scholars describe worker cooperatives as vehicles for political activism.<sup>12</sup> They portray worker cooperatives as part of an emerging, progressive approach to CED that “[n]o longer merely conceptualize[s] [CED] as a vehicle for community-based job creation, [but] also seeks to energize grassroots political activism.”<sup>13</sup> This “politically-engaged” approach to CED

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9. See Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, The Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 412 (1995) [*hereinafter* Gordon, *We Make the Road*]; see also Kennedy, *supra* note 8, at 136 n.56 (noting that other industries in the “underground economy” include restaurants and food service, nail and beauty salons, and building cleaning and security).

10. See Cummings, *Developing Cooperatives*, *supra* note 3, at 185.

11. See Laurie A. Morin, *Legal Services Attorneys as Partners in Community Economic Development: Creating Wealth for Poor Communities through Cooperative Economics*, 5 U.D.C. L. REV. 125, 165 (2000); WILLIAM H. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY* 136 (2001); Scott L. Cummings, *Mobilization Lawyering, Community Economic Development in the Figueroa Corridor*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS*, 308 (Austin Sarat & Stuart A. Scheingold eds. 2006) [*hereinafter* Cummings, *Mobilization Lawyering*].

12. See Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 Stan. L. Rev. 399, 473 (2001) [*hereinafter* Cummings, *CED as Progressive Politics*]; see also Huertas-Noble, *supra* note 3, at 264-66 (discussing worker-owned cooperatives as serving as a space for community organizing that enables cooperative members to participate in the larger economic justice movement); Peter Pitegoff, *Worker Ownership in Enron’s Wake—Revisiting a Community Development Tactic*, 8 J. SMALL & EMERGING BUS. L. 239, 241 (2004) (asserting that worker ownership can be a vital element of a broader job creation, community organizing, or community revitalization strategy) [*hereinafter* Pitegoff, *Worker Ownership*]; Kennedy, *supra* note 8, at 153 (advocating for greater support of housekeeping collectives as a way to improve wages, reduce exploitation, and cultivate social and political networks that strengthen immigrant communities).

13. See Cummings, *CED as Progressive Politics*, *supra* note 12, at 472-73; see also Robin S. Golden & Sameera Fazili, *Raising the Roof: Addressing the Mortgage Foreclosure Crisis Through a Collaboration Between City Government and a Law School Clinic*, 2 ALB. GOV’T L. REV. 29, 61 (2009) (describing lawyers who create cooperatives as “anti-capitalist” crusaders); CLAY, JR. & JONES, *supra* note 2, at 4.

prioritizes political action over market participation.<sup>14</sup> It “fuses legal advocacy with community-based organizing.”<sup>15</sup> Under this approach, existing structures and institutions themselves are seen as in need of reform rather than solely an infusion of investment.<sup>16</sup>

This Article argues that forming a worker cooperative that acts as a change agent requires more than simply structuring the business as a worker cooperative. Cooperative corporation laws and cooperative principles set a floor—typically, one person, one vote—but that floor does not, in and of itself, guarantee political activism or broader social or economic change. The collective nature of a cooperative does not inherently lead to collective *action*. In fact, many workers’ rights organizations and workers’ rights advocates struggle with how to connect worker cooperatives to broader efforts for change.

Part I discusses progressive lawyering theory and the tension between worker cooperatives as job-creating business entities and as organizing entities that carry out progressive aims. It provides background information on worker cooperative history and the relatively recent rise of worker cooperatives for low-wage, immigrant, and often vulnerable workers. Part I also illustrates how the core feature of cooperatives—the one person, one vote requirement—functions as a floor that does not necessarily guarantee broader change but sets up cooperatives as *potential* sites of collective action. At their core, worker cooperatives are businesses. But they are also associations of persons driven by values. These two sets of identities exist in tension. In an effort to put cooperative values into practice, a set of established, international cooperative principles exist for cooperatives to follow. However, following these guidelines is not a requirement for worker cooperatives, and the principles themselves do not resolve the dual-identity tension. Nevertheless, the one-person, one-vote requirement set out in these guidelines builds democracy in the workplace and puts workers on an equal basis, thereby equalizing power and developing individual capacity. Is this enough, as CED scholars posit, to instigate collective action or lead to political activism? How can cooperatives negotiate their dual identity as a business enterprise and as an association of values-driven individuals so that they meet their potential for collective action? Especially at a time when more organizations are learning about the worker-cooperative model, including worker centers and the Occupy Wall

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14. See Cummings, *CED as Progressive Politics*, *supra* note 12, at 458.

15. *Id.*

16. See Golden & Fazili, *supra* note 13, at 60. In contrast, a “market-based approach” to CED focuses on market-based principles—stimulating low-income communities by leveraging private investment for the development of community-based businesses, affordable housing, and financial institutions. See Cummings, *CED as Progressive Politics*, *supra* note 12, at 438; CLAY, JR. & JONES, *supra* note 2, at 11.

Street movement, and when a greater number of CED lawyers are asked to provide legal support to immigrant, low-wage worker cooperatives, it is critical to avoid mechanically prescribing cooperatives to create jobs without an understanding of their potential for activism.<sup>17</sup> Through a close examination of worker cooperatives—their aims, contexts, and methods—this Article attempts to determine how worker cooperatives can further economic, political, and social movements.

Using case studies of six domestic worker cooperatives and the organizations that founded them, Part II identifies and analyzes challenges that worker cooperatives, especially those made up of vulnerable workers, face in connecting to broader movements and serving as more than job-creation vehicles. It examines the difficulties that today's cooperatives encounter in serving as catalysts for political engagement, community action, and broader systemic change. Namely, managing the dual identities as a business and as a values-driven association of members, the limited scale and impact of cooperatives, the significant resources required to start and maintain them, and the concerns over member priorities and retention can hinder the success of cooperatives serving more than merely a job-creation function.

Finally, Part III proposes mechanisms for mobilizing cooperatives as sites of collective action. Lawyers and advocates looking to create worker cooperatives as progressive, politically-engaged institutions must recognize and work to surmount the aforementioned obstacles when incubating, recruiting for, structuring, governing, and operating the cooperative. Mechanisms for creating broader change include orienting members to an expanded mission and educating members about larger social injustices; mitigating the burdens of small-business startup and sustainability; incentivizing or requiring political-engagement activities; formalizing links to an organizing group and including cooperative members as part of an organizing base; and becoming industry players.

## I. PROGRESSIVE LAWYERING AND THE WORKER COOPERATIVE POTENTIAL

For weeks the organizers put together flyers, enlisted the church parishioners' help, and got the word out about an exciting new venture. They wanted to form a housecleaning cooperative. They would hold the initial meeting at the church to describe the idea and recruit the first co-op

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17. The author subscribes to the criticism voiced by Eduardo R.C. Capulong that paying “too much attention to [the] lawyering[/]professional role . . . and too little attention to carefully scrutinizing client activism—in particular its aims, contexts and methods,” results in “mechanical prescriptions that, at best, reinforce formalist (if pluralist) strategy and, at worst, miscalculate the lawyer’s role in promoting client activism and social change.” Eduardo R.C. Capulong, *Client Activism in Progressive Lawyering Theory*, 16 *CLINICAL L. REV.* 109, 113 (2009).



members. When the meeting day arrived, the organizers found themselves in a room of almost sixty women, all interested to hear what they had to say. One of the organizers recounts:

We talked about what the idea was, what a co-op was. We said this is going to take a long time to put together. This is going to take a lot of effort. This is not something that's going to generate jobs tomorrow. We're going to have to put together a plan, figure out how to organize ourselves and get jobs. This could take a year or more, maybe two years, to put together. If this is not what you came here for, if you thought there would be jobs tomorrow, you should feel free to leave.<sup>18</sup>

More than half of the women got up and left. Those who remained became the founding members of UNITY Housecleaners, a worker cooperative in Long Island, New York, launched in 1998. Just as the organizers had forewarned, it would be a year before the cooperative created jobs for its members.<sup>19</sup> The founding members spent numerous hours in committees and as a group to come up with a business plan, raise funds, begin publicity, and generate a pool of clients. The idea and support for the creation of UNITY came from the Workplace Project, a membership-based, workers' rights organization in Long Island.<sup>20</sup> The main organizer of the cooperative was a staff member of the Workplace Project, and the Workplace Project provided the co-op with meeting and office space.<sup>21</sup>

As a worker center, the Workplace Project organizes low-wage immigrant workers and their families for better working and living conditions.<sup>22</sup> Worker centers are community-based non-profit organizations that carry out localized economic justice campaigns outside of the framework of the National Labor Relations Act.<sup>23</sup> Worker centers use a combination of approaches including *service delivery* (providing legal representation to recover unpaid wages and worker rights education), *advocacy* (researching and exposing conditions in low-wage industries as well as lobbying), and *organizing* (engaging in leadership development among workers).<sup>24</sup> As part of a direct economic organizing strategy, the

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18. Telephone Interview with Nadia Marin Molina, former Executive Director, Workplace Project (Jun. 26, 2011) (on file with the author).

19. *See id.*

20. *See* JENNIFER GORDON, SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS 103-04 (2005) [*hereinafter* GORDON, SUBURBAN SWEATSHOPS].

21. *See* Telephone Interview with Nadia Marin Molina, *supra* note 18.

22. *See* History, WORKPLACE PROJECT NY, <http://www.workplaceprojectny.org/history> (last visited Feb. 9, 2013); *see also* GORDON, SUBURBAN SWEATSHOPS, *supra* note 20 at 104.

23. *See* Ashar, *supra* note 2, at 1892.

24. *See* JANICE FINE, WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM 2 (2006). Worker centers vary in how they think about their mission and carry out their work. There is not one specific organizational model that predominates across all centers. *See id.* at 11.

Workplace Project formed UNITY to create non-exploitative jobs in an industry where workers are often taken advantage of and treated poorly.<sup>25</sup> By coming together and acting collectively to obtain work, members of the worker cooperative were able to increase their incomes and better their working conditions.<sup>26</sup>

Progressive lawyers often seek to support organizing like that of the Workplace Project. They envision communities—not merely individuals—as necessary for problem solving, and they are “committed to partnerships between lawyers, clients, and communities as a means of transcending individualized claims and achieving structural change.”<sup>27</sup> This Part describes progressive lawyering theory, focusing on lawyers’ support of workers’ rights and community economic development. It highlights the tension between envisioning worker cooperatives as promoting political change and seeing cooperative formation as separate from a broader organizing strategy. In order to closely examine worker cooperatives, this Part next provides a background on worker cooperatives, with a focus on existing worker cooperatives comprised of low-wage, immigrant workers. Finally, this Part discusses how the core principles of a worker cooperative set a floor from which further efforts must be made to achieve greater structural change.

### A. *Theory and Tension*

Progressive lawyering theory, the set of strategies progressive lawyers and activists have developed over the last thirty-five years, emphasizes organized and politicized mass action to effect change.<sup>28</sup> Progressive legal practice is not about ensuring legal victory, but rather focuses on motivating, supporting, and furthering effective activism.<sup>29</sup> The progressive lawyering cannon encompasses a variety of labels including “‘people’s,’ ‘movement,’ ‘poverty,’ ‘public interest,’ ‘political,’ ‘critical,’ ‘three-dimensional,’ ‘long-haul,’ ‘community,’ ‘rebellious,’ ‘facilitative,’ ‘collaborative,’ ‘cause,’ ‘empowerment,’ ‘social justice,’ ‘grassroots,’ ‘democratic,’ and ‘revolutionary’ lawyers, as well as . . . ‘law and organizing’ . . .”<sup>30</sup> Certainly, differences exist within progressive

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25. See Drucilla Cornell, *Latina Women Organizing Immigrant Workers: Conversations with UNITY Housecleaners Cooperative*, REGIONAL LAB. REV., 10, 11 (Spring 2001); see also FINE, *supra* note 24, at 118.

26. See Telephone Interview with Nadia Marin Molin, *supra* note 18.

27. Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1079 (2007).

28. See Capulong, *supra* note 17, at 111; Andrea C. Yang, *Re-Considering Progressive Lawyering: The Theory and a Growing Practice in Asian Immigrant Communities*, 16 ASIAN PAC. AM. L.J. 100, 100 (Fall/Spring 2010-2011).

29. See Yang, *supra* note 28, at 109.

30. Capulong, *supra* note 17, at 118-19 (citations omitted).

lawyering, but common to the progressive approach is a connection to activism in forms such as mass movement and mobilization, direct action, organization building, and civic participation.<sup>31</sup> Progressive lawyers place value on “empowering communities, promoting economic and social justice, and fostering systemic change.”<sup>32</sup> A core principle for many progressive lawyers is that “[o]nly organized, politicized mass action from below . . . produces fundamental, lasting social change.”<sup>33</sup> Progressive lawyers struggle with the challenges of providing legal advocacy that is grounded in broader movements for political change and that combines a range of tactics such as direct services, mass mobilization, community education, and legal reform.<sup>34</sup> In the areas of workers’ rights and economic rights, progressive lawyers represent community-based groups engaged in organizing to improve wages and working conditions and bringing about broad structural reform for workers within, and sometimes across, industries.

Worker centers offer an example of how progressive lawyers contribute to advocacy and organizing around workers’ rights. At their heart, worker centers organize communities and carry out broad social and economic justice campaigns to build collective power among members, raise wages, and improve working conditions.<sup>35</sup> Sameer M. Ashar highlights three categories of legal work that lawyers provide to worker centers: *claim-centered* (legal advocacy aimed at winning damages for individuals or groups working under unlawful conditions), *organizing-centered* (legal advocacy promoting and defending workplace organizing and the tactical use of direct action protests against employers), and *policy advocacy-centered* (legal analysis, drafting reports and petitions, and lobbying).<sup>36</sup> In addition to the areas Ashar identifies, lawyers provide transactional legal assistance to worker centers, representing the worker center itself in incorporating, applying for tax-exemption status, negotiating contracts and leases, and drafting employee manuals, among other functions. Transactional lawyering in support of worker centers also fits squarely within the aims of progressive lawyering. By helping worker centers acquire formal legal entity status, gain tax exemption to better seek outside funding, and comply with legal requirements in their operation, transactional lawyers help further the organizing that worker centers do.

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31. See Yang, *supra* note 28, at 109.

32. See Karen Tokarz, Nancy L. Cook, Susan Brooks, & Brenda Bratton Blom, *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359, 364 (2008).

33. *Id.*

34. See Raymond H. Brescia, *Line in the Sand: Progressive Lawyering, “Master Communities,” and a Battle for Affordable Housing in New York City*, 73 ALB. L. REV. 715, 727 (2010).

35. See GORDON, SUBURBAN SWEATSHOPS, *supra* note 20, at 282-83.

36. See Ashar, *supra* note 2, at 1895.

Worker centers also need transactional legal assistance to navigate the myriad governance, tax, immigration, and corporate formation issues involved in setting up worker cooperatives.<sup>37</sup> Legal scholarship views worker cooperative formation as part of Community Economic Development (CED). CED, while traditionally focused on local neighborhoods and collaboration rather than confrontation between public and private actors, has started to utilize practices that build upon community organizing, labor organizing, and social movements to “redefine development” and promote “economic justice.”<sup>38</sup> These strategies “fuse[] legal advocacy and grassroots organizing to achieve broad-based economic reform.”<sup>39</sup> Progressive CED lawyers employ transactional skills in mobilizing community participation by creating innovative institutional structures.<sup>40</sup> Scholars posit that creating worker cooperatives, which are seen as innovative institutional structures, advances not only job creation but also political engagement and is a progressive, politically-engaged approach to CED.<sup>41</sup> Scott L. Cummings claims that cooperatives establish sites of collective action and foster political consciousness among members “by challenging the dominant conception of worker status and capital ownership.”<sup>42</sup> He states that worker cooperatives act as a vehicle for CED practitioners “to promote the type of grassroots organizing and community-based leadership development absent from the traditional business model.”<sup>43</sup> Similarly, Carmen Huertas-Noble asserts that community organizing nonprofits helped create worker-owned cooperatives in part because the cooperative form contributes to a larger movement for economic justice.<sup>44</sup>

At the same time, organizers on the ground as well as progressive legal practitioners grapple with the extent to which worker cooperatives promote broader organizing aims. They see cooperative formation as separate from organizing strategies. A well-established and successful domestic workers’ rights organization noted that in its early years, as it figured out the direction it would take, its leaders made a conscious effort *not* to include worker cooperative formation as part of its programs, reasoning that it would detract resources away from the group’s organizing mission. More recently, an organizer with the National Domestic Workers Alliance

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37. The lawyers usually serve either as counsel to the worker center or counsel to the cooperative, though the line is sometimes blurred.

38. See Cummings, *Mobilization Lawyering*, *supra* note 11, at 313.

39. Cummings, *CED as Progressive Politics*, *supra* note 12, at 408.

40. Cummings, *Mobilization Lawyering*, *supra* note 11, at 303.

41. See Cummings, *CED as Progressive Politics*, *supra* note 12, at 408.

42. *Id.* at 475.

43. *Id.*

44. Huertas-Noble, *supra* note 3, at 265-66.

(NDWA), a national organization of domestic workers, recalled, “[w]hen I’m talking to an emerging [domestic worker] organization, I tell them: ‘Don’t form a co-op whatever you do.’”<sup>45</sup> Her strong sentiment comes from seeing groups decide to form worker cooperatives that, while changing conditions dramatically for member workers, fail to deal with many of the vulnerabilities in the wider industry and do not undertake broader organizing or advocacy efforts. Ai-jen Poo, Director of NDWA, stated, “co-ops alone won’t change the dynamics of power in the industry at this point.”<sup>46</sup> She acknowledges that cooperatives are important, but makes a distinction between cooperatives and organizing, where organizing “build[s] the power of the workforce through establishing labor standards [and] through workers being trained to assert their rights under the labor standards for . . . a sense of collective power, not just individual power[,] in the workplace.”<sup>47</sup>

At the Community Development Project (CDP) of the Urban Justice Center in New York City, lawyers represent members from a number of worker centers using a “resource ally” model of lawyering in which “lawyers support community organizing through legal representation of members of external grassroots organizations.”<sup>48</sup> That is, the CDP lawyers, though they are not in-house attorneys at worker centers, make an effort to prioritize partners and clients that effect industry-wide or broader change. A workers’ rights litigator from the CDP recounts, “[a]s a lawyer using litigation to support worker centers, I’ve subscribed to a strict boss-worker dichotomy, and the co-op model troubles this divide . . . [because] co-ops seem to merely transform labor(ers) into capital(ists), without aggregating worker power.”<sup>49</sup> In order to better understand whether and how worker cooperatives are or could be linked to broader organizing aims, and thus serve as a progressive lawyering strategy, the next section explores the principles and history of worker cooperatives, describing the growing use of cooperatives to provide jobs for immigrant, low-wage workers.

### *B. Exploring Worker Cooperatives*

Over the past three decades, there have been thousands of experiments in egalitarian cooperation.<sup>50</sup> Some use the term “cooperative,” borrowed

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45. Telephone Interview with Jill Shenker, Field Director, National Domestic Workers Alliance (Aug. 10, 2011) (on file with author).

46. Zoe Sullivan, FREE SPEECH RADIO NEWS (on file with author).

47. *Id.*

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

49. E-mail from E. Tammy Kim, Staff Attorney, Urban Justice Center (Jun. 29, 2012, 13:43 EST) (on file with author).

50. See Rothschild, *supra* note 2, at 1032.

from the nineteenth century, and others refer to themselves as “collectives,” “social enterprises,” or “non-government organizations.”<sup>51</sup> Common to these organizations is their commitment to collectivist-democratic operations and decision making by direct dialogue and consensus.<sup>52</sup> While there is no uniform cooperative code in the U.S., the International Cooperative Alliance (ICA), an organization representing cooperatives worldwide, defines a cooperative as “an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.”<sup>53</sup> For the purposes of this Article, groups organized to pool their labor, to share fairly in the fruits, and to govern themselves democratically, including worker collectives and informal associations, are referred to as worker cooperatives.

Cooperative businesses are usually classified as consumer-owned, producer-owned, and worker-owned.<sup>54</sup> A worker-owned cooperative, the focus of this Article, is a democratic workplace with two components: first, workers own it, and second, workers control it.<sup>55</sup> Governance rights are not tied to capital investment, but are based on the democratic principle of one person, one vote, regardless of the extent of a worker’s economic interest in the cooperative.<sup>56</sup> Workers in the cooperative approve and amend the cooperative’s governing documents and elect a board of directors.<sup>57</sup> The amount of involvement that workers have in making decisions varies among cooperatives, with a management team often making day-to-day decisions.<sup>58</sup> Ordinarily, there are no equity holders outside of the cooperative.<sup>59</sup> Worker cooperatives are different than employee stock ownership plans (ESOP’s) that give employees stock or allow them to buy

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51. *See id.*

52. *Id.*

53. INTERNATIONAL CO-OPERATIVE ALLIANCE PAGE, <http://www.ica.coop/> (last visited Mar. 14, 2013).

54. *See* Jessica Gordon Nembhard, *Community-Based Economic Development*, in *SOLIDARITY ECONOMY: BUILDING ALTERNATIVES FOR PEOPLE AND PLANET* 211, 211 (Jenna Allard, Carl Davidson, & Julie Matthaei eds., 2008).

55. *See* Melissa Hoover, *Another Workplace is Possible: Co-ops and Workplace Democracy*, in *SOLIDARITY ECONOMY: BUILDING ALTERNATIVES FOR PEOPLE AND PLANET* 237, 240 (Jenna Allard, Carl Davidson, & Julie Matthaei eds., 2008). Not all of the cooperatives studied in this paper are worker-owned. Some take on a non-profit structure in which there are no owners, but all of the workers are members of the cooperative. The structure and governance of these cooperatives are similar to that of the worker-cooperatives described above.

56. Huertas-Noble, *supra* note 3, at 264-65; Ellerman & Pitegoff, *supra* note 3, at 441.

57. Kimberly Zeuli & Jamie Radel, *Cooperatives as a Community Development Strategy: Linking Theory and Practice*, 35 *J. of Regional Analysis & Pol’y* 43, 44-45 (2005).

58. Linda D. Phillips, *Worker Cooperatives: Their Time Has Arrived*, 40 *COLO. LAW.* 33, 34 (2011).

59. Kerwin Tesdell, *Community Development Law: New Incorporation Law for Worker Cooperatives*, 194 *N.Y. L.J.* 1, 1 (1995).

stock at a reduced cost; ESOP's do not normally give workers any significant control over governance.<sup>60</sup>

1. *Brief History of Worker Cooperatives in the U.S.*

Throughout history, worker cooperatives have tended to “develop during periods of severe economic distress.”<sup>61</sup> They have also been intertwined with workers’ movements, nationalist movements, social-religious movements, and political movements.<sup>62</sup> Unemployment and other issues relating to job security, technological change, and social unrest are key reasons for worker cooperative creation.<sup>63</sup> Worker cooperatives emerged in Europe and the U.S. from the 1840s to 1880s.<sup>64</sup> During this time, technological advances in machinery made many skills obsolete, turning formerly skilled workers into unskilled laborers.<sup>65</sup> Most workers could not afford the cost of new, expensive machinery and fell under the domination of machine owners.<sup>66</sup> Industrialization also led to lowered wages because of fierce competition for jobs.<sup>67</sup> In the U.S., native-born Americans competed for factory jobs with a huge influx of new, unskilled, and very poor immigrants from Europe.<sup>68</sup> The new immigrants, coming from regions with strong worker cooperative movements, contributed greatly to the growth of the cooperative movement in the U.S.<sup>69</sup> However, many of the worker cooperatives of the late 1840s and early 1850s only lasted a few years because of a lack of start-up resources and cut-throat capitalist competition.<sup>70</sup> Businessmen’s associations, legislatures, and churches all worked to curtail the formation of cooperatives.<sup>71</sup> A common

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60. See FRANK T. ADAMS & GARY B. HANSEN, *PUTTING DEMOCRACY TO WORK: A PRACTICAL GUIDE FOR STARTING AND MANAGING WORKER-OWNED BUSINESSES* 23 (rev. ed. 1992).

61. See Rothschild, *supra* note 2, at 1032.

62. See Patrick Develtere, *Co-operatives and Development: Towards a Social Movement Perspective*, CENTRE FOR THE STUDY OF CO-OPERATIVES, UNIVERSITY OF SASKATCHEWAN 32-33 (1992), available at <http://www.usaskstudies.coop/pdf-files/publications/1992/Co-ops%20%26%20Development.pdf>.

63. See ROBERT JACKALL, *WORKER COOPERATIVES IN AMERICA* 35 (Henry M. Levin ed., University of California Press 1986).

64. Rothschild, *supra* note 2, at 1027. For the sake of brevity, this section focuses mainly on worker cooperatives in the U.S. Cooperatives exist throughout the world, some with exceptional success. The most well-known one is the Mondragon Cooperatives in the Basque region of Spain. See generally KEITH BRADLEY, *COOPERATION AT WORK: THE MONDRAGON EXPERIENCE* (1983).

65. CURL, *supra* note 2, at 47.

66. *Id.*

67. Rothschild, *supra* note 2, at 1032.

68. CURL, *supra* note 2, at 51 (describing how immigrants came predominantly from Germany and France in the wake of the failed revolutions of 1848, from Ireland during the potato famine, and then from Hungary and Italy).

69. *Id.*

70. *Id.* at 52.

71. *Id.*

accusation held cooperatives to be “the first step to Socialism.”<sup>72</sup> One scholar notes that “this was true to the extent that many workers saw cooperatives as a vehicle to transform society, yet many others sought only to improve their lives and had little interest in social reform.”<sup>73</sup>

In the 1880s, the Knights of Labor, the largest labor organization in the world at the time with nearly a million members, helped bring the cooperative movement its greatest successes.<sup>74</sup> The emerging capitalist system needed a sufficient labor pool, and workers, who once controlled their basic means of survival, became forced by economic necessity to sell their labor, amounting to “wage slavery.”<sup>75</sup> The Knights of Labor organized cooperatives in an effort to exert democratic control over the entire economic system, transforming the country into a “Cooperative Commonwealth.”<sup>76</sup> One study recounts that there were 334 worker cooperatives, mostly industrial cooperatives, formed in the decade of the 1880s.<sup>77</sup> Creating democratic worker cooperatives in a capitalist context proved to be difficult.<sup>78</sup> Capitalists attacked union co-ops, denied investment capital and limited their access to markets.<sup>79</sup> Worker solidarity and the network of cooperatives that had formed posed threats to employers, their labor market and the capitalist system altogether.<sup>80</sup> By the end of the 1880s, the Knights had lost power and their cooperative movement had been destroyed.<sup>81</sup>

With unemployment at twenty-five percent during the Great Depression in the 1920s and 1930s, thousands of cooperatives emerged once again, producing a wide variety of goods for trade and personal use, and creating exchanges between laborers and farmers where laborers would work for a share of the harvest.<sup>82</sup> Often with the assistance of state and local governments, these cooperatives formed with the express purpose of

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72. *Id.* (citing JOHN R. COMMONS ET AL., *HISTORY OF LABOR IN THE UNITED STATES* 571 (1918)).

73. *Id.*

74. See Christopher Wright, *Worker Cooperatives and Revolution: History and Possibilities in the United States*, (Dec. 2010) (Graduate Masters Theses, University of Massachusetts Boston), available at [http://www.scholarworks.umb.edu/masters\\_theses/19](http://www.scholarworks.umb.edu/masters_theses/19).

75. CURL, *supra* note 2, at 32.

76. *Id.* at 4.

77. *Id.* (citing Clare Horner, *Producer Co-operatives in the United States* 228-42 (1978) (unpublished Ph.D. dissertation, University of Pittsburgh)).

78. See John W. Lawrence, *Democratic Worker Cooperatives: An Organizational Strategy Reconsidered for the 21st Century*, *INDYPENDENT READER* (Summer 2007), <http://indyreader.org/node/98>.

79. See *id.*; see also CURL, *supra* note 2, at 93.

80. See CURL, *supra* note 2, at 93.

81. See *id.* at 106-08.

82. See *id.* at 164; Rothschild, *supra* note 2, at 1032.



creating jobs.<sup>83</sup> However, the profit incentives of World War II and prospects for full employment reduced interest in cooperatives as the U.S. was emerging as the capitalist center of world manufacturing and distribution, and by 1939, “the capitalist state and employer domination emerged mostly unchallenged.”<sup>84</sup>

The next surge of cooperatives came with the proliferation of movements for social justice in the 1960s.<sup>85</sup> But this movement for cooperatives was different than that of the 1880s. The cooperatives of the 1880s were part of a broad-based labor movement; skilled and semi-skilled workers explicitly used cooperatives as a way to guarantee employment.<sup>86</sup> The 1960s surge in the cooperative movement came from an educated, middle-class countercultural and anti-authoritarian base that rebelled against American individualism and materialism.<sup>87</sup> Many young people worked to create a network outside of and against the capitalist system.<sup>88</sup> These collectives and cooperatives explicitly reflected the political movement from which they emerged.<sup>89</sup> Most of the early collective businesses were connected to radical communication media and included presses, bookstores, and film production.<sup>90</sup>

The next few decades saw changes to the nature and success of cooperative movements. Motivated by an overt idealism, artisan and industrial cooperatives began to form in urban and rural areas in the 1970s.<sup>91</sup> They considered themselves to be part of a larger movement, whether or not they had an organizational relationship to it.<sup>92</sup> But as the Reagan-era economics of the 1980s led to aggressive capitalism and intense competition, corporate consolidations and mergers, privatization of public services, deregulation of corporations from governmental restraints, off-shoring of industries, and weakening of unions,<sup>93</sup> cooperatives and unions alike struggled for survival, and few new collectives or cooperatives formed.<sup>94</sup> By the late 1980s, however, worker cooperatives began to take shape in the domestic work industry, made up of vulnerable workers looking to better their working conditions.

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83. See JACKALL, *supra* note 63, at 4.

84. See Ness, *A Historical Perspective*, *supra* note 4.

85. See CURL, *supra* note 2, at 204.

86. See Wright, *supra* note 74, at 99.

87. See *id.*; see also Ness, *A Historical Perspective*, *supra* note 4.

88. See CURL, *supra* note 2, at 206.

89. *Id.* at 209.

90. *Id.*

91. *Id.*

92. *Id.* at 210.

93. CURL, *supra* note 2, at 242-44.

94. *Id.*

Immanuel Ness observes that “[t]he standing of worker cooperatives in the US is linked directly to cyclical capitalist cycles of economic recession, depression, and periods of economic recovery.”<sup>95</sup> He notes that capitalist propagandists in every historical era depict cooperatives as dangerous to society and criticize individuals involved in the cooperative movement as “retreating into frugal and modest living.”<sup>96</sup> Yet cooperatives have retained a presence in the U.S throughout the last 150 years<sup>97</sup> and have adapted over time to fit the needs and goals of various constituencies.

## 2. *Worker Cooperatives Today: Creating Jobs for Vulnerable Workers*

Currently, there are approximately 300 to 400 worker cooperatives in the U.S., with more than 3,000 workers all together.<sup>98</sup> These cooperatives are diverse and encompass small collectives to several hundred person organizations; service industry jobs to manufacturing operations; semi-skilled work to highly-skilled trades; and profit-oriented businesses to community-focused social enterprises.<sup>99</sup> Several of the new cooperatives that formed over the past fifteen years are comprised of vulnerable workers—largely immigrant, primarily female, and mostly Spanish-speaking or limited-English proficient members in low-wage jobs who often face exploitation.<sup>100</sup> They are paid less than the minimum wage or cheated out of wages entirely; they are not offered time-and-a-half pay for overtime because employers either ignore the law or create mechanisms to avoid complying with it; they labor long hours and suffer injuries on the job.<sup>101</sup> A 2008 study found that twenty-six percent of low-wage workers in the three largest U.S. cities suffered minimum wage violations in the previous work week and seventy-six percent were not paid the legally required overtime rate.<sup>102</sup> Domestic work, around which many of the new cooperatives have formed, exacerbates the conditions for exploitation

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95. Ness, *A Historical Perspective*, *supra* note 4.

96. *Id.*

97. *Id.*

98. Hoover, *supra* note 55, at 240.

99. *Id.*

100. See E. G. NADEAU AND DAVID J. THOMPSON, COOPERATION WORKS! HOW PEOPLE ARE USING COOPERATIVE ACTION TO REBUILD COMMUNITIES AND REVITALIZE THE ECONOMY 51 (1996) (noting that people involved in many of today’s worker cooperatives are working class or belong to ethnic minority groups); Cummings, *CED as Progressive Politics*, *supra* note 12, at 477; Huertas-Noble, *supra* note 3, at 264-65.

101. See GORDON, SUBURBAN SWEATSHOPS *supra* note 20, at 15.

102. See Annette Bernhardt, et al., BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA’S CITIES, 2 (2009), available at <http://www.unprotectedworkers.org/brokenlaws> (surveying workers in Chicago, Los Angeles, and New York City).

because work is done alone in the homes of employers, putting workers at greater risk of discrimination, coercion, and physical abuse.<sup>103</sup> Lack of work authorization for immigrant workers further compounds their vulnerability, as they fear deportation and separation from their families.<sup>104</sup>

Cooperatives help these vulnerable workers obtain higher wages and better working conditions, increase job security, provide access to job trainings, deter unscrupulous customers from withholding payment or paying workers improperly, and create a structure where members can participate regardless of work authorization status.<sup>105</sup> Cooperatives also help foster dignity and respect towards workers.<sup>106</sup> In the words of a member from a housecleaning cooperative:

Thanks to the co-op, I have jobs that take me three to five hours to complete, and I make the same amount I used to make for 12 hours of work. I can also control my hours, which has been the biggest benefit, especially now that I have two children. I've gotten so much help from other co-op members. I don't have any family in the United States, so the other co-op members have become my family.<sup>107</sup>

Worker cooperatives allow workers to form social networks; gain social, leadership, financial, and business skills; work in healthier environments, as many domestic worker cooperatives focus on using safe cleaning products and techniques; and, in some cases, access health care through the cooperative.<sup>108</sup>

### C. *The One-Person, One-Vote Floor*

While worker cooperatives help individuals in numerous ways, collective *organization* does not inherently lead to collective *action*.

The worker cooperative is a form of business, but it is not necessarily a legal corporate form. The majority of states do not have worker cooperative statutes, and cooperative organizations must choose other legal forms including a limited liability company or a general business corporation.<sup>109</sup> The cooperative's organizing or governance documents lay

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103. See Kennedy, *supra* note 8, at 139.

104. See *id.*

105. See Cummings, *Developing Cooperatives*, *supra* note 3, at 186-88; Smith, *supra* note 8, at 86-95; Huertas-Noble, *supra* note 3, at 265.

106. See Smith, *supra* note 8 at 89.

107. Eleanor J. Bader, *Sunset Park Women's Cooperative Says Si Se Puede!*, THE BROOKLYN RAIL, <http://www.brooklynrail.org/2010/09/local/sunset-park-womens-cooperative-says-si-se-puede> (last visited Mar. 15, 2013).

108. See description of WAGES cooperative, *infra* Part II.A.1.

109. For a detailed description of the various corporate options for worker cooperatives, see generally Edward W. De Barbieri & Brian Glick, *Legal Entity Options for Worker Cooperatives*, GRASSROOTS ECONOMIC ORGANIZING (GEO) Newsletter, Volume 2, Issue 8 (2011), available at

out the principles of the cooperative, including its one-person, one-vote foundation. Some states, however, have worker cooperative statutes that prohibit an entity from calling itself a cooperative unless it is legally formed under the cooperative statute of that state.<sup>110</sup> These statutes codify the one-person, one-vote principle,<sup>111</sup> They also create a system of internal accounting that separates membership rights from stock ownership—individuals accrue ownership stakes based on the amount of work done for the cooperative while maintaining only one vote per person. Known as “internal capital accounts,” this system is used to determine how profits and losses are allocated.<sup>112</sup> These two key features distinguish cooperative corporations from typical business corporations.

Over time, cooperatives have developed principles that build off of the one-person, one-vote foundation. These principles guide the operation of cooperatives, but cooperatives are not required to follow them to call themselves or function as cooperatives.<sup>113</sup> There are several sets of widely accepted cooperative principles.<sup>114</sup> For example, those adopted by the International Cooperative Alliance (ICA) evolved from a cooperative established in Rochdale, England, in 1844, and were the inspiration for cooperatives in the U.S.<sup>115</sup> The ICA adopted the Rochdale Principles, adapting them over time into the following seven principles for cooperatives:

1. Voluntary and Open Membership (cooperatives are open to all persons willing to accept the responsibilities of membership, without gender, social, racial, political, or religious discrimination);
2. Democratic Member Control (members actively participate in setting policies and making decisions);
3. Member Economic Participation (members contribute equitably to and democratically control the capital of the cooperative);

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<http://www.geo.coop/node/628> (last visited Mar. 15, 2013); Cummings, *Developing Cooperatives*, *supra* note 3.

110. See e.g., N.Y. COOP. CORP. LAW § 3(j) (McKinney); see also M.G.L.A. 157 § 8 (penalizing any entity that uses “co-operative” in its name that does not distribute earnings in a manner prescribed by the statute).

111. See, e.g., N.Y. COOP. CORP. LAW § 89(1) (“No capital stock other than membership shares shall be given voting power in a worker cooperative . . .”); N.Y. COOP. CORP. LAW § 88(2) (“Each member shall own only one such membership share, and only members may own such shares.”).

112. See Tesdell, *supra* note 59; see also Cummings, *CED as Progressive Politics*, *supra* note 12, at 474-75.

113. See Zeuli & Radel, *supra* note 57 at 44.

114. See e.g., Ajowa Nzinga Ifateyo, *Mondragon’s Corporate Model: “The Workers Have the Power”*, GRASSROOTS ECONOMIC ORGANIZING, <http://www.geo.coop/node/660> (last visited Mar. 15, 2013) (noting that unlike most other cooperatives that have seven principles, Mondragon has ten).

115. See Brett Fairbairn, *The Meaning of Rochdale: The Rochdale Pioneers and the Co-operative Principles*, CENTRE FOR THE STUDY OF CO-OPERATIVES, UNIVERSITY OF SASKATCHEWAN 14 (1994), available at <http://www.usaskstudies.coop/pdf-files/Rochdale.pdf>.

4. Autonomy and Independence (cooperatives are self-help organizations controlled by their members, such that if they enter into agreements with other organizations or raise capital from external sources, they do so on terms that ensure democratic control by members and maintain autonomy);

5. Education, Training, and Information (cooperatives provide education and training for their members and also inform the general public about the nature and benefits of cooperation);

6. Cooperation among Cooperatives (by working together through local, national, regional, and international structures, cooperatives serve their members most effectively and strengthen the cooperative movement); and

7. Concern for Community (cooperatives work for sustainable development of their communities through policies approved by members).<sup>116</sup>

The last three principles are outward-looking principles that involve those outside of the cooperative—informing the general public about cooperatives, working with other cooperatives to strengthen the cooperative movement, and engaging in community development. If cooperatives carry out these principles, they help to build a growing cooperative movement that can serve as an alternative to capitalist control.<sup>117</sup> Yet these principles are not obligatory, and only the second and third principles, democratic member control and member economic participation, are built into the cooperative form itself.

Nonetheless, the one-person, one-vote requirement sets a floor—or the *potential*—from which broader efforts for change may occur. For the Workplace Project, democratic decision-making processes within the organization “bolstered organizing capacity.”<sup>118</sup> Jennifer Gordon, founder of the Workplace Project, writes, “[a]s immigrant workers participated in the organization, they developed a new understanding of where their experience fit in the local and global economic and political structure and a new capacity to imagine and debate alternative responses.”<sup>119</sup> Similarly, the democratic foundation of a cooperative enables members to exercise democratic control and engage in democratic decision-making, leading to greater confidence in one’s self and, in turn, to a greater potential for action

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116. *Statement on the Cooperative Identity*, INTERNATIONAL CO-OPERATIVE ALLIANCE, <http://www.ica.coop/coop/principles.html> (last visited Mar. 15, 2013); see generally Fairbairn, *supra* note 115.

117. See Immanuel Ness, *Cooperatives and Worker-Owned Enterprises as Transformative Strategies*, GRASSROOTS ECONOMIC ORGANIZING, <http://www.geo.coop/story/cooperatives-and-workers-owned-enterprises-transformative-strategies> (last visited Mar. 14, 2013).

118. GORDON, SUBURBAN SWEATSHOPS, *supra* note 20, at 293.

119. *Id.*

at the collective level. How, then, might a cooperative realize its potential to turn its collective structure and organization into collective action? Part II attempts to answer this question.

## II. CONFRONTING REALITIES: LESSONS FROM DOMESTIC WORKER COOPERATIVES

The history of worker cooperatives demonstrates how cooperatives, while serving as means for workers to secure jobs, have also connected to labor, economic, and social movements. While cooperatives are starting to connect to or act as sites of collective action, they face challenges in doing so. This Part lays out brief profiles of selected domestic worker cooperatives and the organizations that developed them and draws out the challenges that cooperatives comprised of primarily low-wage, immigrant workers confront in serving as more than just job-creation entities.

This Part focuses on domestic worker cooperatives for a number of reasons. The domestic work industry is an attractive industry for cooperatives geared towards vulnerable workers. Domestic worker cooperatives require little capital investment as compared to restaurant or manufacturing cooperatives. Domestic work also does not require a high level of education, and workers can be trained fairly quickly. These factors, combined with the positive effects of worker cooperatives on the lives of workers and their families, make domestic worker cooperatives appealing to organizations helping vulnerable workers. Additionally, there is a growing need for domestic workers, and domestic work is one of the fastest growing sectors in the U.S.<sup>120</sup> The U.S. Department of Labor estimates the following growth between 2008 and 2018: employment of home health aides will grow by fifty percent, much faster than the average for all occupations;<sup>121</sup> the number of childcare workers will increase by eleven percent, keeping pace with the average for all other occupations;<sup>122</sup> the number of maids and housekeeping cleaners will grow by six percent, more slowly than average; and the number of women in the work force will grow at a slightly faster rate than the number of men.<sup>123</sup> Given the nature of

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120. See Peggie R. Smith, *Work Like Any Other, Work Like No Other: Establishing Decent Work for Domestic Workers*, 15 EMP. RTS. & EMP. POL'Y J. 159 (2011).

121. *Home Health Aides and Personal and Home Care Aides*, BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, OCCUPATIONAL OUTLOOK HANDBOOK, (Apr. 5, 2012), available at <http://www.bls.gov/oco/ocos326.htm>.

122. *Child Care Workers*, BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, OCCUPATIONAL OUTLOOK HANDBOOK, (Oct. 26, 2012), available at <http://www.bls.gov/oco/ocos170.htm>.

123. *Overview of the 2008-18 Projections*, BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, OCCUPATIONAL OUTLOOK HANDBOOK, (Mar. 29, 2012), available at <http://www.bls.gov/oco/oco2003.htm> (estimating that the percentage of women in the work force will grow by 9% and the number of men will grow by 7.5%).

domestic work, these jobs are not ones that can be sent overseas. As the need for domestic workers grows, and as the cooperative form becomes more widely known, many workers' rights advocates have started, and more will consider, creating domestic worker cooperatives for vulnerable workers.

*A. Profiles of Incubators and Domestic Worker Cooperatives*

There are a number of domestic worker cooperatives throughout the U.S. They vary greatly in structure and size, ranging from loose affiliations of a handful of members to the largest worker cooperative in the country. Although workers alone can initiate cooperatives, many of the domestic worker cooperatives get started with the help of an organization, referred to as an incubator or developer. Under this approach, called a "top-down approach," persons outside of the cooperative membership create the cooperative.<sup>124</sup> The top-down approach may demand less human capital than a cooperative started by its members, called the "bottom-up approach." Scholars caution that top-down cooperatives are more prone to failure because members are not involved in creating the cooperative and "may never feel a true sense of ownership and loyalty."<sup>125</sup> However, cooperatives made up of vulnerable workers often require an incubating organization to get them started.

Specific factors related to organizing low-wage, immigrant workers make incubators, in particular community-based, service-providing incubators, crucial for creating a successful worker cooperative. In a study on microenterprises as a tool for poverty alleviation, Louise A. Howells writes "[n]one of the predictors for small business success are reflected in the profile of a microentrepreneur with little formal education, no business experience, no financial resources, children to support, and limited personal support."<sup>126</sup> For worker cooperatives whose members fit similar profiles, the cooperative incubator helps provide supports that members lack, giving the cooperative a greater chance at success. Community-based incubators provide resources to the cooperative and help it access other resources it otherwise might not be able to obtain, including services beyond merely setting up a business. With established networks and relationships in the community, community-based incubators have the social capital needed to gain the trust of potential cooperative members.<sup>127</sup> For example, they help pull in business planners, accountants, and lawyers; they help arrange for or

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124. See Zeuli & Radel, *supra* note 57, at 51.

125. *Id.*

126. Louise A. Howells, *Dimensions of Microenterprise: A Critical Look at Microenterprise as a Tool to Alleviate Poverty*, 9 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 161, 174 (1999-2000), available at <http://www.jstor.org/stable/25782437>.

127. See *id.*

provide child care for members' children; they provide referrals for or directly offer assistance in accessing benefits; and they conduct English-as-a-Second-Language (ESL) classes.

Lawyers, incubators, and cooperative members encounter a variety of options for structuring a cooperative. Some key decisions include how to set up operations; what type of legal entity, if any, to choose; what type of internal governance, rights, and responsibilities to give members; and what role the incubator will play. In terms of operations, domestic worker cooperatives have generally chosen one of two models: a referral/marketing model or a traditional worker-cooperative model. The referral/marketing model is essentially a modified union hiring hall approach that acts as a referral mechanism, "serving as a clearinghouse for jobs and bringing together workers in search of jobs."<sup>128</sup> In a referral/marketing model, members work together to publicize services. The cooperative fields calls for work and assigns work to an individual member who performs the service on her own behalf. If there is a contract, it is between the member and the client. The client pays the member directly, and the member contributes financially to the cooperative by means of dues or other payment. In contrast, in a traditional worker-cooperative model, the cooperative contracts with the client. Members perform services as representatives or on behalf of the cooperative. The cooperative receives payment and then distributes it to worker-owners after retaining some portion.

The six domestic worker cooperatives and their incubating organizations profiled in this Article reveal the challenges cooperatives face in creating broader economic, political, and social change, as well as ways in which some of these cooperatives foster political engagement. These cooperatives were chosen to illustrate a range in size, structure, age, and type of incubator. The first featured organization is Women's Action to Gain Economic Security ("WAGES"), a cooperative incubator in California that has developed five housecleaning cooperatives in the San Francisco Bay Area.<sup>129</sup> Building off of the WAGES model, UNITY Housecleaners, developed by a worker center in Long Island, New York, called the Workplace Project, started up soon thereafter.<sup>130</sup> Similarly linked to a worker center, La Colectiva, the third profiled cooperative, formed as a

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128. Smith, *Organizing the Unorganizable*, *supra* note 8, at 81.

129. *Our Founding Story*, Women's Action to Gain Economic Security ("WAGES"), <http://www.wagescooperatives.org/about-us/history-0> (last visited Feb. 9, 2013).

130. *Women's Leadership and Gender Equality*, WORKPLACE PROJECT, <http://www.workplaceprojectny.org/womens-leadership-and-gender-equality/> (last visited Feb. 9, 2013); *see also* Telephone Interview with Nadia Marin Molina, *supra* note 19 (recalling that UNITY used materials from WAGES in creating cooperative course and that UNITY based its curriculum on that of WAGES).



housecleaning cooperative in San Francisco in 2001.<sup>131</sup> The next two cooperatives, both relatively new—Si Se Puede! (a housecleaning cooperative) and Beyond Care (a child-care cooperative)—were formed by a social service agency in Brooklyn, New York, that drew inspiration from the WAGES and UNITY models.<sup>132</sup> The last cooperative profiled is also the largest worker cooperative in the country—Community Home Care Associates (CHCA).<sup>133</sup> It is the oldest of the profiled cooperatives and, unlike the others, provides home care services for individuals who are elderly, chronically ill, or living with disabilities.<sup>134</sup> Brief profiles of the cooperatives and their incubators follow.

### 1. *WAGES and Its Cooperatives*

Women's Action to Gain Economic Security, founded in 1995 and based in the San Francisco Bay Area, is a non-profit, worker cooperative development organization whose mission is to build worker-owned green cleaning businesses for low-income women.<sup>135</sup> WAGES' central mission is to develop cooperatives; it is not a worker center or social services agency. Its founders had experience providing social services, but wanted to do something to create more economic security for the Latina women they were serving. Hence, WAGES focuses on building economic security for low-income, Latina women.<sup>136</sup>

Since launching its first cooperative in 1999, WAGES has developed five cooperatives operating in the Bay Area with a total of nearly a hundred workers and combined sales of more than \$3 million in 2010.<sup>137</sup> Each cooperative is organized as a limited liability company (LLC), wherein each member of the cooperative is a member of the LLC. WAGES cooperatives

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131. See *Day Labor Program*, LA RAZA CENTRO LEGAL, <http://www.lrcl.org/index.php?topic=hire> (last visited Feb. 9, 2013).

132. See Vanessa Bransburg, *The Center for Family Life: Tackling Poverty and Social Isolation in Brooklyn with Worker Cooperatives*, GRASSROOTS ECONOMIC ORGANIZING, <http://www.geo.coop/node/636> (last visited Mar. 15, 2013); see also WE CAN DO IT!, [www.wecandoit.coop](http://www.wecandoit.coop) (last visited Feb. 9, 2013); BEYOND CARE, [www.beyondcare.coop](http://www.beyondcare.coop) (last visited Feb. 9, 2013). The author represented both Si Se Puede! and Beyond Care in forming the entities and developing by-laws.

133. See Stu Schneider, *Cooperative Home Care Associates: Participation with 1600 Employees*, GRASSROOTS ECONOMIC ORGANIZING, <http://geo.coop/node/433>; see also COOPERATIVE HOME CARE ASSOCIATES, [www.chcany.org](http://www.chcany.org) (last visited Feb. 9, 2013).

134. See *Services*, COOPERATIVE HOME CARE ASSOCIATES, <http://www.chcany.org/index-2.html> (last visited Feb. 9, 2013).

135. See *Our Founding Story*, WAGES, <http://wagescooperatives.org/about-us/history-0> (last visited Feb. 9, 2013).

136. See Joel Schoening, *Cooperative Replication at WAGES*, GRASSROOTS ECONOMIC ORGANIZING, <http://www.geo.coop/node/364> (last visited Mar. 15, 2013).

137. See Hilary Abell, *Wages Model and the Value of Partnerships*, GRASSROOTS ECONOMIC ORGANIZING, <http://www.geo.coop/node/635> (last visited Mar. 15, 2013).

operate as traditional worker-owner cooperatives, with members working on behalf of the cooperative. Teams of cooperative members clean residences together, and each of WAGES cooperatives cleans, on average, fifty places a day.

### 2. *The Workplace Project and UNITY Housecleaners*

The Workplace Project, founded in 1992 in Long Island, is one of the first worker centers in the United States to focus on organizing the Latino/a immigrant community.<sup>138</sup> It fights exploitation of workers through organizing supported by community education, leadership training, and labor-related legal support. After a short-lived attempt at a landscaping cooperative, staff of the Workplace Project decided to create a housecleaning cooperative.<sup>139</sup> The Workplace Project had a women's committee that was carrying out a campaign against abusive domestic worker agencies.<sup>140</sup> They created UNITY Housecleaners in part to create an alternative for workers and show the industry that domestic work could be done in a non-exploitative way.<sup>141</sup>

UNITY was formed in 1998.<sup>142</sup> For over ten years it functioned as an unincorporated association before forming as an LLC in 2009.<sup>143</sup> UNITY lists a total of 187 members, with thirty-six active members who participate in cooperative events and attend meetings.<sup>144</sup> Its membership structure is fairly open in that the cooperative is open to new members four to six times per year.<sup>145</sup> The cooperative structure follows the referral/marketing model. UNITY's members receive points depending on how active they are in the organization.<sup>146</sup> Points, in addition to a lottery system, determine a member's position on a list used to assign jobs.<sup>147</sup>

### 3. *La Raza Centro Legal and La Colectiva*

Founded in 1973 by Latino law students, La Raza Centro Legal is a community-based legal organization in San Francisco's Mission District

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138. See WORKPLACE PROJECT, <http://www.workplaceprojectny.org/history/> (last visited Feb. 9, 2013).

139. Telephone Interview with Nadia Marin Molina, *supra* note 18; see also GORDON, *SUBURBAN SWEATSHOPS*, *supra* note 20, at 103-04.

140. Cornell, *supra* note 25.

141. See Telephone Interview with Nadia Marin Molina, *supra* note 18.

142. See WORKPLACE PROJECT, <http://www.workplaceprojectny.org/womens-leadership-and-gender-equality/> (last visited Feb. 9, 2013).

143. Telephone Interview with Liliam Juarez, Coordinator, UNITY Housecleaners (Jul. 28, 2011).

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

that combines legal services, organizing, advocacy, and social services.<sup>148</sup> In 2000, it adopted the San Francisco Day Labor Program with the goal of making the day labor program a worker-run center that combines job development and social services with organizing and leadership development.<sup>149</sup> The worker center provides an alternative location to street corners or home center parking lots for workers, mostly men, to find work. Day laborers arrive daily at the worker center, and the program assigns jobs. A year later, in 2001, La Raza formed the Women's Collective of the Day Labor Program (La Colectiva) to explicitly address the needs and issues of women workers after women expressed a lack of comfort doing construction work or being at the predominantly male day labor center.<sup>150</sup>

La Colectiva describes itself as a worker-run collective that helps connect women with jobs.<sup>151</sup> It has an open membership structure that allows new members to join after attending a weekly membership meeting.<sup>152</sup> Members pay monthly dues of four dollars to fund supplies, transportation, and community events.<sup>153</sup> Like UNITY, La Colectiva uses a referral/marketing model, as well as a points-based system to assign jobs from a work list. Approximately seventy-five women sign up on the work list every day.<sup>154</sup>

#### 4. *The Center for Family Life, Si Se Puede! and Beyond Care*

The Center for Family Life (CFL) is a family and social service agency founded by Catholic nuns over thirty years ago and based in the New York City neighborhood of Sunset Park, Brooklyn—a diverse, densely populated, low-income neighborhood.<sup>155</sup> The CFL offers family counseling, neighborhood-based foster care services, cultural and educational school programs, emergency food, advocacy assistance, and adult employment services.<sup>156</sup> The adult employment program's staff recognized an inability to place an increasing number of people into traditional employment due to factors such as low levels of education, inadequate job skills, lack of work

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148. See *Mission and History of La Raza Centro Legal*, LA RAZA CENTRO LEGAL, <http://www.lrc1.org/article.php/MissionStatement> (last visited Feb. 9, 2013).

149. *Id.*

150. See *id.*; see also Preeti Shekar, *Day Labor Program Unites Politics and Services*, 14 RACE, POVERTY & THE ENV'T 42, 42 (2007), available at <http://www.urbanhabitat.org/files/Shekar.14-2%20Education.pdf>.

151. See LA COLECTIVA, <http://lacolectivasf.org/about.html> (last visited Feb. 9, 2013).

152. Telephone Interview with Jill Shenker, *supra* note 45.

153. *Id.*

154. *Id.*

155. See CENTER FOR FAMILY LIFE IN SUNSET PARK, <http://cflsp.org/about.html> (last visited Feb. 9, 2013). [Krishna Macro\\_gjk edits 4.15.13-1.docx](#)

156. See *id.*

authorization status, and limited English-language competency.<sup>157</sup> In 2006, the CFL sought out an alternative model to its traditional job readiness program that would generate income in the neighborhood. Coming across examples of immigrant-run, worker-owned cooperatives, including WAGES and UNITY, it approached unemployed and underemployed women who had been participating in the CFL's ESL classes and receiving family counseling with the idea of forming a housecleaning cooperative.<sup>158</sup>

Organized in 2006, with fifteen founding members, Si Se Puede! is the CFL's first cooperative.<sup>159</sup> Today it has grown to a group of forty-two, mostly Latina members.<sup>160</sup> It is incorporated as a New York State Cooperative Corporation and, more specifically, as a non-profit, non-stock membership cooperative.<sup>161</sup> The women are all members of the cooperative and contribute monthly dues after paying a membership fee to join. The cooperative uses the referral/marketing model. Rather than a points-based method for determining a member's position on the work list, the cooperative requires its members to attend all meetings and fulfill service hours and other duties to remain a member of the cooperative and stay on the work list. Members pay fines to the cooperative for not attending meetings on time, for missing meetings, and for not completing publicity hours. In some cases, members may be suspended from the work list until they meet their responsibilities.

Beyond Care, organized in 2008, has thirty-five members, all female and predominantly Latina, who provide home-based child care by caring for children in the clients' own homes. Its members chose to incorporate as a New York State Cooperative Corporation in the same way as Si Se Puede!, and it operates in a similar fashion. Unlike UNITY and La Colectiva, which also use a referral/marketing model, the CFL cooperatives have a stricter tie between member attendance and eligibility for work.

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157. See Bransburg, *supra* note 132.

158. See *id.*

159. See *id.*

160. See Telephone Interview with Vanessa Bransburg, Coop Coordinator, Center for Family Life in Sunset Park (Aug. 18, 2011) (on file with author).

161. Note the distinction between the state and federal designation; though the cooperative is organized as a non-profit at the state level, it does not have federal tax exemption status under Section 501(c)(3) of the Internal Revenue Code. To qualify as a Section 501(c)(3) tax exempt organization, among other criteria, it would need to be organized and operated exclusively for exempt purposes as set forth by the Code. See I.R.C. § 501(c)(3) (2013). These exempt purposes include charitable or educational purposes. See *id.* The cooperative would likely not qualify for exemption under Section 501(c)(3), meaning that unless it were considered exempt under a separate section of the Code, it may be responsible for taxes on its income

### 5. *Community Service Society and CHCA*

The Community Service Society (CSS), a 165-year-old institution providing advocacy, research, and direct services in New York City, housed the CSS Center for Community Economic Development in the early 1980's.<sup>162</sup> The program's goal was to create decent worker-owned jobs for low-income people.<sup>163</sup> It emphasized a worker-ownership structure as a way both to maximize wages and benefits in businesses with low profit margins and to ensure that workers' interests would receive priority in the firm's business strategy.<sup>164</sup> The organizers identified the home health aide industry for its new project called Cooperative Home Care Associates (CHCA). The organizers believed that achieving even modest improvements in the low-wage home health aide industry would be worthwhile because the industry employs a large number of low-income workers.<sup>165</sup> CHCA remained connected to CSS for about two years before functioning completely independent of the incubator, although the head of the CSS Center for Community Economic Development became the CEO of CHCA and subsequently served in that capacity for fifteen years.<sup>166</sup>

CHCA, organized in 1985, is the largest worker cooperative in the U.S. with over 1,600 members and revenues of \$40 million.<sup>167</sup> It is a home-care agency based in New York City's South Bronx, the poorest congressional district in the U.S., where thirty-eight percent of residents live below the poverty line.<sup>168</sup> CHCA contracts with agencies in New York to provide home care services for individuals who are elderly, chronically ill, or living with disabilities.<sup>169</sup> CHCA home care workers assist with a range of activities including bathing, dressing, and walking; planning, preparing, and feeding meals; administering exercise programs; and providing companionship.<sup>170</sup> CHCA is organized as a for-profit, New York State Cooperative Corporation.<sup>171</sup> Members are eligible to become owners after a

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162. Anne Inerra, Maureen Conway & John Rodat, *Cooperative Home Care Associates: A Case Study of a Sectoral Employment Development Approach*, THE ASPEN INSTITUTE 18-19 (2002) [hereinafter Inerra, *A Case Study*], available at <http://www.aspenwsi.org/resource/chca/>.

163. *Id.* at 19.

164. *Id.*

165. *Id.*

166. *Id.*

167. AMERICAN WORKER COOPERATIVE, *A Brief History of Cooperative Home Care Associates*, <http://www.american.coop/content/brief-history-cooperative-home-care-associates> (last visited Mar. 15, 2013).

168. Josh Duboff, *South Bronx is America's Poorest District*, NEW YORK MAG., (Sept. 29, 2010), [http://nymag.com/daily/intel/2010/09/south\\_bronx\\_is\\_americas\\_poores.html](http://nymag.com/daily/intel/2010/09/south_bronx_is_americas_poores.html).

169. COOPERATIVE HOME CARE ASSOCIATES, <http://www.chcany.org/index-2.html> (last visited Mar. 15, 2013).

170. *Id.*

171. See New York State Department of State, Division of Corporations, Entity Information, [http://appext20.dos.ny.gov/corp\\_public/CORPSEARCH.ENTITY\\_INFORMATION?p\\_nameid=105046](http://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=105046)

three-month probationary period and through the purchase of \$1,000 in equity, paid through payroll deductions over their membership.<sup>172</sup> CHCA offers health care and a 401k plan for workers.<sup>173</sup> CHCA workers are also members of 1199SEIU, the region's largest healthcare union.<sup>174</sup>

### *B. Challenges to Effecting Broader Change*

Cooperatives, including the ones profiled above, come up against challenges that affect their ability to foster collective action for greater economic, political, and social change. Challenges include managing the dual identities of a business enterprise and an association of cooperative members, the limited scale and impact of cooperatives, the significant resources required to start and maintain a cooperative, and concerns over member priorities and retention. This section examines these challenges and discusses relevant experiences of the profiled cooperatives.

#### *1. Managing Dual Identities*

Worker cooperatives have a dual identity as a business acting on the market and as an association of cooperative members pursuing value-oriented goals.<sup>175</sup> Solely because a business operates as a cooperative does not make it immune from the pressures of typical business corporations. Peter Pitegoff acknowledges that worker-owned businesses face the pressure of any competitive market enterprise and that “[b]usiness imperatives are often at odds with extending scarce benefits beyond the firm or with providing adequate and equitable support to the workforce.”<sup>176</sup> The business objectives are also at odds with the association-of-cooperative-members identity since “[t]ypical enterprises aim at quantitative profit maximization, while typical associations pursue qualitative, value-oriented goals leaving only limited space for economic considerations.”<sup>177</sup> As described in Part I.A. above, Poo’s vision of cooperatives as separate from organizing alludes to this dichotomy. The difference between cooperatives and collective-action organizations is that a

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l&p\_corpid=949129&p\_entity\_name=cooperative%20home%20care%20associates&p\_name\_type=A&p\_search\_type=BEGINS&p\_srch\_results\_page=0 (last visited Mar. 30, 2013).

172. See Inserra, *A Case Study*, *supra* note 162 at 24.

173. Of the 1,262 home care workers currently eligible for worker ownership, 830, or sixty-two percent, have an ownership stake in CHCA. They receive a vote in key organizational decisions and elect eight of fourteen members of CHCA’s board of directors. See Handbook on Worker Cooperatives, *on file with author*.

174. See Schneider, *supra* note 133.

175. See Johannes Michelsen, *The Rationales of Cooperative Organizations. Some Suggestions from Scandinavia*, 65 ANNALS OF PUB. AND COOPERATIVE ECON. 13 (1994).

176. Pitegoff, *Worker Ownership*, *supra* note 12, at 250.

177. Michelsen, *supra* note 175, at 13.

business enterprise, the cooperative, is the chosen vehicle for realizing the set of aims.<sup>178</sup> Inherent within that vehicle are pressures placed upon any enterprise. Although cooperative principles attempt to weave value-oriented goals into otherwise typical aims of business enterprises, the combination of the two types of entities, usually treated separately, poses challenges for cooperatives that wish to prioritize values-oriented goals such as political change.

The experience of WAGES illustrates this challenge. When WAGES was originally founded, it expressly included language in its mission statement that referenced fostering broader social movements.<sup>179</sup> The founders thought that social empowerment would come from having a collective organization that brought people together.<sup>180</sup> However, in early 2000, it became clear that this idea had not worked as planned and that WAGES would need to focus more on the business end of the organization to be as successful as possible.<sup>181</sup> WAGES honed in on making cooperatives successful businesses by bringing in people with business skills to help develop the cooperatives and provide high-quality training to cooperative members on business matters. In turn, WAGES changed its mission statement to remove references to fostering broader social change, exemplifying the tension inherent in balancing the dual identities of business and members' (or in this case, developers') interests.

## 2. *Limited Scale and Impact*

An overarching tension and challenge is the limited scale of cooperatives and the number of people they can impact. Since primarily only those who have the opportunity to join a cooperative reap its benefits, impact is often measured strictly in terms of the number of people directly involved in the cooperative. Under this measure of impact, a cooperative has a limited ability for broader change because of the limited number of members with access to it.<sup>182</sup>

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178. See Develtere, *supra* note 62, at 37.

179. See Telephone Interview with Hilary Abell, former Executive Director, WAGES (Aug. 18, 2011).

180. *See id.*

181. *See id.*

182. Large-scale cooperatives exist both in the U.S. and abroad. *See, e.g.*, CHCA, profiled in Part II.A.5. The most internationally well-known cooperatives are the Mondragon cooperatives in the Basque region of Spain. Started by a rural village priest in 1956, the Mondragon cooperatives have approximately 850,000 members in over 260 cooperative enterprises including a cooperative university, cooperative bank, and the world's largest industrial workers cooperative. *See Press Release, United Steelworkers USW News, Worker Ownership for the 99%: The United Steelworkers, Mondragon, and the Ohio Employee Ownership Center Announce a New Union Cooperative Model to Reinsert Worker Equity Back into the U.S. Economy*, UNITED STEEL WORKERS (Mar. 26, 2012), [http://www.usw.org/media\\_center/releases\\_advisories?id=0523](http://www.usw.org/media_center/releases_advisories?id=0523) [*hereinafter* USW Press Release]. Their 2011 annual sales were more than \$24 billion. *See id.* For the purposes of this Article, the limited scale

In the case of the CFL, no fewer than sixty prospective members have come to each call for forming new cooperatives.<sup>183</sup> The agency chooses, on average, around twenty members to start each new cooperative.<sup>184</sup> Once established, the cooperatives conduct open houses as needed to bring in new members to help publicize the cooperative and provide services.<sup>185</sup> At these open houses, the cooperatives only extend membership to one out of every six women who attend due to the limited number of openings.<sup>186</sup> Because of the work and time involved in orienting members, teaching members about operating and being a member of the cooperative, and building up the capacity of the cooperative to have steady work for members, cooperatives tend to start out small in size. Thus, even when cooperatives do take on new members, they do not fulfill the existing need for membership.

### 3. *Significant Resources Required to Start and Maintain a Worker Cooperative*

Starting and maintaining a small business, such as a cooperative, takes a large investment of time and resources. The amount of capital necessary depends on the type of cooperative. For cooperatives formed by an incubating organization, that organization must devote staff time to recruiting and training initial members; assisting in setting up the operations; connecting the cooperative to business and legal resources; and providing back office support and meeting space. Most non-profit organizations already function under tight budgets. Allocating resources to cooperative creation often means a decision to divest resources from other activities of the organization, including mobilizing a larger number of workers to effect more wide-ranging change.

Members of a cooperative also contribute considerable time to forming and sustaining the cooperative. The amount of work a member has depends on the setup of the cooperative. In many cooperatives, members work full schedules and also attend meetings of the cooperative outside of work. As business owners and not merely employees, cooperative members invest more time in work-related matters than they would if traditionally employed. Ongoing trainings, education, committee activities, and other business responsibilities require attention from members. With the time

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and impact of cooperatives refers to the difference between impacting all workers in an industry versus impacting only those in a cooperative.

183. See e-mail from Vanessa Bransburg, Cooperative Coordinator, Center for Family Life (Aug. 18, 2011, 13:16 EST) (on file with author).

184. See *id.*

185. See e-mail from Vanessa Bransburg, Cooperative Coordinator, Center for Family Life (Aug. 10, 2011, 15:26 EST) (on file with author).

186. See e-mail from Vanessa Bransburg, *supra* note 183.



that they do have left, members often prefer to spend it with their families. This creates a challenge in establishing ways that a cooperative might link to or carry out broader aims, which often require additional engagement from members.

#### 4. Concerns Over Member Priorities and Retention

“One hundred percent of our members come to the cooperative looking for jobs.”<sup>187</sup> This statement about WAGES is true for many cooperatives and highlights another challenge that cooperatives face—managing the priorities of the members in the cooperative and their orientation, or relationship, to the cooperative. If members view membership in a cooperative solely as a means for obtaining work, and not as a means of creating systemic change, then the potential for broader change becomes limited. While cooperatives screen prospective members and usually factor in a person’s willingness or ability to work well in a group setting, they may not be considering whether a member has a social justice mindset.

Hilary Abell, the former executive director of WAGES, contextualizes cooperative membership mentality in terms of Maslow’s Hierarchy of Needs, a theory in psychology often represented by a pyramid ranking human needs.<sup>188</sup> In short, at the base level is the need to *survive*, the middle is to *succeed*, and the top is to *transform*.<sup>189</sup> Within this concept, Abell views the members of the cooperative as strong on the survival aspect since the members work in the cooperative primarily to make money to support themselves and their families.<sup>190</sup> She observes that the *succeed* aspect is fairly strong as well, with members feeling like they are doing something powerful professionally and gaining strength in their own lives.<sup>191</sup> The final level—transformation—is self-actualization, when one reaches her full potential. Abell says that only a smaller subset of the hundred or so WAGES cooperative members achieve powerful self-actualization through membership in the cooperatives.<sup>192</sup> Abell comments that very few tap into a bigger sense of community building and getting involved in other ways.<sup>193</sup> This framing helps to understand the tension cooperatives face between

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187. Telephone Interview with Hilary Abell, *supra* note 179.

188. *See id.*; *see also* Jill Fraser, *What Goes Up Can Come Down*, THINK BIG MAG., <http://www.thinkbigmagazine.com/business/225-what-goes-up-can-come-down> (last visited Mar. 15, 2013).

189. *See* Telephone Interview with Hilary Abell, *supra* note 179.

190. *See id.*

191. *See id.*

192. *See id.*

193. *See id.*

being satisfied by the cooperative's job creation ability and wanting to push members to actively pursue community or social transformation.<sup>194</sup>

Another member-related concern is member retention. In the cooperatives that use a referral/marketing model with looser requirements for membership or work eligibility, such as UNITY and La Colectiva, it is sometimes the case that active membership ebbs and flows, with members participating long enough to get sufficient work for themselves and thereafter leaving the cooperative. Cooperative scholars comment that "once the co-op is no longer needed or when the returns from individual efforts outweighs the common good (e.g., the business profits they can achieve individually exceed what they would earn acting cooperatively), the cooperative will have difficulty retaining its member support."<sup>195</sup> With an unsteady and weakened base of members, the cooperative's capacity for organizing diminishes.

In sum, the challenges identified herein work against a cooperative's potential for collective action. The next Part sets forth ways that cooperatives can overcome these challenges and realize their potential.

### III. MOVING BEYOND THE FLOOR: MECHANISMS FOR CREATING BROADER CHANGE

Worker cooperatives have a significant impact even without connections to broader movements. As a space where workers carry out work in non-exploitative ways, worker cooperatives demonstrate a "high road" possibility for workers, clients, and industry.<sup>196</sup> It is a remarkable achievement when worker cooperative members negotiate contracts for better pay and working conditions than they otherwise would have had if traditionally employed. Though this Article refers to the one-person, one-vote requirement as a floor, when compared to traditional businesses, that

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194. A fair question to ask here is why should incubators, progressive lawyers, or others ask low-wage, immigrant workers to transform community. For many, deciding to leave their home countries to come to the U.S. already requires sacrifice, courage, and a level of self-actualization. Why should they now be asked to change conditions in this country? Progressive lawyers, workers' rights organizations, and cooperative developers have grappled with this question, one that raises interesting ethical questions beyond the scope of this Article. However, there are a few factors to consider. For some immigrant workers, especially from Central and South America, strong traditions of worker organizing and worker cooperatives exist in their home countries. For these workers, such concepts are not new; some workers come with the experience, if not only the interest, in engaging in broader political, economic, and social struggles. Moreover, workers who have endured economic and/or physical abuse prior to their membership in a cooperative may bring their own desire to help create change for future workers, a desire rooted in their real-life situations.

195. See Zeuli & Radel, *supra* note 57, at 51.

196. See Huertas-Noble, *supra* note 3, at 269 (illustrating how a workers' rights organization incubated a cooperative restaurant with the goal of transforming the industry).

floor is a significant one in terms of opportunities for democratic control, participation, and real change in the lives of workers.

For activists, workers' rights organizations, and progressive lawyers seeking change for more than the individual, creating cooperatives is not enough; they must employ mechanisms for creating broader change. The way that worker centers have addressed the dilemma between balancing service delivery and broader organizing is instructive for balancing job creation with collective action in worker cooperatives. Worker centers recruit members and build their worker base through various means. They engage in outreach through ethnic media, visiting neighborhoods, speaking at religious organizations, hand-billing workplaces, and networking with community institutions, such as soccer leagues and hometown associations.<sup>197</sup> Worker centers also use service delivery, especially legal support for pursuing unpaid wages, as a way of recruiting members.<sup>198</sup> Worker centers provide these services "with great trepidation because they want to promote collective and systemic approaches to change. They want workers to see that the solution to their situation requires collective action to alter the relations of power and win concrete victories."<sup>199</sup> Therefore, they worry that individual services to workers cut against the message of collective action and take time and resources away from the same. They address this dilemma in two ways: first, "by delivering services in a way that empowers workers," and second, "by connecting service, as much as possible, to organizing."<sup>200</sup> In the context of cooperatives, while the cooperative form challenges the dominant conception of worker status and ownership, cultivating and harnessing political consciousness similarly requires actively connecting cooperatives to broader social movements. This Part explores how cooperatives can and have moved beyond the one-person, one-vote floor to go from collectively-organized, democratic workplaces to places of collective action.

*A. Orienting Members to an Expanded Mission and Member Education*

All of the cooperatives profiled here believe in and hold themselves out as providing dignified, living wage jobs carried out in safe and healthy environments. They achieve this standard and make a significant difference for members when compared to the conditions of members' work before joining the cooperatives. Some cooperatives, however, orient members to a broader mission through education about historical, political, and economic

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197. FINE, *supra* note 24, at 48, 55.

198. *Id.* at 72-73.

199. *Id.* at 73.

200. *Id.*

inequalities underlying domestic work, low-wage work, and immigration policies, and by making the social justice aim explicit. The type of incubator makes a difference in the cooperative's orientation to larger social change. Workers' rights organizations, or worker centers, more than social service agencies or cooperative-developer organizations, create cooperatives with a pronounced social justice vision. Nevertheless, incubators can direct cooperatives to an expanded mission by explicitly prioritizing social aims and by educating members on social issues.

For worker centers with explicit organizing and social change missions, their incubated cooperatives tend to articulate similar goals. Jennifer Gordon writes about the Workplace Project's theory for social change: "[o]rganizing is not simply a matter of mobilization. It is a long-term process of analysis leading to action . . . It must be the conscious development of a worker-led movement for better communities and lives."<sup>201</sup> The cooperative coordinator for UNITY emphasizes that the main focus of the cooperative is not to find work for the women, but to organize and lobby for domestic workers.<sup>202</sup> La Colectiva, also incubated by a workers' rights organization, articulates on its websites: "La Colectiva isn't just a place to find work . . . It's an opportunity for civic engagement and activism towards social justice."<sup>203</sup> A video on the website features a worker-member saying, "[f]or us it's important that women know their rights, since we as domestic workers are not included in the labor codes."<sup>204</sup> She continues, "[t]he most important thing that we have to do is to work together really hard emphasizing that we need a Bill of Rights . . . [T]here are millions of domestic workers around the world and this will set a precedent for other states and countries."<sup>205</sup> Both UNITY and La Colectiva have been active in fighting for domestic workers' bills of rights in their states.<sup>206</sup> They have been successful in mobilizing members to attend lobbying days, speak with legislators, and educate the public.

Merely stating in a group's mission that it has a broader social justice aim, however, does not necessarily mean that the group will achieve it. WAGES included in its original mission statement that its cooperatives would strive to create economic and social change; the group thought that social empowerment would come from bringing people together to work collectively.<sup>207</sup> After about five years of operating the first cooperative, the

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201. Gordon, *We Make the Road*, *supra* note 9, at 447.

202. See Telephone Interview with Liliam Juarez, *supra* note 143.

203. LA COLECTIVA, <http://lacolectivasf.org/gallery/> (last visited Mar. 15, 2013).

204. Guillermina Castellanos, *Video*, LA COLECTIVA, available at <http://lacolectivasf.org/gallery/> (last visited Feb. 9, 2013).

205. *Id.*

206. See Cornell, *supra* note 25, at 10-11.

207. Telephone Interview with Hilary Abell, *supra* note 179.

group changed its mission statement to focus solely on economic empowerment, realizing that in reality, larger social change was not its main purpose.<sup>208</sup>

Another way to orient members towards a social justice vision is through curricula used at orientation sessions or other gatherings. Several of the cooperatives include in their orientation sessions a broader historical and legal discussion of workers' and immigrants' rights. Members gain a deeper understanding of the history of the domestic work industry in the U.S., basic political economy, theories of social change, and an introduction to organizing. La Colectiva uses peer-led, participatory, and popular education strategies to share information.<sup>209</sup> The CFL's cooperative coordinator arranged an anti-oppression training tailored for people of color. Si Se Puede! members participated, and the training was also part of the orientation session for the CFL's newest cooperative, an elder care cooperative. Lawyers also can play a role here by teaching members about their legal rights and explaining how the legal system works in general. By placing domestic work within a larger picture of social injustice and the fight for workers' rights, cooperatives can help members think beyond the cooperative to ways they might create change that helps those without access to cooperative membership.

#### *B. Mitigating the Burdens of Small-Business Startup and Sustainability*

Described previously as a challenge, the amount of resources and time that go into running a small business limit the cooperative's potential to engage in activities beyond running the business. Presumably, lessening some of these tasks would free up time for members to channel their energy towards greater efforts. There are several ways incubators and cooperatives might mitigate the burdens of small business startup and sustainability.

Cooperative incubators can take on some of the initial administrative and managerial roles. During the incubation phase, WAGES occupies the majority of seats on the cooperative board.<sup>210</sup> WAGES views this as a way to help the cooperative move more quickly towards sustainable job creation.<sup>211</sup> Though counterintuitive to many in the cooperative world, WAGES feels the benefits outweigh the disadvantage of less member control.<sup>212</sup> Abell writes, "members seem to experience greater 'empowerment' by having a full schedule, time to care for their families, a

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208. *See id.*

209. Kennedy, *supra* note 8, at 153.

210. *See* Abell, *supra* note 137.

211. *Id.*

212. *Id.*

voice in the workplace, and control over a small number of key decisions, than by having to shoulder the full burden of bringing a start-up business to stability.<sup>213</sup> By extension, fewer burdens of small business can free up members to think about and participate in politically engaged activities.<sup>214</sup>

WAGES launched a cooperative network in 2009 that currently has five cleaning cooperatives as members.<sup>215</sup> It jointly brands and purchases supplies, refers services, and provides technical assistance and ongoing training for its cooperative members.<sup>216</sup> The hope is that it will be able to jointly purchase insurance as well.<sup>217</sup> This type of “social franchising” provides unity, mutual support, and economies of scale.<sup>218</sup> The network offers varying levels of membership depending on the relationship of the cooperative to WAGES, the level of training and the level of the cooperative’s compliance with the network’s standards.<sup>219</sup> There are opportunities for other cooperatives, both within and outside of the Bay Area to join the network, to create similar networks that will strengthen the individual cooperatives and lessen some of the burdens of starting up and running a small business.

The referral/marketing model can further mitigate the burdens of running a small business. The cooperatives incubated by the workers’ rights organizations, UNITY and La Colectiva, as well as the CFL cooperatives, function using a referral/marketing model. This type of model requires less administration and management than WAGES cooperatives and the CHCA model, in which workers represent the business. The cooperative itself does not handle the money coming in from jobs, so there is less bookkeeping required. Members report income on their individual tax returns without the cooperative being responsible for issuing each member a statement of her share of the business.

There are, however, a couple of drawbacks to the referral model. One is that there can be a greater need for work than there are available jobs, leaving members with either no work or insufficient work. The open membership structure of UNITY and La Colectiva contributes to this issue.

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213. *Id.*

214. An issue to be aware of in relieving too many of the responsibilities of ownership, a factor used under labor, immigration, and tax laws for determining whether one is an employee or not, is that one might be deemed an employee under those various laws, necessitating the cooperative to check for work authorization.

215. See WAGES, <http://wagescooperatives.org/about-us/history-0> (last visited Feb. 9, 2013).

216. See WAGES, <http://wagescooperatives.org/co-op-network/co-op-network> (last visited Feb. 17, 2013); Schoening, *supra* note 136.

217. See Interview by Steve Dubb with Hilary Abell, Executive Director, WAGES (Jan. 2010), available at [http://www.community-wealth.org/\\_pdfs/news/recent-articles/01-10/interview-abell.pdf](http://www.community-wealth.org/_pdfs/news/recent-articles/01-10/interview-abell.pdf).

218. See, e.g., HOME GREEN HOME CLEANING CO-OP NETWORK, <http://www.homegreenhomecleaning.com/> (last visited Mar. 15, 2013).

219. See *id.*

The CFL cooperatives use a referral/marketing model, but have more restricted calls for membership. The members determine whether or not to take on new members depending on whether current members have sufficient work. In more classic worker-owner models like WAGES' cooperatives and CHCA, the cooperatives produce steady work for members. Another drawback of the referral model is the limited ability to provide benefits to workers. By having a structure where the cooperative receives payment for services, retains some amount for its operations, and pays a portion to workers, the cooperative has more control and ability to direct money towards benefits for workers, as is the case with the CHCA and WAGES' cooperatives.

### *C. Incentivizing or Requiring Political-Engagement Activities*

The points-based system that UNITY and La Colectiva use helps link member participation to job assignments. Cooperatives can incentivize participation in broader organizing or political activities so that those activities link to getting jobs, while at the same time emphasize efforts beyond individual work. For workers' rights organizations that are incubators, giving points for participation in the organization's activities politically engages cooperative members and increases the organization's base.

Cooperatives can also require participation in political activities as part of membership. Using governance structures that impose certain requirements on members like those of the CFL cooperatives, a cooperative can require that members fulfill a certain number of hours per period of time in furtherance of advocacy activities. But cooperatives must take care when structuring this type of arrangement. Depending on the particular circumstances, requiring members to participate in the activities of an outside organization, such as an incubator, may give rise to wage-and-hour claims in which a member demands, and may be owed, compensation for time spent with the outside organization.<sup>220</sup> A cooperative can also create a committee tasked with thinking about how the cooperative could link to broader change efforts and require that members participate in the committee in the same manner that they would require participation in other cooperative committees.

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220. It is also possible that a wage and hour claim may exist even if the requirement to participate in political engagement activities is for the cooperative itself and not for an outside organization. The threshold legal question here is whether or not the member is an employee of the cooperative.

*D. Formalizing Links to an Organizing Group and Including  
Cooperative Members as Part of an Organizing Base*

Scholars have discussed the importance of connecting cooperatives to other institutions. Peggie R. Smith writes, “[t]o help build their momentum and appeal, domestic service cooperatives should look to forge ties with organized labor.”<sup>221</sup> Peter Pitegoff underscores the need for linkages on a broader scale in order to challenge the basic structure of the political economy.<sup>222</sup> Worker centers, unions, and other types of organizations can serve as connecting points to larger strategies for change. Lawyers and incubating organizations can help facilitate connections between cooperatives themselves and between cooperatives and organizing entities. Progressive CED lawyers who work with worker centers and cooperatives are well-positioned to initiate these relationships. They bring knowledge from previous representations and help connect the dots in a way that becomes a “true CED strategy”<sup>223</sup> and also a progressive strategy that “strive[s] to bring democracy to life by recognizing and building connections and capacities that can lead to effective collective action to combat societal subordination.”<sup>224</sup>

For workers’ rights organizations and unions, members of a cooperative can serve as a stable base of membership.<sup>225</sup> While a large pool of individuals come to worker centers because of problems on the job, accidents, or other issues, then leave or have less of an interest in the centers once they get their pay, file a suit, or have their immediate problem resolved, cooperative members have long-term involvement with their cooperatives and provide a counter to the otherwise transitory nature of worker center membership. At the Workplace Project, the Project’s staff always made sure to involve the cooperative members in its organizing activities.<sup>226</sup> The staff invited cooperative members to report at its broader membership meetings.<sup>227</sup> In this way, they attempted to make the

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221. See Smith, *supra* note 8, at 98.

222. Peter Pitegoff, *Child Care Enterprise, Community Development, and Work*, 81 GEO. L.J. 1897, 1930 (1993).

223. See Praveen Kosuri, “Impact” in *3D—Maximizing Impact Through Transactional Clinics*, 18 CLINICAL L. REV. 1, 16-17 (2011).

224. Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541, 548 (2006).

225. The fourth ICA principle, that of Autonomy and Independence, is important to consider when connecting cooperatives to other organizations, including to the cooperative incubators themselves. See *supra* note 116 and accompanying text. Too much control of cooperatives by outside entities risks impinging on cooperatives’ independence and ability to “control their own destiny.” See Ann Hoyt, *And Then There Were Seven: Cooperative Principles Updated* INTERNATIONAL CO-OPERATIVE ALLIANCE, available at <http://www.mongolia.coop/data/Principles1.pdf> (last visited Mar. 15, 2013).

226. See Telephone Interview with Liliam Juarez, *supra* note 143.

227. See *id.*



cooperative members feel like part of the organizing group. Including cooperative members in organizing activities helps educate members to issues and can inspire members to prioritize politically engaged efforts.

Domestic worker organizing in the U.S. is a growing movement with which cooperatives have and can continue to connect. Poo, of NDWA, says: “[w]e are part of the labor movement, of the women’s movement, of the immigrant rights movement. We can be a bridge across those different sectors and strengthen them. And especially, we can revive the labor movement.”<sup>228</sup> Domestic Workers United (DWU), a New York-based organization advocating for the rights of domestic workers, led a successful campaign for a Domestic Workers Bill of Rights in New York.<sup>229</sup> A similar effort in California awaits passage in the state’s senate. Some of the cooperatives profiled in this Article are members of NDWA—UNITY, Beyond Care, and La Colectiva. As members, the groups get updates on ongoing campaigns, have opportunities to participate in activities, and can help direct the movement. Prior to its membership in NDWA, UNITY was one of the founding groups of DWU. UNITY members led the effort to pass a county-wide Domestic Workers Bill of Rights in 2006 that required all domestic worker placement agencies to inform workers about their rights to minimum wage and overtime, regardless of immigration status.<sup>230</sup> La Colectiva has been active in efforts to pass a Domestic Workers Bill of Rights in California.<sup>231</sup>

Unionization offers another broad-scale link.<sup>232</sup> In 2003, CHCA’s workers joined 1199SEIU United Healthcare Workers East.<sup>233</sup> A motivation for unionizing workers, for both CHCA and the union, was to better advocate for additional government funding to the home care sector and to mandate that home care agencies use additional resources to increase the compensation earned by home care workers. CHCA workers received

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228. Elizabeth Martinez, *Domestic Workers Rising Up*, Z MAG. (Jan. 2009), <http://www.zcommunications.org/domestic-workers-rising-up-by-elizabeth-martinez>. One of NDWA’s major campaigns is the Caring Across Generations Campaign. To meet the impending need for a significant number of home care workers to care for the baby boomer generation, the Caring Across Generations Campaign has among its core policies the creation of new, quality jobs in home care; labor standards and improved job quality for existing and new jobs; training and career ladders for home care workers; and a new visa category and path to citizenship for care workers. See *Caring Across Generations*, NATIONAL DOMESTIC WORKERS ALLIANCE, <http://www.domesticworkers.org/caring-across-generations> (last visited Mar. 15, 2013).

229. H.R.J. Res. 1470, 233 Leg. Sess. (N.Y. 2010). The bill, passed in 2010, guarantees overtime pay, a minimum of one day off every seven days, three days of paid leave per year, and protections against sexual harassment and racial discrimination.

230. See WORKPLACE PROJECT, <http://www.workplaceprojectny.org/womens-leadership-and-gender-equality/> (last visited Mar. 15, 2013).

231. See LA COLECTIVA, <http://www.lacolectivasf.org/billofrights/> (last visited Feb. 17, 2013).

232. Note, however, that unionization might not be desirable for every cooperative, as it can raise questions as to whether or not a member is considered an employee under various legal definitions.

233. See Schneider, *supra* note 133.

new benefits, including health insurance through the union and the ability to enroll in different continuing education programs offered by the union.<sup>234</sup>

The United Steelworkers, Mondragon International, and the Ohio Employee Ownership Center recently announced a new “union co-op” model that combines cooperatives and collective bargaining.<sup>235</sup> The model seeks to build ties between worker cooperatives and unions.<sup>236</sup> In larger scale cooperatives, worker-owners elect a board of directors from among themselves to appoint people to manage the daily operations of the cooperative. The union cooperative model has a union committee that engages in collective bargaining with the appointed management over issues such as wages, benefits, and working conditions.<sup>237</sup> This union cooperative model institutionalizes a link between cooperatives and unions.

Cooperative members can also become members of worker centers and/or unions in their individual capacities, even if their cooperative is not formally tied to a union or worker center. For example, by requiring its members to complete a nanny-training course conducted by DWU, Beyond Care thereby requires each member to become a member of DWU, with one exception.<sup>238</sup> Members of UNITY attended training sessions that the Workplace Project conducted.<sup>239</sup> The culture of the cooperative led members to participate in training, even when it was not required. With respect to union membership, Smith suggests that because paid household workers cannot bargain traditional union contracts, unions can represent their interests through associate membership arrangements that allow workers who are not part of an organized bargaining unit to join a union

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234. *See id.*

235. *See USW Press Release, supra* note 182

236. *See* Rob Witherell, Chris Cooper & Michael Peck, *Sustainable Jobs, Sustainable Communities: The Union Co-op Model* (Mar. 26, 2012) available at <http://assets.usw.org/our-union/coops/The-Union-Co-op-Model-March-26-2012.pdf>. The authors discuss the natural and historical alliances between the cooperative and labor union movements. *See id.* Both were initially formed in the U.S. in the mid-1800’s among particular trades as means of mutual aid and support. *See id.* at 4-5. They share several similarities: democratic election of leadership based on a principle of one member, one vote; propensity to promote, select, and elect leadership from the rank and file; emphasis on education, training, and collective attainment; concern for the community; and cooperation with similar entities. *See id.* at 5. The authors note that the modern experience of organized labor and employee ownership has been mixed and uneasy. *See id.*

237. *See id.* at 6. Worker-owners would potentially serve in multiple roles on a consecutive basis—one could be elected to the union committee and later elected to the board of directors if they are no longer on the union committee. *See id.* at 6.

238. BY-LAWS OF BEYOND CARE (on file with author) (require that members take a nanny training course); e-mail from Vanessa Bransburg, Director of Cooperative Development, SCO Family of Services, Center for Family Life (April 1, 2013 4:57 EST) (on file with author) (DWU conducts the nanny training course, which requires DWU membership. Beyond Care also has begun offering its own training, which does not require DWU membership).

239. *See* Telephone Interview with Liliam Juarez, *supra* note 143.

individually.<sup>240</sup> She notes that the AFL-CIO established a Union Privilege Benefit Program in 1986 that offers associate members direct benefits including health and life insurance at below-market rates.<sup>241</sup> Further, a union can assist cooperatives develop strategies to lobby for legislation beneficial to domestic workers.<sup>242</sup>

Beyond industry-specific change, there are growing movements across sectors and internationally that have the potential to include worker cooperatives. The World Social Forum, first organized in 2001, and its U.S. counterpart, the U.S. Social Forum (U.S.S.F.), first convened in 2007, symbolize a vast global and nationwide movement in opposition to neoliberalism and the domination of the world by capital.<sup>243</sup> Several efforts have emerged out of the two U.S.S.F. gatherings that have happened to date. NDWA is one, and the other is the Solidarity Economy Network, a global movement that seeks to build systemic economic transformation and strategic cooperation from the grassroots.<sup>244</sup> Worker cooperative practitioners and scholars are exploring how worker cooperatives can contribute to broader efforts to build a solidarity economy.<sup>245</sup> Worker cooperatives such as Si Se Puede! saw the U.S.S.F. as an opportunity to grow the cooperative movement and presented workshops and spoke at events.<sup>246</sup> Yet another effort that formed out of the 2010 U.S.S.F. forum was the Excluded Workers Congress, an inter-industry collaboration of working people that face exclusion from the protection of core U.S. labor laws because of the industry or social sector in which they work.<sup>247</sup> The

240. Smith, *Organizing the Unorganizable*, *supra* note 8, at 97.

241. *Id.*

242. *Id.*

243. See WORLD SOCIAL FORUM 2011 DAKAR, <http://fsm2011.org/en/wsf-2011> (last visited Mar. 13, 2013).

244. See Jenna Allard & Julie Matthaie, *U.S. Solidarity Economy Network is Born at the USSF 2007*, GRASSROOTS ECONOMIC ORGANIZING, available at <http://www.geo.coop/node/131> (last visited Mar. 13, 2013). There is no one definition of the solidarity economy; it is more of a framework than a model. The most commonly used definition is:

[The] [s]olidarity economy . . . covers different forms of organization that the population uses to create its own means of work or to have access to qualitative goods and services, in a dynamic of reciprocity and solidarity which links individual interests to the collective interest. In this sense, solidarity economy is not a sector of the economy, but an overall approach that includes initiatives in most sectors of the economy.

Workgroup on the Solidarity Socioeconomy, *Proposal Paper on the Solidarity Economy* (May, 2001) (cited in Allard and Matthaie, *U.S. Solidarity Economy*, *supra* note 244, at 6).

245. See US FEDERATION OF WORKER COOPERATIVES, *What's the Economy for Anyway? Why We Need a Solidarity Economy*, <http://www.usworker.coop/node/344> (last visited Mar. 13, 2013).

246. See NORTH AMERICAN STUDENTS OF COOPERATION, *Get Involved in the U.S. Social Forum*, <http://www.nasco.coop/node/10669> (last visited Mar. 15, 2013).

247. See *Unity for Dignity: Expanding the Right to Organize to Win Human Rights at Work*, Dec. 2010, at 3, available at [http://www.excludedworkerscongress.org/images/stories/documents/EWC\\_rpt\\_final4.pdf](http://urbanhabitat.org/files/Excluded%20workers%282%29.pdf).

sectors include farmworkers, domestic workers and direct care providers, day laborers, tipped minimum wage workers such as restaurant workers, guest workers, workers in right-to-work states (especially in the South), taxi drivers, workfare workers, and formerly incarcerated workers.<sup>248</sup> Low-wage worker movements seek an increase in the federal minimum wage, paid sick and family leave, access to affordable medical care, opportunities for career advancement, and a pathway to citizenship for undocumented workers.<sup>249</sup> These movements all have the potential for stronger worker cooperative inclusion.

#### *E. Becoming an Industry Player*

As cooperatives grow in scale, they can work to influence the greater industry. Cooperatives can develop a significant presence in the industry through work in coalitions, positions on boards, and policy reform efforts. CHCA staff organized the New York City Home Care Work Group, made up of representatives of consumers, unions, workers, and home care providers, to conduct research and develop recommendations for improving the home care system.<sup>250</sup> The Work Group was successful in increasing Medicaid reimbursement rates for the sector, even though the increase did not translate completely into wage increases for home health aides.<sup>251</sup> CHCA's current and former CEOs have sat on trade association boards, helping to raise the prominence of home health aides and gaining exposure for the cooperative model.<sup>252</sup> Realizing that CHCA's livelihood was dependent on Medicare and Medicaid policy, CHCA started the Paraprofessional Healthcare Institute, a non-profit organization dedicated to supporting research, creating demonstration projects, and promoting government policy that supports the paraprofessional healthcare workforce.<sup>253</sup> As a large player in the industry, CHCA has shown that an emphasis on improved job conditions and investment in workers can result in better quality home services while still meeting profitability standards.<sup>254</sup>

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248. *See id.*

249. *See* Burnham & Theodore, *supra* note 6, at xiii.

250. Inerra, *A Case Study*, *supra* note 162, at 39-40.

251. *See id.* at 40-41.

252. *See id.* at 41.

253. *See* Peter Pitegoff, *Shaping Regional Economies to Sustain Quality Work: The Cooperative Health Care Network*, in *HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA* 96, 101 (Joel F. Handler & Lucie White eds., 1999).

254. Inerra, *A Case Study*, *supra* note 162, at 51.

## CONCLUSION

This Article does not argue that all worker cooperatives should serve as more than job-creating entities. Rather, activists, workers' rights organizations, and progressive lawyers seeking to create cooperatives as vehicles for greater societal change must consciously pursue mechanisms beyond merely choosing the cooperative form to accomplish that end. Lawyers, having the choice of which projects to pursue and which clients to represent, can approach worker cooperative creation in a way that advances a progressive CED agenda or a more traditional one; merely creating a worker cooperative is not necessarily a progressive CED effort. Choosing to work with incubators and cooperatives that have a commitment to activism, as well as implementing mechanisms to support activism, furthers progressive lawyering aims.

Historically, worker cooperatives have shared ties to movements for economic, political, and social change. Opportunities exist for similar connections today. As workers', immigrants', and women's rights movements grow, intersect, and evolve in a way that incorporates alternative institutions, more worker cooperatives can move beyond the individual towards effecting collective action.