Reflections on “Message from the Grassroots: Participatory Democracy, Community Empowerment and the Reconstruction of Urban America”

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As I reflect on the Note that I authored as a law student fifteen years ago, I am struck by how relevant it is to the course of my professional career in the years since. In a way, my Note was not only a writing project; it was also a career development plan. Although it is a cliché that nearly all law school students express an interest in social justice on their law school essays (and then proceed to join the 95+\% of the bar working in private practice), I did spend much my time in law school engaged with the question of how I was going to be able to use my education and professional career to further the cause of social justice, particularly as it relates to racial equality.

From my perspective in the mid-1990’s, the prospects for the success of a direct appeal to the court system for redress for the legacy and ongoing experience of racial discrimination and injustice seemed rather bleak. Race-conscious remedies were under direct assault in the courts, the legislatures and boardrooms. I personally spent an inordinate amount of time in law school organizing protests in an ultimately unsuccessful attempt to fend off a ban on affirmative action at the University of California.¹ Within two years, that ban had been extended by popular vote to every public agency in the State of California.² Several years had passed since there had been a significant U.S. Supreme Court decision expanding the scope of race-based remedies and instead there had been a string of decisions limiting and narrowing the permissible contexts and scope of such remedies.³

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1. On July 20, 1995, the Board of Regents of the University of California adopted Regents Resolutions SP-1 requiring that race, religion, sex, color, ethnicity, and national origin not be considered in the admissions decision process.

2. On November 5, 1996, California voters passed into law Proposition 209, which states in relevant part: “The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” CAL. CONST. art. I, § 31 (a). 19

3. In City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989), the Supreme Court struck
It seemed clear to me that the courts would not likely be receptive to arguments that called attention to the fact that even in an era of *de jure* equality, race continued to operate in powerful ways in the lives of black people; nor would there be any new race-based causes of actions or remedies found in the Constitution or in the common law. Even in partially upholding affirmative action at the University of Michigan as a compelling state interest in its *Gratz* decision, the Supreme Court only did so entirely on the basis of the present-day need for educational “diversity” in the classroom, as opposed to any thought or consideration of righting past wrongs or current inequalities. No, the future within the court system at that time looked like at best rear-guard defenses of even the most narrowly constructed and applied race-conscious remedies.

Stepping back a bit, we can see the paring back by the courts of race-based remedies and affirmative action as actually a subset of a generalized societal rejection of what I would term “intergenerational justice”, i.e., granting rights to present-day individuals as compensation for wrongs done to members of their racial group in the past. The majority consensus was then consolidating around a kind of racial détente: present-day racial discrimination in any form would be seen as wrong, even taboo, and rectified whenever and wherever it is found, while at the same time blacks and other minority groups would be expected to just “get over” the past, a past about which whites would feel no guilt or responsibility for.

There was also the reality that by the mid-1990’s, it seemed increasingly clear that many of the most pressing problems faced by black and other minority communities in America had much less to do with racial discrimination directly, and more to do with class and the lingering effects of past racial injustices. At the time I wrote:

The great victory of the Civil Rights Movement has been the realization of legal equality for African Americans in American society. Blacks can no longer be blatantly discriminated against under sanction of law. However, the unanswered questions of the 1960’s – political and economic, as opposed to strictly legal, inequality – have become increasingly relevant, given that the economic status of blacks generally has not improved, particularly for those without the skills and education requisite to taking advantage of the opportunities created in the wake of down a city regulation favoring minority businesses. The Court held that "generalized assertions" of past racial discrimination could not justify "rigid" racial quotas for the awarding of public contracts. This decision was followed several years later by *Adarand Constructors v. Peña*, 515 U.S. 200 (1995), where the Court explicitly overruled a previous 5-4 decision upholding an affirmative action program, *Metro Broadcasting Inc. v. FCC*, 497 U.S. 547 (1990). In striking down the minority business set-aside program at issue in *Peña*, the Court took the opportunity to declare that all race-based programs would henceforward be subject to strict scrutiny, and therefore must be narrowly conceived and tailored to meet a compelling governmental interest.

the Civil Rights Movement.\(^5\)

Whatever race-based remedies were going to survive the wider societal hostility to claims of inter-generational justice seemed likely to be somewhat impotent to address the primarily class-based ills facing many black communities across the nation.

But all was not lost. Considered within the context of the decades-long African-American struggle for freedom and equality in America, however, the strategy of appealing to the courts for race-based redress for inter-generational and continuing racial injustices is just one part of the picture. There has always been a two-pronged strategy, with one prong focused primarily on appeals to the majority for justice, and the other focused more on strategies for advancement based on intra-communal cooperation. As I recounted in my Note, a century ago the two prongs were cast in terms of an at times bitter debate over racial advancement strategies between W.E.B. DuBois and Booker T. Washington and, since then, the two strategies have waxed and waned in prominence depending mostly on the receptivity of the wider society to the cause of black equality.

So if, in the mid-1990's the national pendulum appeared to be swinging back toward a period of retrenchment, clearly new strategies outside of the traditional rights-based model would be needed. It was toward that goal that I began to focus less on devising novel arguments aimed at judges and more on strategies aimed at placing communities themselves at the center of the struggle to bring about positive changes in their own condition, i.e. political and policy advocacy, direct legal assistance and community organizing and capacity-building to bring about fundamental changes at the grassroots level.

Harold McDougall's examination of the experiences of community rebuilding on the West Side of Baltimore represented, then, a look at what that alternative strategy might look like in both theory and practice. McDougall, a law professor at Catholic University in Washington, D.C., was also interested in exploring the relevance of both rights- and community-based strategies for black advancement. He placed the rights/community debate in a much broader historical and societal context, tracing it all the way back to the debates between Federalism and the Jeffersonian ideal of participatory democracy and civic responsibility right up through the period stretching from Roosevelt's "New Deal" to Johnson's "Great Society." McDougall suggested that there could be a "third way" between the competing strategies:

Participatory democracy and community empowerment might help to better define the public interest, as well as furnish social approaches that are useful, and often necessary, complements to public interest

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regulation.\textsuperscript{6}

At the time, these words resonated strongly with my own sense of the direction that I wanted to pursue as I sought to find a role for myself as a lawyer in the fight for social justice. This could be a new way that would avoid the capitulation implicit in Booker T. Washington's parallel, "self-help" approach, while at the same time placing the community itself, and not a generally hostile judiciary, at the center of struggles for social justice. As I look back on my Note, I can see that it both helped to form, and reflected, my own views on and plans for how the law might be used to help advance the cause of racial justice in the coming years. Consider this excerpt from a biography that I recently submitted for a grant application:

Mr. Carson specializes in community capacity building, transportation equity, and environmental justice and has more than ten years of experience working with neighborhood and community groups on land-use, redevelopment, community development, the environment and other issues.\textsuperscript{7}

As an attorney with LAFLA, I've developed a law practice that mostly revolves around working with and for community-based organizations in efforts to address some of the economic and environmental issues they face. The foundation of my practice is simple organizational capacity building: board trainings on the basics of founding and operating a non-profit organization, legal assistance in obtaining state and federal tax exemptions, etc. From there, however, my practice branches off into a wide variety of issues. With one organization, it may be policy and legal research in preparation for meetings with city officials about a proposed ordinance. Another group may be looking for me to lay the groundwork for an environmental lawsuit alleging inadequacies in the planning of a transportation project. A third matter might entail helping a network of organizations united around a common agenda to develop a formal agreement to allow for closer collaboration and common fundraising efforts. The entry point for many of my clients and collaborative partners has been a workshop I developed called Public Participation in the Planning Process that aims to give residents of low-income communities the requisite skills and information to effectively participate in decision-making processes that affect quality of life in their neighborhoods.

I've also been personally involved in a number of McDougall's "base communities" such as: (1) architecture and planning students leading a "community visioning" process to help low-income residents plan the future of their neighborhood; (2) real estate development professionals coming together

\textsuperscript{6} Harold A. McDougall, Black Baltimore: A New Theory of Community 9 (1993).

\textsuperscript{7} Legal Aid Foundation of Los Angeles, Proposal for Funding -- Southeast Los Angeles Air Quality and Environmental Health Action, ENVIRONMENT NOW (2009).
to implement a vision for a “transit” village in West Oakland, California; (3) public health advocates defeating a proposed expansion of a freeway that would’ve demolished hundreds of homes, schools and businesses and quadrupled local pollution levels in low-income minority communities and successfully promoting a cleaner alternative; (4) policy advocates passing an ordinance for the retrofitting of all LA city buildings for energy efficiency, in the process training community residents in “green jobs”; and (5) a coalition of legal services lawyers and public defenders to address employment “re-entry” issues for community members with criminal records.

One could argue that history has been relatively kind to my prognosis. Since the publication of that first issue of ALPR, there haven’t been any groundbreaking Supreme Court decisions allowing for new causes of action or remedies for racial discrimination. The best that can be said is that in some of the more liberal lower courts, lawyers have found new ways to enforce the rights, remedies, and causes of actions that have managed to survive the conservative onslaught against them.

Furthermore, the divergence between the fates of blacks at the upper and lower ends of the economic spectrum has only intensified as our society as a whole has become increasingly stratified economically. While educated and affluent blacks have generally benefited from our society’s transition to a global, information-based economy, the working class entry-level jobs in manufacturing centers such as Detroit, Philadelphia, and Los Angeles that once provided the bottom-rung of the ladder to the American Dream have evaporated at a seemingly ever-increasing pace.

There has, on the other hand, been a proliferation of the kind of community-based strategies that focus on organizing at the grassroots level to confront systemic injustices using not only the legal system, but also policy and political advocacy, organizational development, and economic strategies. All over the country, there are thousands of “base communities” creating change at the grassroots level through community-centered approaches. In hundreds of urban, low-income neighborhoods community-based organizations have opened up new career and business opportunities, improved public services, altered development plans, built and preserved affordable housing, started new schools, etc.8

One could look at Barack Obama’s rise from Southside Chicago community organizer to become the first African-American President of the United States as the crowning individual achievement of the community-based model in the same way that one could consider Thurgood Marshall’s rise from civil rights litigator to become the first black Supreme Court Justice was for the

rights-based approach. Based on my own experience as a volunteer, Obama's presidential campaign itself extensively utilized the "base community" model described by McDougall to enable semi-autonomous local networks of supporters to knock on doors, organize phone banks, raise funds, and spread Obama's message of "hope and change."

Obama also downplayed race-based strategies in favor of a more universalist rhetoric, albeit rhetoric that was clearly and often explicitly borne out of and responsive to his experiences on the South Side of Chicago. I had the privilege of attending a private meeting between Los Angeles African-American community leaders and Barack Obama in the summer of 2007, where he was asked to state his position on reparations. To paraphrase, then-candidate Obama said that he was not "going to be able to sell that" to white people in Iowa struggling to make ends meet with stagnant wages and mounting costs for housing, health care, and energy and argued that better education, jobs, and economic opportunity for all Americans would benefit blacks as much as, if not more than, anyone. This ability to translate the particular concerns of inner-city black communities into terms that resonated with a wider audience may in part explain how he was able to simultaneously "fire up" an unprecedented outpouring of support in black communities across the country, while at the same time expanding his "cross-over" appeal to all of the different ethnic groups that make up the American electorate.

There have, of course, been downsides to the community-based approach as well. My major critique of McDougall's prescription in my Note was that a community-centered approach could be ultimately doomed to failure in the face of the larger, more determinative societal forces at the root of poverty and inequality:

Without confronting those forces, self-help strategies may amount to little more than a variant on the "blame the victim" approach so prevalent in American political and economic discourse. Even at the local level, community development approaches must address the structural causes of poverty and unemployment in order to achieve success.9

This critique remains just as relevant today. Although the black poverty rate fell across the country in the late 1990's, it remains at least double the white rate and is again on the rise.10 Whatever progress has been made in certain local contexts can look like small outcroppings of safety against a torrent of trends headed in the opposite direction. The root causes of poverty and unemployment, to a large extent, aren't even entirely just national anymore either. Increasingly, what happens in southeast China has more impact on life in South Central Los Angeles than what happens in Washington, D.C. The

9. Carson, supra note 5, at 125.

most exciting and promising of the community-based approaches, then, are exactly those that combine organizing at the grass-roots level with political and legal advocacy at all levels to confront the fundamental structural issues facing black and other communities. In his introduction to a special issue of the National Center on Poverty Law’s Clearinghouse Review focusing on community-based approaches, UCLA law professor Scott Cummings argues that Community Economic Development “is being reinterpreted by practitioners on the ground in a way that connects community-based lawyering to a broader movement for economic justice.” I co-wrote an article for that issue about efforts by legal advocates and community groups to hold publicly supported development projects accountable to low-income communities by entering into and enforcing Community Benefits Agreements. But whether the field is development, or job training, or environmental justice, or a host of other areas of endeavor, a common thread emerges of lawyers and community groups coming together to confront systemic and structural issues utilizing a variety of tactics and strategies including, but by no means limited to, strictly legal ones.

One of the best examples of this kind of strategy that I’ve been involved in has been the collaboration between public interest lawyers and community organizers confronting “transit racism” in Los Angeles. After years of organizing one of the most dispossessed groups of people anywhere, the transit-dependent in famously car-centric Los Angeles County, the Bus Rider’s Union (BRU) teamed up with the National Association for the Advancement of Colored People Legal Defense Fund, along with three other community-based organizations, and filed a lawsuit alleging violations of Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the 14th Amendment by the Los Angeles County Metropolitan Transportation Authority.

Although unfortunately the cause of action—disparate impact—that formed the basis of the original case was later overruled by the Supreme Court in Alexander v. Sandoval, 532 U.S. 275 (2001), the BRU had by then already entered into a ten-year consent decree requiring: (1) maintenance of low fares; (2) new and expanded service to improve access to employment, education, and health care available to low-income communities.

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14. In Sandoval, the Court held that there is no private right of action to enforce disparate-impact regulations promulgated under Title VI.
centers; and (3) a reduction in overcrowding. The BRU, along with other allied transit equity advocates, has been able to leverage the consent decree into approximately $1.3 billion in increased transportation services and reduced costs for low-income people in Los Angeles.

But ultimately, the jury may still be out on the question of the impact that a community-focused approach can have at the national and international level. If we can at least partially attribute Obama's victory to the community-based approach to racial justice that formed both the foundation of his personal career and the organizational structure and political rhetoric of his presidential campaign, and given President Obama's own stated intention to maintain the organizational framework of his campaign as a means of applying pressure on Washington for change, we may be able to at some point down the road evaluate the impact of his election on the national and international structural underlying causes of poverty and unemployment in black communities as a test of the community-based approach.

But by the terms of community-based lawyering, even that may not be a proper test, however. Ultimately, a true community organizing and empowerment strategy can never be dependent on any individual politician's goodwill. Obama himself would surely remind us that the community-lawyering approach dictates that, in the end, the only way to bring about any kind of fundamental structural change is to continue to build our movements and organizations into powerful economic and political power bases that are able to exercise their will at the national and international level, against all kinds of economic and political actors. We might do well to heed the words of Harry Belafonte being interviewed on Tavis Smiley's television show on the day after Obama's historic election:

I'm reminded of something that Eleanor Roosevelt once told a group of us at a dinner. It was when she had first introduced A. Philip Randolph, a great labor leader back in the 1930s up to and including the civil rights movement. And she introduced him to Franklin Delano Roosevelt for the first time at a dinner, and Roosevelt beseeched him to please tell him what he thought of the nation, what he thought of the plight of the Negro people and what did he think - where the nation was headed. And A. Philip Randolph held forth and spoke eloquently on his thoughts, and at the end of it Roosevelt said to him, "You know, Mr. Randolph, I've heard everything you've said tonight, and I couldn't agree with you more. I agree with everything that you've said, including my capacity to be able to right many of these wrongs and to use my power and the bully pulpit."

He said, "But I would ask one thing of you, Mr. Randolph, and that is go out and make me do it."\textsuperscript{17}
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