

ARTICLES

A Systemic Reimagining of Poverty Law

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ABSTRACT

A multitude of legal and administrative systems in America combine to regulate low-income people and to create and perpetuate poverty. Despite this, a literature review shows that poverty law scholarship has not analyzed how these systems interlock with each other and considered their cumulative effects on this population. The earliest poverty law scholarship, as exemplified by Stephen Wexler, was concerned with the practice of law on behalf of low-income individuals. The pioneers of the next wave of scholarship, such as Anthony Alfieri and Lucie White, incorporated postmodern theory into their work and applied it to the attorney-client relationship; however, their writing was still largely practice-based. Critiques of this scholarship were likewise concerned with its practice implications, and the next significant body of poverty law scholarship focused on where it should be situated within the academy. The movement which has come closest to this type of analysis is the ClassCrits, whose stated mission is to deconstruct laws in order to reveal the effects of economic and relational class on our legal systems. However, this school has opted not to focus on poverty in particular, and it has not made the leap to praxis. There is thus no body of work which reviews the cumulative effects of multiple laws on low-income individuals in order to inform and assist practice and policy as well as scholarship.

In this Article, I trace the history of existing poverty law scholarship and discuss the focus of each successive wave of work by considering how it would view the situation of a hypothetical low-income woman. I then argue that the existing scholarship has not considered the cumulative effects of the multiple systems which interact to regulate people living in poverty and that such an analysis is vital to a true understanding of the numerous mechanisms which act to enforce poverty. This approach, which I call Systems of Poverty, differs significantly from prior poverty law scholarship in that it requires a collaborative approach among scholars; while it is fundamentally an analytic and scholarly approach, it is also

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grounded firmly in the experience of low-income individuals and the attorneys who serve them and has the potential to marry theory and practice in a way that prior work has not.

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I. INTRODUCTION

“For me the law is all over. I am caught, you know; there is always some rule that I’m supposed to follow, some rule I don’t even know about that they say. It’s just different and you can’t really understand.” These words were spoken by Spencer, a thirty-five-year-old man on public assistance (general relief), whom I first encountered in the waiting room of a legal services office.¹

As of 2021, studies estimated that approximately one-quarter of Americans who earned \$25,000 annually were behind on their rent and that as many as 40% of low-income individuals² could be in danger of eviction in some

1. Austin Sarat, *The Law Is All Over: Power, Resistance and the Legal Consciousness of the Welfare Poor*, 2 YALE J. L. & HUMAN. 343, 343 (1990).

2. I prefer the terminology “low-income” to the term “poor” and therefore use it throughout this Article except when I am quoting directly.

locations.³ As of 2015, one national study found that 38% of those accused of felonies, many of them Black or Brown, were detained throughout their pre-trial periods; 90% of these were low-income individuals who were simply unable to pay the bail.⁴ Nationally, the children of low-income families are demonstrably more likely to be the subject of abuse or neglect investigations or to be removed from the household.⁵ Those receiving Supplemental Security Income (SSI), a program specifically designed to provide income to low-income disabled individuals, are effectively kept in poverty by the very program designed to help them.⁶ A person who works full-time and receives the federal minimum wage is unlikely to be able to afford housing in 2023; the housing that such an individual might be able to find is highly likely to have significant defects.⁷ At the time of this Article, states are removing individuals from Medicaid coverage in bulk, often in error and in at least one case because an infant failed to complete requested paperwork.⁸

There is ongoing legal scholarship about these discrete issues, and sometimes about the interplay of two of them.⁹ However, even looking at two issues together does not fully acknowledge the myriad of ways in which we have chosen to regulate the lives of low-income individuals, nor does it explain or explore the ways in which these various regulations interlock with and affect each other. It does not and cannot fully explicate the ways in which “the law is all around” low-income individuals.¹⁰

3. Whitney Airgood-Obyrcki, *Renters' Responses to Financial Stress During the Pandemic*, JOINT CENTER FOR HOUSING STUDIES AT HARVARD UNIVERSITY at 38, 40–41 (Apr. 2021), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_renter_responses_covid_airgood-obrycki_et_al_2021.pdf (last visited Nov. 9, 2023); see generally MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2015).

4. U.S. COMMISSION ON CIVIL RIGHTS, *THE CIVIL RIGHTS IMPLICATIONS OF CASH BAIL* 44–46 (Jan. 2022).

5. David Pimentel, *Punishing Families for Being Poor: How Child Protection Interventions Threaten the Right to Parent While Impoverished*, 71 OKLA. L. REV. 885, 887 (2019).

6. Caroline Jarcho, *Supplemental Security Income: How Noble Mission without Modernization Perpetuates Poverty*, 27 PUB. INT. L. REP. 34, 37 (2021).

7. NAT'L LOW INCOME HOUS. COAL., *OUT OF REACH: THE HIGH COST OF HOUSING* (June 26, 2023), <https://nlihc.org/oor> (last visited Nov. 9, 2023); U.S. DEP'T OF HOUS. AND URB. DEV. OFF. OF POL'Y DEV. AND RSCH., *WORST CASE HOUSING NEEDS: 2021 REPORT TO CONGRESS*, n.7 (July 2021), <https://www.huduser.gov/portal/sites/default/files/pdf/Worst-Case-Housing-Needs-2021.pdf>.

8. Amy Goldstein, “Nearly 4 Million in U.S. Cut from Medicaid, Most for Paperwork Reasons,” WASH. POST (July 28, 2023), <https://www.washingtonpost.com/health/2023/07/28/medicaid-unwinding-pandemic/>.

9. See, e.g., Jarcho, *supra* note 6 (discussing intersection of SSI program with housing instability and lack of access to services); Jennifer Pokempner & Dorothy E. Roberts, *Poverty, Welfare Reform, and the Meaning of Disability*, 62 OHIO ST. L.J. 425 (2001) (examining the link between disability and receipt of public benefits and arguing for a comprehensive policy reform); Jill C. Engle, *Promoting the General Welfare: Legal Reform to Lift Women and Children in the United States Out of Poverty*, 16 J. GENDER RACE & JUST. 1 (2013) (arguing for a suite of broad reforms, from minimum wage through alimony, to help women and children out of poverty); Marian Wright Edelman, *Poverty Law in the 1980's*, 2 ANTIOCH L.J. 29 (1982) (highlighting the need for coalition across issues such as child care, health, and public benefits in order to effectively assist children living in poverty).

10. Sarat, *supra* note 1, at 343.

Legal scholarship around poverty law is relatively new, dating back only as far as the Great Society program and the associated movement towards formalized legal services for low income individuals.¹¹ Some scholars have described this as consisting broadly of three waves¹² of scholarship, coinciding generally with the rise of legal services,¹³ the receding of the Reagan era antipathy toward legal services funding,¹⁴ and a renaissance in interest at the very end of the 20th and beginning of the 21st centuries.¹⁵ The thrust and focus of these various bodies of work is often contrasted. The first wave—the legal scholarship of the 1960s and 70s—centered the importance of traditional organizing.¹⁶ The second wave of the post-Reagan 1980s sprang from the insights of the Critical Legal Studies (CLS) movement, coupled with the rise of clinical legal education;¹⁷ much of this

11. Asciano Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 436–456 (2000) (comparing scholarship on poverty law before and after the integration of Foucault’s theories into the legal academy); Gary Blasi, *What’s a Theory For?: Notes on Reconstructing Poverty Law Scholarship*, 48 U. MIA. L. REV. 1063, 1081–88 (1994); Louise G. Trubek, *Lawyering for Poor People: Revisionist Scholarship and Practice*, 48 U. MIA. L. REV. 983, 984–85 (1994) (tracing the influx of new ideas into poverty law scholarship and practice).

12. I have come to think of these as tides rather than waves, as they are part of a unified whole and a patterned ebb-and-flow of scholarship.

13. See, e.g., Martha F. Davis, *The Pendulum Swings Back: Poverty Law in the Old and New Curriculum*, 34 FORDHAM URB. L.J. 1391, 1402–03 (2007); Howard S. Erlanger & Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress*, 43 J. LEGAL EDUC. 199, 199–200 (1993); Vanita Saleema Snow, *The Untold Story of the Justice Gap: Integrating Poverty Law into the Law School Curriculum*, 37 PACE L. REV. 642, 647–48 (2017).

14. For a discussion of Reagan’s antipathy towards and subsequent attempts to defund civil legal services, see Snow, *supra* note 13, at 648–50. Erlanger & Lessard, *supra* note 13, at 199; Davis, *supra* note 13, at 1402; and Trubek, *supra* note 11, at 984, 996, all discuss and confirm the dearth of poverty law scholarship during this same period and its rebirth in the late 1980s. See generally Davis, *supra* note 13.

15. Davis, *supra* note 13, at 1404. Examples from this period of scholarship include, Helen Hershkoff, *Poverty Law and Civil Procedure: Rethinking the First-Year Course*, 34 FORDHAM URB. L.J. 1325 (2007) (arguing that the mission of law schools requires students to be taught through a socioeconomic lens); Andrea Charlow, *Race, Poverty, and Neglect*, 28 WM. MITCHELL L. REV. 763 (2001) (noting a correlation between poverty and alleged child neglect); Walter L. Stiehm, *Poverty Law: Access to Healthcare and Barriers to the Poor*, 4 QUINNIPIAC HEALTH L. J. 279 (2001) (discussing both direct and indirect economic barriers to healthcare). As Marie Failinger has put it, “the interest of the legal academy in poverty law tends to wax and wane as regularly as society’s interest in skinny ties or short skirts.” Marie A. Failinger, *A Home of Its Own: The Role of Poverty Law in Furthering Law Schools’ Missions*, 34 FORDHAM URB. L.J. 1173, 1174 (2007).

16. Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1331–33, 1338–40 (1964) (hereinafter Cahn, *Civilian*); Edgar S. Cahn & Jean Camper Cahn, *What Price Justice: The Civilian Perspective Revisited*, 41 NOTRE DAME LAW. 927, 954 (1966) (hereinafter Cahn, *Justice*); Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1053 (1970). The scholarship of this period is sometimes referred to as “first wave” poverty law scholarship; see, e.g., Piomelli, *supra* note 11, at 436. It is also known as the “old” poverty law scholarship. Trubek, *supra* note 11, at 996. I will use both terms in this article.

17. Gary L. Blasi, *What’s a Theory for?: Notes on Reconstructing Poverty Law Scholarship*, 48 U. MIAMI L. REV. 1063, 1086 (1994) (discussing the critical and postmodern roots of the “new” scholarship of this era); see also Ruth Margaret Buchanan, *Context, Continuity, and Difference in Poverty Law Scholarship*, 48 U. MIAMI L. REV. 999, 1032 (1994). In discussing the scholarship of this era, Buchanan notes that “As increasing numbers of formerly marginalized clinical professors have gained legitimacy and status for their specialty, they have reached beyond traditional doctrinal approaches to poverty law

work focuses on the balance of power between client and lawyer and on the vital importance of allowing the client's voice to be heard at all costs.¹⁸ What is commonly considered the third wave, in the 1990s and beyond, was often (though not exclusively) centered around pedagogy; however, unlike the prior wave of scholarship it argued that poverty law should be situated in various other places and disciplines within the academy.¹⁹ The ClassCrits movement, which is a related but different discipline arising out of Critical Legal Studies, explicitly considers class as one of many intersectional factors and uses that as a lens to interrogate law, policy, and practice.²⁰ However, this field is conceptually different in that it focuses broadly on political economy and in that it remains more theory than praxis.²¹ A careful analysis and comparison of these various bodies of scholarship shows three things. First, as I will discuss further, there are not three, but five distinct peaks of poverty law scholarship. Secondly, even the most theoretical

scholarship and drawn on insights from critical scholars both inside and outside of the legal academy to produce an increasingly complex body of scholarship.” *Id.* See E. Dana Neacsu, *CLS Stands for Clinical Legal Studies, if Anyone Remembers*, 8 J. L. & POL’Y 415, 425–26 (2000).

18. Buchanan, *supra* note 17, at 1032; see also William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIA. L. REV. 1099, 1100 (1994) (“The scale of practice portrayed [in this body of literature] is typically small—often one on one—and the benefits are often as much psychological as they are material.”). Exemplars of this strand of scholarship, both of which I will discuss *infra*, are Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990); Anthony V. Alfieri, *Speaking out of Turn: The Story of Josephine V.*, 4 GEO. J. LEGAL ETHICS 619 (1991); and Ruth Margaret Buchanan, *Context, Continuity, and Difference in Poverty Law Scholarship*, 48 U. MIA. L. REV. 999 (1994).

19. See, e.g., Stephen Loffredo, *Poverty, Inequality, and Class in the Structural Constitutional Law Course*, 34 FORDHAM URB. L.J. 1239, 1248–49 (2007) (arguing that poverty law should be taught within a traditional constitutional law class); Davis, *supra* note 13, at 1404–14 (arguing that poverty law is best taught within human rights clinics); Hershkoff, *supra* note 15, at 1325–27 (arguing that poverty law should be taught within a civil procedure framework); Snow, *supra* note 13, at 685–98 (arguing for inclusion of poverty law in property law specifically and in doctrinal classes generally); Nathalie Martin, *Poverty, Culture and the Bankruptcy Code: Narratives from the Money Law Clinic*, 12 CLINICAL L. REV. 203, 238–41 (2005).

20. Athena D. Mutua, *Introducing ClassCrits: Rejecting Class-Blindness, A Critical Legal Analysis of Economic Inequity*, 56 BUFF. L. REV. 859, 865 (2008) (laying out a cooperatively built framework for a critique of legal, political, and economic systems which relied on class differences, together with the intersection between class and additional “othering” characteristics); see also Justin Desautels-Stein, *ClassCrits Mission Statement* 43 SW. L. REV. 651 (2014) (clarifying and distilling the goals of the ClassCrit movement).

21. Mutua, *supra* note 20, at 900 (noting that in the initial ClassCrit meetings “[T]he group agreed that the study of law and economic inequality was not simply about the study of law and poverty or the poor. Though the group expressed a concern for those who are economically disadvantaged, and a commitment to study the nature and structure of that disadvantage, the group decided that exploration of economic inequality involved exploring the way law contributed to or abated economic inequality experienced by both those who were privileged by that inequality as well as those who were disadvantaged by it. The study of poverty, some suggested, was often the study of status, not class.”); Angela P. Harris, *From Precarity to Positive Freedom: ClassCrits at Seven (ClassCrits VII Symposium Introduction)*, 44 SW. L. REV. 621, 634 (2015) (“ClassCrits scholars hope to get students, and ultimately the next generation of American lawyers, to see that the political and the economic are not two different realms subject to wholly different rules of governance. Rather, they are intimately intertwined with one another, and both are created and maintained by law.”).

writings of the second wave of scholarship are more linked to practice than is often acknowledged or understood.²² And finally, the bulk of this scholarship has been confined to specific substantive areas of law; to the pedagogy of poverty law; or to the practice of poverty law.²³

In 2019, Sara Greene characterized legal scholarship about poverty law as falling into “two distinct camps: (1) Understanding how the law might be used to aid the poor; or (2) Understanding how one particular statute, case, or legal procedure may disadvantage the poor.”²⁴

Under this broad umbrella, Greene described poverty law itself as a “narrow conception” which “focus[ed] almost solely on individual silos of study within federal law.”²⁵ Greene argued that this focus overlooked or ignored the way in which the intersection of state and local laws become “key driver[s] in thwarting upward socioeconomic mobility,” a phenomenon she called “legal immobility.”²⁶ She rightly suggested that legal scholars need to develop a vocabulary to discuss this phenomenon broadly and that the scope of poverty law must be expanded “well beyond the traditional areas of inquiry.”²⁷ Her broader argument, and the thrust of her article, was that legal scholars can only understand the relationship between law and poverty by engaging with the “largely hidden and difficult to uncover” state and local laws which perpetuate poverty.²⁸

In focusing on this one area of inquiry (albeit in several different areas of substantive law), Greene both highlighted and stepped back from the needs she has identified.²⁹ The inquiry she proposes, however, does not allow for a full

22. Cathy Lesser Mansfield, *Deconstructing Reconstructive Poverty Law: Practice-Based Critique of the Storytelling Aspects of the Theoretics of Practice Movement*, 61 *BROOK. L. REV.* 889, 896 (2015). In arguing against Alfieri’s and White’s elevation of their role as recipients of client narratives, Mansfield asserts that “In forging any theory of poverty law, we cannot forget the functional reason why we are chosen to hear a client’s story, and why we are asked to re-tell that client’s story. To think that we have the privilege of hearing clients’ stories for a greater purpose than to achieve legal results, and therefore that we become caretakers of or conduits for uninterpreted and unabridged client story, aggrandizes and yet eviscerates the role of the poverty lawyer in the life of the poverty law client.” *Id.* at 896. Implicit in this critique is a belief that this camp of scholarship has become divorced from the fundamentals of practice.

23. See, e.g., Sarah S. Greene, *A Theory of Poverty: Legal Immobility*, 96 *WASH. U. L. REV.* 753 at nn.9–10; for examples of the types of scholarship she references, see generally Anne Fleming, *The Rise and Fall of Unconscionability as the ‘Law of the Poor’*, 102 *GEO. L.J.* 1383 (2014) (discussing the doctrine of unconscionability and its effects on low-income individuals); Ruth Margaret Buchanan, *Context, Continuity, and Difference in Poverty Law Scholarship*, 48 *U. MIA. L. REV.* 999 (1994) (review of scholarly literature in this area and discussion of how this theory should inform practice).

24. Greene, *supra* note 23, at 755–56.

25. *Id.* at 756.

26. *Id.* at 756–57.

27. *Id.* at 756.

28. *Id.* at 757.

29. Greene concludes, correctly in my view, that:

The cumulative effects of state and local law can play an important role in perpetuating poverty. Conceptualizing state and local laws as cumulatively disadvantageous to the poor, however, is a surprisingly neglected topic among legal scholars and scholars of poverty. Some scholars of law or poverty have identified individual areas of state and local laws that disproportionately burden the

understanding of the multiplicity of ways in which we choose to regulate the lives of low-income individuals and the ways in which those systems interact. A full picture and understanding of these issues, which is itself a prerequisite for proposing solutions and policy fixes, requires a larger, cross-disciplinary, systemic review and approach.

There is, therefore, no discipline or body of scholarship which broadly analyzes and interrogates the ways in which our legal system perpetuates poverty and then informs policy and practice writ large. For this reason, I propose to build further on the failings that Greene and others³⁰ have identified with scholarship in this area, arguing that legal scholars should analyze and consider the interaction of various laws and regulations on low-income people within a single recognized discipline. In making this argument, I am heeding Stephen Wexler's 1970 argument that lawyers can best work in this area by organizing;³¹ scholars, too, must organize to work effectively in this area.³² I here refer to this discipline as Systems of Poverty.

In Part II of this Article, I will lay out a case study which exemplifies the ways in which overlapping and often contradictory sets of laws regulate low-income individuals and trap them in poverty. In Part III, I will trace the various waves and lineages of poverty law scholarship and discuss and analyze the scholarship; I will also discuss the ways in which these various lineages would react to

poor, but few have moved beyond the individual silos of one particular burden to consider how these often hidden burdens embedded within the law might, as a whole, systematically play a significant role in perpetuating poverty and thwarting upward mobility.

Id. at 799. Having identified a need for this type of inventory, however, Greene's writing focuses on the need for scholars to critically examine particular types of state and local laws rather than for scholars to collaborate across silos in order to map these effects. *Id.* at 768–88. She additionally focuses on empirical research over the lived experience of low-income individuals and those who work with them, which I will argue is of foundational importance to such a project. *Id.* at 799–800; *see generally id.*

30. Anne Alstott has made this point outside the context of poverty law:

Taken together, constitutional law, subconstitutional family law, and the U.S. welfare state enact a distinctly neoliberal legal regime for the governance of family life. What is striking is that these three bodies of law are so seldom analyzed together. Constitutional law, family law, and social welfare represent distinct legal specialties. U.S. constitutionalists work within a regime in which negative liberty is powerful and positive liberty seldom mentioned. Family-law scholars work within a system of rules that permits only zero-sum allocations of market earnings within private families. And social-welfare specialists take as given the absence of constitutional rights and the political contingency of social programs.

Anne L. Alstott, *Neoliberalism in U.S. Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State*, 77 LAW & CONTEMP. PROBS. 25, 41 (2014); *see also* Wendy A. Bach, *Poor Support/Rich Support: (Re)Viewing the American Social Welfare State*, 20 FLA. TAX REV. 495 (2017) (considering tax policy in tandem with and as an inherent part of public benefits).

31. *See* Wexler, *supra* note 16, at 1054.

32. While William Quigley explicitly called for solidarity and community among what he called "revolutionary lawyers," this call comes purely from a practical and practice-based perspective. William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J.L. & POL'Y 101, 149–50, 157 (2006).

I argue that this is equally important for scholars in the field, both so that they can support and teach one another and so that they can bring new insight into the discipline.

and consider the case study. Finally, in Part IV, I will explain why a systemic and holistic study of poverty is necessary to fully understand the ways in which our legal system itself causes and perpetuates this condition. I will also propose and outline an ongoing, symbiotic relationship between this body of scholarship and those who regularly practice law on behalf of low-income individuals.

II. A CASE STUDY

Imagine a single woman, Tabitha, who is unable to work due to a disabling medical condition.³³ For the sake of argument, let's say that she suffers from severe depression and anxiety.³⁴ Let us also say that her work history has been sporadic and that she therefore does not qualify for Social Security Disability.³⁵ Tabitha may, however, qualify for the needs-based Supplemental Security Income (SSI) program.³⁶

The first hurdle, of course, is for Tabitha to convince the Social Security Administration that she is disabled within their rules.³⁷ To do that, she must show that she is unable to perform *any* work that exists *anywhere* in the national economy, regardless of her financial or social ability to move.³⁸ Moreover, the

33. As I will discuss later in this section, this type of problem is not exclusive to SSI; it could arise under a number of different benefits programs which are available to low-income individuals.

34. As of December 2019, one-third of nonelderly SSI recipients had mental health disabilities. This does not include individuals with intellectual or developmental disabilities. MaryBeth Musumeci & Kendal Orgera, *Supplemental Security Income for People with Disabilities: Implications for Medicaid*, KFF, <https://www.kff.org/medicaid/issue-brief/supplemental-security-income-for-people-with-disabilities-implications-for-medicaid/> (last visited Nov. 9, 2023). As of 2019, 39% of disabled workers under the age of 50 who received Social Security Disability suffered from a mental health disorder other than intellectual disability, and 21% of disabled workers over the age of 50 suffered from a mental health disorder. OFF. OF RET. AND DISABILITY POL'Y & OFF. OF RSCH., EVALUATION, AND STAT., SOC. SEC. ADMIN., ANNUAL STATISTICAL REPORT ON THE SOCIAL SECURITY DISABILITY INSURANCE PROGRAM (2019), https://www.ssa.gov/policy/docs/statcomps/di_asr/2019/di_asr19.pdf, 66–73 tbls.. This would therefore be a fairly typical diagnosis for a disabled individual.

35. Pursuant to 20 C.F.R. §§404.130, 404.132 (2022), in order to qualify for Social Security Disability most individuals must accrue 40 quarters of coverage before becoming disabled. A quarter of coverage refers generally to a given amount which the individual must earn in a calendar quarter; in and before 1977 that amount was \$50 in wages or \$100 in self-employment income. 20 C.F.R. §404.140 (2022). Since 1978, that amount has been indexed for inflation; in 2023 the amount is \$1,640. *Id.*; Cost-of-Living Increase and Other Determinations for 2023, 87 Fed. Reg. 64,296 (Oct. 24, 2022). For an overview of the Social Security Disability and SSI programs, see generally VICTORIA M. ESPOSITO & DAVID A. PRATT, SOCIAL SECURITY AND MEDICARE ANSWER BOOK (9th ed. 2020).

36. SSI is a means-tested benefit for (as relevant here) low-income disabled individuals who do not qualify for Social Security Disability Income (SSDI) or whose SSDI payment is extremely low. 20 C.F.R. §§ 416.110, 416.202.

37. Disability for SSI purposes is “the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” 20 C.F.R. § 416.905(a).

38. *Id.* While our hypothetical case does not involve a parent, it is not difficult to imagine that this requirement is a particular burden to parents, who might only be able to access these jobs by moving away from the supports which allow them to work in the first place. Of course, as SSI is means-tested, the question also arises of how *any* financially eligible individual would be able to move to get such a job. In May 2023, Forbes estimated the cost of moving less than a hundred miles as \$1,400 on average,

existence of such work is based on the Dictionary of Occupational Titles (DOT), which has not been updated since 1991 and will not be updated again.³⁹ This resource lists positions such as “bird keeper,”⁴⁰ “straw hat brim cutter operator,”⁴¹ “usher,”⁴² and “potato chip sorter”⁴³ as possible jobs for applicants. This means that if a hearing officer determines that an individual in (for example) Boise, Idaho could work as a theater usher, and further that “usher” is a job that exists in significant numbers *somewhere* in the national economy, that person is not disabled.⁴⁴

with a range from \$800 to \$2500. Deane Biermeier, *Learn The Top Moving Statistics And Trends Continuing Into 2023*, FORBES (Feb. 9, 2023, 9:00 AM), <https://www.forbes.com/home-improvement/moving-services/2023-moving-statistics-trends/>. A longer move could cost anywhere from \$2,200 to \$5,700. *Id.*

39. The website of the Department of Labor, which is the agency responsible for promulgating the DOT, included the following language as of June 2023:

The Dictionary of Occupational Titles (DOT) was created under the sponsorship by the Employment and Training Administration (ETA), and was last updated in 1991. The DOT was replaced by the O*Net, and ETA no longer supports the DOT Thus, if you are looking for current occupational information you should use the O*Net So, why is the DOT still on the Office of Administrative Law Judges (OALJ) website? It is because the DOT is still used in Social Security disability adjudications and the OALJ copy of the DOT is often cited as an authoritative source of the DOT. The Social Security Administration (SSA) is developing a new Occupational Information System (OIS), which will replace the DOT as the primary source of occupational information for use in the SSA disability adjudication process. SSA intends to have the OIS operational and to make necessary regulatory and policy updates by 2020.

OFF. OF. ADMIN. L. JUDGES, *Dictionary of Occupational Titles - Fourth Edition, Revised 1991: Status of the Dictionary of Occupational Titles; use in Social Security disability adjudications*, U.S. DEP'T OF LAB. (last visited Nov. 9, 2023) (emphasis in original), <https://www.dol.gov/agencies/oalj/topics/libraries/LIBDOT>. However, according to the Social Security Administration, the OIS is still in pre-production as of December 2022: “From FY 2012 – 2022, SSA has spent approximately \$239 million on pre-production testing, subsequent ORS data collection, and VIT development. We will provide an assessment of the cost/savings impact of ORS when we publish a proposed rule.” SOC. SEC. ADMIN., FACT SHEET – OCCUPATIONAL INFORMATION SYSTEM PROJECT (2006), <https://www.ssa.gov/disability/research/documents/Fact%20Sheet%20-%20Occupational%20Information%20System%20Project.pdf>. See Lisa Rein, *Social Security denies disability benefits based on list with jobs from 1977*, WASH. POST (Dec. 27, 2022), <https://www.washingtonpost.com/politics/2022/12/27/social-security-job-titles-disabled-applicants-obsolete/>.

40. The DOT is available on the website of the Office of Administrative Law Judges, with an alphabetical index at <https://www.dol.gov/agencies/oalj/PUBLIC/DOT/REFERENCES/DOTALPHA> (1991). Each occupation has an individual number; the DOT number for “bird keeper” is 412.674-010. *MICA through MIX*, DICTIONARY OF OCCUPATIONAL TITLES INDEX, https://occupationalinfo.org/dot_m4.html (1991) (May 26, 2023).

41. DOT #585.685-086. *ROADABILITY through ROW*, DICTIONARY OF OCCUPATIONAL TITLES INDEX, https://occupationalinfo.org/dot_m4.html (1991) (May 26, 2023).

42. This position involves assisting patrons in the entertainment industry. DOT #344.677-014. *THAW-SHED through TNT-LINE*, DICTIONARY OF OCCUPATIONAL TITLES INDEX, https://occupationalinfo.org/dot_m4.html (May 26, 2023).

43. DOT #526.687-010. *PNEUMATIC through PROPELLANT*, DICTIONARY OF OCCUPATIONAL TITLES INDEX, https://occupationalinfo.org/dot_m4.html (1991) (May 26, 2023).

44.

If we find that your residual functional capacity does not enable you to do any of your past relevant work . . . we will use the same residual functional capacity assessment when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your

However, let us assume that Tabitha establishes her medical eligibility for SSI—perhaps upon first application, perhaps after a series of administrative hearings which could take two years or longer.⁴⁵ She must then establish that she is financially eligible.⁴⁶ Among other requirements, she must show that, with a few exemptions such as a home and a car, she does not have resources worth more than \$2,000 at one given time (\$3,000 for a disabled couple).⁴⁷

Assuming that Tabitha is able to meet the financial requirements, she will then become eligible for SSI.⁴⁸ In 2023, the maximum monthly SSI benefit is \$914.⁴⁹ The federal poverty level for a single-person household in 2023 is

residual functional capacity and the vocational factors of age, education, and work experience, as appropriate in your case Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

20 C.F.R. §416.960(c)(1). “Residual functional capacity” means the most that an individual is still able to do despite his or her impairment-related limitations. 20 C.F.R. § 416.945 (2023). See *THAW-SHED through TNT-LINE*, *supra* note 42; 20 C.F.R. § 404.1505 (2023).

45. Social Security’s February 2023 projections for fiscal year 2023 were that a claimant would need to wait on average 220 days for an initial determination; 224 days for reconsideration; and 475 days to get a decision on a hearing before an administrative law judge. SOC. SEC. ADMIN, FISCAL YEAR 2023 OPERATING PLAN 7 (2023), <https://www.ssa.gov/budget/assets/materials/2023/2023OP.pdf>. As the claimant must pass through each of these stages, that means she would wait on average approximately two and a half years before filing any administrative or civil appeals. See *generally* 20 C.F.R. §§ 416.1400–1499 (2023). However, as of May 2023 several hearing offices had processing times well over 475 days, with the Los Angeles Downtown office taking 726 days on average. SOC. SEC. ADMIN, HEARING OFFICE AVERAGE PROCESSING TIME RANKING REPORT (2023), https://www.ssa.gov/appeals/DataSets/05_Average_Processing_Time_Report.html. According to a Kaiser Family Foundation analysis of federal data, if Tabitha is Black, Hispanic, or Asian, she is far less likely than a White individual to get mental health treatment of any kind; in this context, that means that she is less likely to be able to prove disability. Latoya Hill et al., Key Data on Health and Health Care by Race and Ethnicity, KFF, <https://www.kff.org/racial-equity-and-health-policy/report/key-data-on-health-and-health-care-by-race-and-ethnicity/> (last visited Nov. 9, 2023).

46. See *generally* 20 C.F.R. § 416.1100–82 (2023). “Income” under these rules includes “in-kind support and maintenance,” which Social Security defines generally as “any food or shelter that is given to you or that you receive because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.” 20 C.F.R. § 416.1130 (2023).

47. The specific amount of resources for individuals and couples, which has not changed since 1985, is available at 20 C.F.R. § 416.1205 (2023). Resources in general are covered in 20 C.F.R. § 416.1201–66 (2023), with exceptions such as a primary home, a car, certain household goods, and specific types of payments laid out in 20 C.F.R. § 416.1210–66 (2023). If an individual is found to have too many resources, she must generally dispose of those resources before receiving any SSI payments. 20 C.F.R. § 416.1240 (2023). However, she may receive payments while attempting to dispose of nonliquid resources if she agrees in writing to dispose of real property within nine months and personal property within three months (at current market value) and to repay any overpayments with the receipts from those resources. *Id.*; 20 C.F.R. § 416.1242 (2023).

48. She may be eligible for a lump sum payment of retroactive benefits; however, if she has had to rely on assistance from the Department of Social Services while waiting for benefits, those benefits will be recouped from her retroactive benefits. 20 C.F.R. §§ 416.525, 416.536, 416.538 (2023). There is no analogous provision for the work-based Social Security Disability Income. 42 U.S.C. § 1383(g)(2) (2019).

49. Cost-of-Living, 87 Fed. Reg. at 64296. Most states also provide SSI recipients with a supplemental payment. SOC. SEC. ADMIN., Supplemental Security Income (SSI) Benefits, UNDERSTANDING SUPPLEMENTAL SOC. SEC. INCOME (2023), <https://www.ssa.gov/ssi/text-benefits-ussi.htm> (last visited Nov. 9,

\$14,850, or \$1,237.50/month.⁵⁰ While SSI is a lifeline for Tabitha, it also has the effect of keeping her below poverty level for as long as she is disabled, particularly as any other income will have the effect of reducing her SSI benefit proportionately.⁵¹ These rules spill over into and affect every other area of her life.

For example, in the likely event that Tabitha does not own her home,⁵² she will need to rent housing. In 2023, she is unlikely to be able to afford safe and decent housing or to avoid being severely rent burdened.⁵³ Her options to improve her situation are limited. If she wants to move to a better apartment, she may not

2023). However, the payments provided by these states may vary widely, based on such factors as the recipient's living arrangements and specific location. 20 C.F.R. § 416.2030 (2023).

50. Annual Update of HHS Poverty Guidelines, 88 Fed. Reg. 3,424 (Jan. 19, 2023).

51. The Social Security Administration (SSA) excludes the first \$65 of regularly earned income and half of the remaining earned income; the first \$30 of irregularly earned income and half of the remaining earned income; and \$20 of regularly received unearned income or \$30 of irregularly received unearned income. 20 C.F.R. § 416.1112 (2023). The regulations also exclude several specific benefits and payments, as well as setting a higher income allowance for students. *Id.* Income outside these parameters is known as “countable income,” and the SSI benefit will be reduced by this amount. 20 C.F.R. § 416.420 (2023). For example, an SSI recipient who receives the full \$914 benefit and earns \$101 in a given month will have her benefit reduced by \$18 ($\$101 - 65 = \36 ; $\$36/2 = \18). An SSI recipient who is regularly given \$100 per month will have her benefit reduced by \$80, as there is no exclusion beyond the initial \$20 for unearned income. As discussed in note 46, “income” includes in-kind assistance such as food and housing. 20 C.F.R. § 416.1130 (2023). There is no such reduction in income for SSDI recipients as long as their incomes do not exceed “substantial gainful activity,” which in 2023 is \$1,470 per month for disabled individuals and \$2,460 for blind individuals. Cost-of-Living Increase and Other Determinations for 2023, 87 Fed. Reg. 64296 (Oct. 24, 2022).

52. A May 2021 review of 2017 census data about SSI recipients found that 59% of them rented their homes. KATHERINE GIEFER, A Profile of Supplemental Security Income Recipients: 2017, (2021) <https://www.census.gov/content/dam/Census/library/publications/2021/demo/p70br-171.pdf>. Similarly, a 2023 Census Bureau analysis of rent burdens on the households in the lowest quintile of income (up to \$27,457 per household) found that 52.9% of individuals within that income band rented their homes. PETER MATEYKA AND JAYNE YOO, SHARE OF INCOME NEEDED TO PAY RENT INCREASED THE MOST FOR LOW-INCOME HOUSEHOLDS FROM 2019 TO 2021 (2023), <https://www.census.gov/library/stories/2023/03/low-income-renters-spent-larger-share-of-income-on-rent.html>.

53. The Census Bureau analysis found that as of 2021, 87.3% of renters in the lowest income quintile were cost-burdened (defined as having to pay more than 30% of their income for housing) and 65.9% were severely cost-burdened (defined as having to pay more than 50% of their income for housing). MATEYKA AND YOO, *supra* note 52, at tbl. 2. Tabitha can therefore only avoid being “severely rent burdened” if she can find housing for \$457.00 or less per month, and one analysis suggests that SSI recipients cannot afford rents of more than \$274 per month. NAT’L LOW INCOME HOUS. COAL., *supra* note 7, at 4 fig. 4. Moreover, analyses of national housing data have found that housing repair costs are disproportionately associated with housing occupied by individuals at or below the poverty line. U.S. DEP’T OF HOUS. & URB. DEV. OFF. OF POL’Y DEV. & RSCH., *supra* note 7, at 3 n.7. HUD defines renter households with “worst case housing needs” as those which “have very low incomes— household incomes at or below 50 percent of the area median income (AMI), do not receive government housing assistance, and pay more than one-half of their income for rent, live in severely inadequate conditions, or both.” *Id.* at vii. While “area median income” by definition varies by location, the national median income for fiscal year 2023 is \$80,944, so that an SSI recipient is at 13.5% of AMI. U.S. DEP’T OF HOUS. & URB. DEV. OFF. OF POL’Y DEV. & RSCH., Income Limits FAQs, (2023) https://www.huduser.gov/portal/datasets/il.html#faq_2023. As of 2017, census data showed that only one-quarter of SSI recipients received housing assistance. GIEFER, *supra* note 52, at 8.

be able to save enough for a security deposit and first month's rent⁵⁴ without losing her SSI, at least temporarily. If she is injured by a leaky roof, a caved-in ceiling, bad mold, or something similar, then she does not have the recourse of a lawsuit against her landlord—unless she is willing to take the risk of losing her SSI for some period of time if she is awarded money damages.⁵⁵

If she receives regular financial assistance from an adult child or a friend, that will be considered unearned income and her SSI will be reduced proportionately each month for every amount over \$20.⁵⁶ If she lives with someone else and does not pay her proportional share of rent and living expenses, she will be considered to live “in the household of another” and her SSI will be reduced by one-third.⁵⁷ If she is evicted, even as a result of withholding rent to force repairs, and a court issues a money judgment, she is unlikely to be able to save enough to pay that debt.⁵⁸ While her SSI is “judgment-proof” and can therefore not be garnished,⁵⁹ if she undergoes a continuing disability review (CDR), is found to be no longer disabled and is able to find a job, her wages may be garnished.⁶⁰ Even if she keeps

54. According to the National Low Income Housing Coalition's 2023 report, the national average for the fair market value of a one-bedroom house in 2022 was \$1,231. NAT'L LOW INCOME HOUS. COAL., *supra* note 7, at 4 fig. 4. However, this report uses the HUD definition of “fair market value” as the 40th percentile of “gross rents of standard rental units for recent movers.” *Id.* at 16. That suggests that the rent could go up as high as \$3,077, on average. The SSI limits on resources, however, mean that unless Tabitha could find a rental for under \$1,000, she would not be able to save up a first month's rent and security deposit without putting her SSI at risk. 20 C.F.R. § 416.120–1266 (2023). This assumes that she lives in a state, such as New York, which limits the security deposit to a single month's rent. NY GEN. OBLIG. L. § 7-108 (McKinney's 2023). Some states, such as Maryland and Maine, limit the security deposits to two months' rent. MD CODE ANN. REAL PROP. § 8-203 (West 2023); ME STAT. tit. 14 § 6032 (2009). Others, such as Florida and Colorado, have no statutory limit. FLA. STAT. § 83.49 (2023); COLO. REV. STAT. § 38-12-102 (2016). However, Florida law contemplates that a landlord and tenant may agree to a recurring fee in lieu of a security deposit. FLA. STAT. § 83-491 (2023).

55. The exceptions to the resource limit in 20 C.F.R. § 416.1210–1266 (2023) do not include an exception for any form of lawsuit.

56. 20 C.F.R. § 416.1121 (2023); *Understanding Supplemental Security Income Living Arrangements—2023 Edition*, SOC. SEC. (2023), <https://www.ssa.gov/ssi/text-living-ussi.htm>.

57. 20 C.F.R. §§ 416.1131–33 (2023); *Understanding Supplemental Security Income*, *supra* note 56.

58. According to pre-pandemic data collected by the Eviction Lab, the average amount of a money judgment associated with an eviction varied widely in the 22 states reviewed. The national median in that review, however, was \$1,253. Emily Badger, *Eviction Crises That a Few Hundred Dollars Could Solve*, N.Y. TIMES, Dec. 18, 2019. However, analysis of eviction filings in a sampling of cities shows that even in late 2020 the amount sought in back rent had increased significantly. Renee Louis et al., *Preliminary Analysis: Rising Eviction Claim Amounts During the COVID-19 Pandemic*, EVICTION LAB (Dec. 9, 2020), <https://evictionlab.org/rising-claim-amounts/>. Granted, our hypothetical individual has the option to pay off a money judgment over time; however, this is not useful to her if (for example) the money judgment is preventing her from being able to find new housing. The Fair Credit Reporting Act specifically allows for this use of a credit report, as does New York State law. 15 U.S.C.A. § 1681b (West 2023); NY REAL PROP. L. § 238-a (McKinney's 2023).

59. 5 C.F.R. § 581.104(j) (2023); 45 C.F.R. § 307.11(c)(3)(i) (2023).

60. Federal law protects a weekly amount of 25% of her disposable income or 30 times the federal minimum wage, whichever is lesser, from garnishment. 15 U.S.C.A. § 1673 (West 2023). There are certain exceptions, such as child support, which do not apply in our scenario. *Id.* At this writing, the federal minimum wage is generally \$7.25 per hour. Fair Labor Standards Act, 29 U.S.C.A. § 206 (West 2016) (amended by U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability

her SSI indefinitely, her poor credit rating from the eviction, the fact of the eviction itself, and her low income may conspire to prevent her from finding decent and affordable housing.⁶¹

This scenario is relatively simple and common. For example, we are assuming that Tabitha does not have a criminal record and that therefore she could be licensed in any profession, should she so choose.⁶² We are assuming that she does not have children and that it would therefore be relatively easy for her to find accommodations in a homeless shelter, however deplorable that situation might be.⁶³ And we are assuming that she does not carry additional debt from a restitution order, child support, or any similar source. Finally, we are assuming that she does not yet have a “legal problem” as we tend to construe them: her SSI is being timely paid; she may not have decent housing but she is housed; her landlord is not (yet) refusing to repair hazardous conditions. And yet—even without a legal adversary or a court proceeding, a series of laws are operating to harm her.

Although this particular case study arises within the ambit of SSI, it could as easily have happened if Tabitha received and depended on another form of public assistance. For example, in *Colondres v. Scoppetta*,⁶⁴ the plaintiff successfully challenged New York City’s wrongful removal of her children and what she characterized as “malicious” child protective proceedings against her. Since Ms. Colondres was a recipient of public assistance, the same city which ultimately

Appropriations Act of 2007, Pub. L. No. 110–28, 121 Stat. 112 (2007)). In New York State, her wages may not be garnished unless her “disposable” income (essentially her net income) is the greater of 30 times the state or 30 times the federal minimum wage. N.Y. C.P.L.R. § 5231 (McKinney’s 2023). As I write this, the minimum wage in New York State (outside New York City) is \$14.20, although it is scheduled to increase in and after 2024. N.Y. COMP. CODES R. & REGS. tit. 12 § 142-2.1 (a) (3) (2023); N.Y. LAB. L. § 652 (1-a) (c) (McKinney’s 2023). If Tabitha lives in New York State, she would therefore need to net \$427.50 weekly, or approximately \$20,500 annually, before her wages could be garnished. In this scenario her lack of work history and the likelihood that she would only be able to find low-wage work would actually assist her. If, however, she lives in a state which does not have a high minimum wage and which does not require creditors to consider the greater of the state or federal wage, she could be subject to garnishment if she made as little as \$10,440 annually.

61. A handful of states have enacted laws intended to protect tenants from the use of eviction histories in renting. These range from New York State’s outright ban on considering this history (N.Y. REAL PROP. L. §227-f (McKinney’s 2023)) through various forms of sealing and expungement. For a general overview, see Nada Hussein et al., *Eviction Record Sealing and Expungement Toolkit*, NLIHC, <https://nlihc.org/sites/default/files/2023-04/eviction-record-sealing-and-expungement-toolkit.pdf> (last visited Nov. 11, 2023).

62. See *Collateral Consequences of Criminal Convictions: Judicial Bench Book*, 2018 A.B.A. CRIM. JUST. SECTION at 7.

63. Debra J. Rog et al., *Characteristics and Dynamics of Homeless Families with Children*, HEALTH & HUM. SERVS. (Sept. 30, 2007), <https://aspe.hhs.gov/reports/characteristics-dynamics-homeless-families-children-0>.

64. *Colondres v. Scoppetta*, 290 F. Supp. 2d 376 (E.D.N.Y. 2003) (DSS wrongly removed children from house and commenced neglect proceeding against mother solely because mother was a victim of domestic violence; Social Services entitled to a portion of the settlement); cf. *Nicholson v. Scoppetta*, 820 N.E.2d 840 (N.Y. 2004) (Court of Appeals held on certified question that violence against mother in presence of children did not on its own constitute child neglect). This mechanism is sometimes referred to as a “Medicaid lien,” but the plain language of the statute is considerably broader than that would suggest. N.Y. SOC. SERV. L. §104-b(a) (McKinney 2023).

gave her \$90,001 to settle these matters was able to recoup a percentage of that amount through a lien on the proceeds of litigation.⁶⁵ The New York Social Services Law specifies that such liens are available for “personal injury” cases if the public welfare agency has given assistance and care to the recipient after the injury occurred.⁶⁶

In New York, however, “personal injury” includes “libel, slander and malicious prosecution; also an assault, battery, false imprisonment, or other actionable injury to the person either of the plaintiff, or of another.”⁶⁷ This definition has been held to be “an exceedingly broad one. . . cover[ing] every variety of injury to a person’s body, feelings or reputation.”⁶⁸ There is no exception for a situation like this, where the tortfeasor and the recouping agency are in fact the same entity.⁶⁹ And yet, the intersection of these particular laws acts to prevent low-income people—and only low-income people—from gaining complete relief against the state when it has injured them.⁷⁰ If Tabitha received public assistance instead of SSI, and if she had a personal injury cause of action against her municipality—malicious prosecution, an injury sustained in public housing, defamation by a public official—this would be her situation as well.

This scenario serves as an anchor, not only for the overview of scholarship which follows, but for the proposed new approach to poverty law scholarship.

III. A BRIEF HISTORY OF POVERTY LAW AND SCHOLARSHIP

Over the course of sixty years, poverty law has been defined and conceived in any number of ways. It has been called “the practice of law for poor people;”⁷¹

65. *Colondres*, 290 F. Supp. 2d at 384–85.

66. This remedy is available to the agency up to ten years after the individual receives assistance. *Baker v. Sterling*, 348 N.E.2d 584, 590 (N.Y. 1976) (reading this statute together with N.Y. SOC. SERV. L. §104(1)), *rev’d on other grounds by Gold ex rel. Gold v. United Health Servs. Hosps., Inc.*, 746 N.E.2d 172, 176 (N.Y. 2001). Legislation has been proposed to significantly modify both statutes; however, one such proposal appears to have died in committee in 2017 (N.Y. State Assemb. B. A00165, Reg. Sess. 2017-2018 (2017), https://nyassembly.gov/leg/?default_fld=&bn=A00165&term=2017&Summary=Y&Actions=Y&Text=Y&Votes=Y), whereas the other has been in committee since early 2023. (N.Y.S.B. S4888A Reg. Sess. 2023-2024 (2023). <https://www.nysenate.gov/legislation/bills/2023/S4888/amendment/A>).

67. N.Y. GEN. CONSTR. L. § 37-a (McKinney 2023).

68. *Bonilla v. Reeves*, 267 N.Y.S.2d 374, 381 (N.Y. Sup. Ct. 1966).

69. See generally *Colondres*, 290 F. Supp. 2d. This would be understandable if, for example, Social Services had defrayed the cost of medical care for the child. In this instance, however, it does not appear that public assistance did anything more than provide for their basic needs. See also *Puglisi v. Underhill Park Taxpayer Ass’n*, 947 F. Supp. 673, 681 (S.D.N.Y. 1996), *aff’d sub nom.*, 125 F.3d 844 (2d Cir. 1997) (landlord who alleged that he had suffered, inter alia, reputational damages because of renting to Black families had shown “personal injury” sufficient to have standing within the meaning of the Fair Housing Act). It is not hard to imagine that a low-income individual in receipt of public benefits would need to sue a public housing authority run by the same municipality that issued the benefits.

70. This is of particular concern as low-income individuals are more likely to interact with and be regulated by the state. See generally *Sarat*, *supra* note 1; U.S. COMM’N ON CIV. RTS., *supra* note 4; *Pimentel*, *supra* note 5; *Goldstein*, *supra* note 8. It therefore follows that there are more opportunities for the state to harm this population and more opportunities for the state to recoup assistance from the very proceeds it has paid as the tortfeasor.

71. *Buchanan*, *supra* note 17, at 1000.

“legal issues which are . . . in principle peculiar to poor people;”⁷² and the “body of [substantive] laws governing the poor, regarded as a distinct class in society.”⁷³ More ambitiously, it has been defined as “the study of the regulation of the institution of poverty and the balancing and advancing of the mutual and competing interests of the poor and the nonpoor.”⁷⁴ Stephen Loffredo brought all these ideas together, noting that in the most traditional sense poverty law was the attempt “to enlist the law in a systemic effort to achieve social and structural changes” as well as “a reference to the substantive areas in which lawyers for the poor have carried on this . . . practice.”⁷⁵ In terms of practice, Loffredo also acknowledged that poverty law could mean a model of lawyering that seeks to work collaboratively and non-hierarchically with clients.⁷⁶ He contrasted this with the more academic meanings of the term, which he described as “a critical analysis of how the law maintains institutions and practices that create and perpetuate severe inequalities of wealth and economic opportunities and facilitates the translation of those inequalities into a system of unequal political power, privilege, and citizenship.”⁷⁷

Before reimagining the scope, breadth, and goals of poverty law, it is important to fully consider the ways in which we have historically understood, analyzed, and discussed this discipline.

A. The Beginning of Poverty Law: Community-Based and Practice-Driven

Poverty law began to crystallize as a discrete subject in the wake of Lyndon Johnson’s Great Society programs; it was particularly driven by the Office of Economic Opportunity’s work in funding and supporting neighborhood legal services organizations.⁷⁸ The work that is generally described as the “first

72. Stephen Wizner & William Resnick, *Cases and Materials on Law and Poverty*, 70 COLUM. L. REV. 1305, 1308 (1970).

73. Anne Fleming, *The Rise and Fall of Unconscionability as the “Law of the Poor,”* 102 GEO. L. J. 1383, 1386 (2014).

74. Leonard J. Long, *Optimum Poverty, Character, and the Non-Relevance of Poverty Law*, 47 RUTGERS L. REV. 693, 783 (1995); however, Long goes on to note that:

Most Americans, or at least the critical mass of Americans, fail to perceive the need to address the poverty around them, at least not in a manner which is intended to alleviate poverty rather than merely reduce some of the costs imposed on the nonpoor by the poverty around them. Thus poverty law and poverty lawyering is, unfortunately, non-relevant, unless, of course, some function other than alleviating poverty is the true function of poverty law and poverty lawyering.

Id. at 784.

75. Loffredo, *supra* note 19, at 1241.

76. *Id.*

77. *Id.* at 122.

78. *See., e.g.,* Snow, *supra* note 13 (surveying the genesis of poverty law scholarship in the context of arguing for a greater pedagogy of poverty law in law school); *see* Buchanan, *supra* note 17 (comparing and contrasting the “old” poverty law scholarship of the 1960s and 1970s with the “new” poverty law scholarship which arose in and after the late 1980s); Davis, *supra* note 13 (summarizing the history of poverty law scholarship and discussing the goals of the various schools and waves of such scholarship).

wave⁷⁹ of poverty law scholarship therefore came from the practitioners who worked directly with low-income people.⁸⁰ Their specific experiences differed, but they uniformly argued that working with and for low-income individuals was fundamentally different from representing others.⁸¹ Ultimately, all concluded that effective legal representation in this arena required a community-based strategy and, indeed, an effacement of the attorney's traditional role.⁸²

As early as 1964 Edgar and Jean Cahn, pivotal figures in the legal services world,⁸³ considered the problems with the Johnson administration's "militaristic" approach to the "War on Poverty."⁸⁴ While they believed that this approach was necessary given the scale and scope of the problems facing low-income individuals, they also foreshadowed the limitations which would flow from a professionalized service which relied on the beliefs and insights of "experts."⁸⁵

The Cahns used a non-profit pilot program in New Haven as their example.⁸⁶ This project selected several "blighted" neighborhoods throughout the city and offered them integrated and community-based services, including "community workers, homemaking advisers, and legal advisers; and eventually, public health nurses, doctors and dentists, public welfare workers, family caseworkers, school social workers, police youth officers, housing inspectors, and sanitarians."⁸⁷ Two of the neighborhoods also had attorneys on staff, and all had "Neighborhood Coordinators," assisted by nonprofessionals from the community itself.⁸⁸

In keeping with what the Cahns described as "the military approach," the professionals set the eligibility criteria and additionally determined which members of the existing power structures should be given seats on the board.⁸⁹ This had the effect of both creating and maintaining a donor-donee relationship between the professionals and the community served.⁹⁰ Additionally, in what they

79. Buchanan, *supra* note 17, at 1011–12; Davis, *supra* note 13, at 1391–92.

80. See generally Cahn, *Civilian*, *supra* note 16; Wexler, *supra* note 16; Jerome E. Carlin & Jan Howard, *Legal Representation and Class Justice*, 12 UCLA L. REV. 381 (1965); Charles R. Halpern & John M. Cunningham, *Reflections on the New Public Interest Law: Theory and Practice at the Center for Law and Social Policy*, 59 GEO. L.J. 1095 (1971).

81. Cahn, *Civilian*, *supra* note 16, at 1334–35; Wexler, *supra* note 16, at 1049–50.

82. Cahn, *Civilian*, *supra* note 16, at 1329–30; Wexler, *supra* note 16, at 1053–54, 1063–66; Cahn, *Justice*, *supra* note 16, at 938–39.

83. For a contemporary overview of the War on Poverty and the Office of Economic Opportunity (OEO), see generally *Legal Services and the War on Poverty*, 13 CATH. LAW. 272 (1967). That same piece also discusses the OEO's ultimate decision to include legal services for low-income individuals. *Id.* at 283–96. Deborah J. Cantrell has specifically noted the Cahns' pivotal role in this decision. Deborah J. Cantrell, *A Short History of Poverty Lawyers in the United States*, 5 LOY J. PUB. INT. L. 11, 16–18 (2003).

84. See generally Cahn, *Civilian*, *supra* note 16.

85. *Id.* at 1317–18, 1321. As Deborah Cantrell has pointed out, this belief is a common thread between the "first" and "second" waves of poverty law scholarship. Cantrell, *supra* note 83, at 33.

86. Cahn, *Civilian*, *supra* note 16, at 1318–1319.

87. *Id.* at 1319.

88. *Id.* at 1319–20.

89. *Id.* at 1320.

90. *Id.*

characterized as “a fundamental part of the military approach,” once the overall plan, priorities, and strategies were established, adhering to them became of paramount importance.⁹¹

The Cahns critiqued this approach, arguing that it either cut off or co-opted community leadership; that it fostered an ongoing culture of dependency; that it failed to consider the specific needs and desires articulated by the community; and that it “define[d] a status of subserviency and evoke[d] fear, resentment and resignation on the part of the done.”⁹² They noted that the co-opting of local community leaders could have the effect of stifling criticism and that this, coupled with the large scale of the project, could in effect create a social services monopoly in these neighborhoods.⁹³ Finally, they argued that the large-scale planning which this type of project entailed, together with the stakeholders’ need to maintain their own standing in the community, would require a particular set of priorities.⁹⁴ While the authors stop short of saying so overtly, they clearly fear that such an organization’s sustained viability would ultimately take precedence over the well-being and needs of the individuals it was intended to serve.⁹⁵

As an alternative, the Cahns argued for neighborhood legal services organizations which drew their direction directly from those they served and which operated according to certain core principles.⁹⁶ Specifically, they argued for what we would now call cultural humility, stating that attorneys should suspend their class-based judgment and ideas when working with their low-income clients.⁹⁷ They also argued that attorneys should feel empowered not only to represent clients whose established rights were being violated, but also to help with problems

91. *Id.*

92. *Id.* at 1321–22. These principles underlie what eventually became known as “community lawyering.” *See, e.g.*, Michael J. Fox, *Some Rules for Community Lawyers*, 14 CLEARINGHOUSE REV. 1 (1980). This critique of “movement lawyering” continues; *see, e.g.*, Tifanei Ressler-Moyer, Pilar Gonzalez Morales & Jaqueline Aranda Osorno, *Movement Lawyering During a Crisis: How the Legal System Exploits the Labor of Activists and Undermines Movements*, 24 CUNY L. REV. 91 (2021).

93. Cahn, *Civilian*, *supra* note 16, at 1322–23.

94. Such priorities would include conservation of financial and other resources; preservation of alliances and a clear command structure; continuous mobilization and planning over immediate operations, “impressive initial maneuvers involving a minimum of risk, planning, and resources” with “extensive safeguards to avoid the possibility of a humiliating setback”; and the “avoidance of precipitous, risky programs.” *Id.* at 1325–26.

95. *Id.*

96. *Id.* at 1336–48.

97. *Id.* at 1334–35. This predates the overall ideas of cultural competence and cultural humility by some decades, and it far predates their explicit application to low-income individuals. *See, e.g.*, Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997) (discussing the erasure of race, gender, and class from classes and texts on client-centered counseling); Susan Bryant, *The Five Habits: Bldg. Cross-Culture Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001) (discussing and describing the methods and exercises which she and Jean Koh Peters developed to teach cultural competence in a clinical setting); Ascanio Piomelli, *Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda*, 4 HASTINGS RACE AND POVERTY L.J. 131 (2006) (critiquing and comparing existing client counseling texts’ approaches to working with clients of different races, genders, and classes).

that were traditionally considered non-legal and to challenge laws that were “contrary to the rights and interests of the client or client community.”⁹⁸

All this said, the Cahns also added a cautionary note, arguing that such an attorney or firm must exercise caution in “[L]egal analysis and reform where the law is vague, uncertain, or destructively complex.”⁹⁹ They argued correctly that “[t]he poor live in a legal universe which has, by and large, been ignored by legal scholars”¹⁰⁰ but also cautioned practitioners that “improvident insistence on ‘rights’ can also produce rigid and ill-considered law which may yield neither short-run nor long-run benefits.”¹⁰¹ To this end, and as most relevant here, the Cahns argued that scholarship and practice must inform each other:

[I]ntervention and advocacy on behalf of the poor must be accompanied by extended scholarly considerations of the policies, alternatives, and costs involved. A neighborhood law firm concerned with this dimension of the law as it affects the poor should have some formal nexus with the academic world. The law, as experienced by one stratum of society, must be made known to legal scholars so that it can be scrutinized, so that knowledge of it can be disseminated through the law school curriculum and the evolution of what we might term “urban law” proceed rationally and at an accelerated pace.¹⁰²

While the Cahns’ vision was largely practical, it was thus also an early and explicit expression of the idea that scholars and attorneys working with low-income individuals should both teach and learn from each other.

When the Cahns revisited their vision in 1966, many of the concerns which they had expressed had come to pass.¹⁰³ While they conceded that there was a wide variety in neighborhood legal services which made completely accurate generalizations impossible, they noted that overall this model had become highly professionalized and numbers-oriented.¹⁰⁴ As relevant here, they argued that the organizations were being overwhelmed with demand; that clients were being

98. Cahn, *Civilian*, *supra* note 16, at 1340.

99. *Id.*

100. *Id.*

101. *Id.* at 1341.

102. *Id.* “Urban law” appears, at least through this period, to have been used synonymously with “poverty law.” See, e.g., David F. Cavers, *A Core Curriculum for Urb. Law*, 18 CLEV.-MARSHALL L. REV. 243 (1969); Emanuel Boasberg, *Urb. Law and the Private Bar*, 2 URB. LAW. 105 (1970). But see Tersh Boasberg, *The Private Practice of Urb. Law*, 20 CASE W. RES. L. REV. 323, 324–35 (1969) (“But the . . . term may be misleading, for urban law can involve rural problems as well as urban.”) These three articles are not written by practitioners but are otherwise representative of the scholarship of the period in that they are concerned with the practicalities of representing low-income individuals, whether through targeted curricular changes to the law school (Cavers) or through arguing for pro bono service (E. and T. Boasberg). See also J. Skelly Wright, *Poverty, Minorities, and Respect for Law*, 1970 DUKE L.J. 425 (1970).

103. Cahn, *Justice*, *supra* note 16.

104. *Id.* at 928.

assisted only after their problems had already arisen; that there was no significant effort to research, ameliorate, or identify problems on a large scale; that the organizations were disconnected from the organizations that served the client population; and that the legal services organizations were failing to train lay advocates or others to assist in their work.¹⁰⁵ While they praised the work that these organizations were doing, the authors also argued that:

[T]he ends of justice will not be served if all that neighborhood law firms do is foist on the poor a legal system which the middle class has rejected as obsolete, cumbersome, and too expensive in money, psychological strain and investment of time. This would be true, even if particular legal doctrines were less biased against the poor.¹⁰⁶

The Cahns termed the existing legal services model “The Justice Industry” and argued that it suffered from the same myopic tendencies as the legal system writ large: “events outstrip reform, need outstrips increments in resources, practices do not keep abreast of rules, the structure of institutions does not accurately reflect actual decision-making processes and the patterns of official conduct are most resistant to change or reform by the ‘production system.’”¹⁰⁷ As in 1964, the Cahns argued that immediately affected individuals and neighborhoods should be more intimately involved with the processes of the law and legal services, however, in this iteration of their vision they also argued that these neighborhoods should create their own systems of justice and arbitration.¹⁰⁸ This conception of both poverty law and legal services is more pessimistic than that of just two years earlier; it highlights a deep and perhaps unbridgeable gulf between the legal system and the needs of low-income individuals.¹⁰⁹ In this vision, there is little room for attorneys themselves and certainly no room for scholarship or for the academy as they were then constituted.¹¹⁰

105. *Id.*

106. *Id.* at 929.

107. *Id.* at 934. The Cahns defined the “production side” as the structures which manufacture laws, including not only courts and legislatures but also juries and such non-governmental entities as bar organizations. *Id.* at 931–34.

108. *Id.*; Cahn, *Civilian*, *supra* note 16, at 1330–31. Edgar Cahn became more pessimistic about the provision and efficacy of legal services as they were and have historically been provided; in 1994, he proposed to “reinvent” legal services according to a cooperative non-market model. Edgar S. Cahn, *Reinventing Poverty Law*, 103 *YALE L.J.* 2133 (1994).

109. The Cahns acknowledge that this system does not work for middle-class individuals either but that they, like the upper class, have been able to find and establish parallel systems which do work. Cahn, *Justice*, *supra* note 16, at 937–38.

110. While the Cahns make several references to research, they appear to be thinking of primarily practical collaborations. For example, one suggestion is that a neighborhood-run legal corporation might make “the decision to enter into a liaison with a university to conduct legal research.” *Id.* at 958. Similarly, they mention that “[l]ittle if any research is being carried on that could affect significant legal change unconnected with specific cases” but clarify in a footnote that they are primarily referring to coordination and issue-spotting among attorneys (“One reason for this is that there has been previously little effort to coordinate communication between attorneys so that there is an awareness of recurrences of particular

Stephen Wexler, a staff attorney with the National Welfare Rights Organization, brought a similar sensibility to his seminal 1970 article, arguing that teaching poverty law was of limited utility at best.¹¹¹ While Wexler applauded those law students who wanted to practice poverty law, he believed that they were being trained to treat low-income clients just as they would any other clients and that “the traditional model of legal practice for private clients is not what poor people need; in many ways, it is exactly what they do not need.”¹¹²

In arguing that lawyers must work with low-income clients in a fundamentally different way, Wexler contrasted the lives of these individuals with those in traditional law school casebooks.¹¹³ While middle- and upper- class clients generally lead “settled and harmonious lives”¹¹⁴ until something bad appears on the horizon:

Poor people get hit by cars too; they get evicted; they have their furniture repossessed; they can't pay their utility bills. But they do not have personal legal problems in the law school way. Nothing that happens to them breaks up or threatens to break up a settled and harmonious life. Poor people do not lead settled lives into which the law seldom intrudes; they are constantly involved with the law in its most intrusive forms. For instance, poor people must go to government officials for many of the things which not-poor people get privately. Life would be very difficult for the not-poor person if he had to fill out an income tax return once or twice a week. Poverty creates an abrasive interface with society; poor people are always bumping into sharp legal things. The law school model of personal legal problems, of solving them and returning the client to the smooth and orderly world in television advertisements, doesn't apply to poor people.¹¹⁵

Like the Cahns, Wexler questioned the utility of both legal education and lawyers themselves in this area, arguing that courses on poverty law “do little . . . to change the law schools' treatment of legal problems, or their perception of the proper roles and concerns of a lawyer.”¹¹⁶ He further noted that law schools did not equip or encourage students to question the origins of the law or to wonder about their clients' lives outside of their purely legal problems.¹¹⁷

Wexler goes on to argue that a successful poverty lawyer “should also learn some facts about our society,” and must specifically understand that poverty is a systemic issue rather than a personal failing:

problems; and even in the few cases where communication occurs proposals have failed to establish units within such systems devoted to law reform rather than to the handling of cases.”) *Id.* at 928, n.4.

111. Wexler, *supra* note 16.

112. *Id.* at 1049.

113. Wexler, *supra* note 16, at 1049.

114. *Id.*

115. *Id.* at 1049–50.

116. *Id.* at 1049.

117. *Id.* at 1049–50.

Poor people are not poor by chance; they are not poor through lack of personal merit; they are not poor because it is inevitable that someone be poor. Poor people are poor because some people who are not poor believe that it is a good thing to have some poor people around. Of course, many of the people who are not poor don't believe this, but most of them have been led to believe that poor people are poor because they are bad, that poverty for some doesn't affect everyone, that anyway poverty cannot be stopped, and that, even if it could, it would cost too much to do it.¹¹⁸

Unlike the academic-practitioner partnership which the Cahns initially proposed to help hurdle this barrier, Wexler ultimately concluded that the best thing that a poverty lawyer could do was to help this population organize.¹¹⁹ While he conceded that this was an unconventional role for an attorney, and in fact went against the profession's training and norms, he argued that allowing the clients to rely overly on attorneys would foster a culture of dependence, particularly given that so many of their problems are really not legal problems.¹²⁰ Thus, Wexler simultaneously critiqued the way in which poverty law is taught, raised the possibility of a more searching examination of the ways in which the law perpetuates poverty, and concluded that neither the academy nor practicing attorneys have a central place in ameliorating these problems.¹²¹

This wave of scholarship therefore retains a highly practical bent and focus; while it gives lip service to the role of scholars, education, and attorneys themselves, it is above all concerned with the best and most immediate way to address and ameliorate the systemic problems that cause and exacerbate poverty.¹²² Little of this is concerned with traditional legal scholarship in the sense of reasoned academic consideration and analysis of particular law or legal developments. In some sense these authors are visionary, completely rethinking the correct role of the law and lawyers as they relate to poverty.¹²³ In other senses that vision is myopic, focusing on and deriving from the authors' (and their clients') experiences rather than on any more ambitious understanding or analysis of the law. There is a similar tension between these writers' pioneering place in the first vanguard of poverty law and their ultimate pessimism about what they can accomplish through the law.¹²⁴

118. Wexler, *supra* note 16, at 1053.

119. *Id.*

120. *Id.* at 1055–56.

121. *Id.* at 1050, 1053.

122. Cahn, *Civilian*, *supra* note 16, at 1341; Cahn, *Justice*, *supra* note 16, at 934; Wexler, *supra* note 16, at 1049–53.

123. Cahn, *Civilian*, *supra* note 16, at 1341; Cahn, *Justice*, *supra* note 16, at 934; Wexler, *supra* note 16, at 1049–53.

124. Wexler, *supra* note 16, at 1050; Cahn, *Justice*, *supra* note 16, at 937.

These “first wave” or “old scholarship” authors would, of course, be highly familiar with Tabitha’s situation—or at least, they would if she had a “legal problem” in the most traditional sense.¹²⁵ They would likely not see her until her landlord refused to fix the heat or Social Security halted or reduced her payments. Even under those circumstances, however, the Cahns would likely tread lightly in this area of settled law.¹²⁶ They might work to fix Tabitha’s immediate problems and to remedy what they could under the law as it stands.¹²⁷ However, as Wexler correctly recognized, that would be at most a temporary reprieve from a life which the law itself systematically fills with sharp corners.¹²⁸ The Cahns and Wexler ultimately agreed on the lawyer’s inability to change the overarching legal landscape in a case such as this one;¹²⁹ while the Cahns initially suggested that this might be the province of scholars who could then influence policy, that vision did not come to fruition.¹³⁰ In their later incarnation, they would have told Tabitha to work within community and grassroots organizations to effect larger change.¹³¹ Similarly, Wexler would have told her that the only solution was to organize with similarly affected individuals in order to highlight and center their common experience.¹³² An attorney could put a Band-Aid on an immediate problem, but low-income individuals needed to solve the longer-term issues themselves.¹³³

B. Poverty Law Redux: Postmodernism Rises, the Lawyer’s World Shrinks

Poverty law appears to have largely vanished from both scholarship and teaching between the late 1970s and the late 1980s.¹³⁴ Ruth Buchanan attributes this to a number of factors, including an unmooring of welfare rights attorneys from the grassroots they served; a retreat by the Supreme Court from the promise of its earlier decisions in the area; and the subsequent “dramatic alteration” in the very practice of poverty law.¹³⁵

125. For purposes of this article, I am considering a “traditional legal problem” to be an issue between parties (which could include an institution) where either (1) one party has commenced or threatened to commence a judicial or quasi-judicial proceeding, such as an eviction or an administrative hearing or (2) one party has deprived or threatened to deprive the other of something, for which the appropriate remedy is a judicial or quasi-judicial hearing.

126. Cahn, *Civilian*, *supra* note 16, at 1336–40.

127. *Id.*

128. Wexler, *supra* note 16, at 1050.

129. Cahn, *Justice*, *supra* note 16, at 946–47 (proposing neighborhood-based, community run organizations to ameliorate the “fundamental problems with which the neighborhood law firm is not equipped to cope and . . . offer valuable auxiliary assistance in coping with those underlying deficiencies.”); Wexler, *supra* note 16 at 1053.

130. Wexler, *supra* note 16, at 1053; Cahn, *Civilian*, *supra* note 16, at 1338–45.

131. Cahn, *Justice*, *supra* note 16, at 950–60; *see also* Cahn, *Justice*, *supra* note 16, at 946–47.

132. *See* Wexler, *supra* note 16.

133. *Id.*; *see also* Cahn, *Civilian*, *supra* note 16.

134. *See, e.g.*, Davis, *supra* note 13, at 1402–03; Zoe Niesel, *Putting Poverty Law into Context: Using the First Year Experience to Educate New Lawyers for Social Change*, 76 N.Y.U. ANN. SURV. AM. L. 97, 109 (2020); Howard S. Erlanger & Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress*, 43 J. LEGAL EDUC. 199 (1993); *see* Simon, *supra* note 18.

135. Buchanan, *supra* note 17, at 1019–20.

In the early to mid-1990s, however, law schools and professors began once again to write about and teach this subject, and the “second wave” of poverty law scholarship appeared.¹³⁶ A variety of factors appear to have fueled this scholarship. Academics have variously noted the importance of the emphasis on clinical education during this period,¹³⁷ the rise of Critical Legal Studies in the academy,¹³⁸ the (nominally) less hostile attitude to low-income individuals after the Reagan administration,¹³⁹ and the establishment of the Interuniversity Consortium thanks to funding from the Ford Foundation.¹⁴⁰

The new scholarship drew heavily on critical and postmodern theory in general, with particular emphasis on the writings of Foucault,¹⁴¹ and more specifically on the framework which Duncan Kennedy established for critical legal studies.¹⁴² While the initial and monolithic notion of “critical legal studies” had

136. *Id.* at 1031; Davis, *supra* note 13, at 1402-03; see Piomelli, *supra* note 11.

137. Trubek, *supra* note 11, at 984; see Davis, *supra* note 13; see Buchanan, *supra* note 17.

138. Alan Hunt, *The Theory of Critical Legal Studies*, 6 OXFORD J. LEGAL STUD. 1 (1986); see Trubek, *supra* note 11; see Davis, *supra* note 13.

139. Trubek, *supra* note 11, at 984 (documenting “renaissance” of poverty law scholarship in and after 1986); Buchanan, *supra* note 17, at 1000 (“after a decade in which the gap between rich and poor in America has widened dramatically and practitioners of poverty law have encountered repeated setbacks, one may see in an emerging wave of literature the elements of a nascent rebirth of the practice of law for poor people”); Piomelli, *supra* note 11, at 438 (“In the late 1980’s and early 1990’s, a new stream of scholarship, specifically focused on the representation of lower-income clients, gained prominence in the literature on lawyering.”).

140. Davis, *supra* note 13, at 1402-03; Erlanger & Lessard, *supra* note 134; see Blasi, *supra* note 11. The Ford Foundation provided funding for the Interuniversity Consortium in 1988 in order to facilitate “conversations about the role of law schools in poverty law advocacy.” Davis, *supra* note 13, at 1402-03. However, while the Consortium was able to assist with poverty law teaching and scholarship, its ultimate conclusion was that “the potential contribution of academics is more limited than might have been originally hoped.” Davis, *supra* note 13, at 1403 (citing INTERUNIVERSITY CONSORTIUM ON POVERTY LAW, TOWARD THE MOBILIZATION OF LAW SCHOOLS FOR POVERTY LAW ADVOCACY (1992) (final report to the Ford Foundation on Two Years of Activity, under grant 890-0427-1)).

141. For an overview of the legal academy’s journey to this point, see G. Edward White, *From Sociological Jurisprudence to Realism: Jurisprudence and Social Change in Early Twentieth-Century America*, 58 VA. L. REV. 999 (1972). For representative writings explicating upon and citing Foucault’s work, see Hunt, *supra* note 138; Cornel West, *Brendan Brown Lecture: Reassessing the Critical Legal Studies Movement*, 34 LOY L. REV. 265 (1988); Duncan Kennedy, *The Stakes of Law, or Hale and Foucault!*, 15 LEGAL STUD. F. 327 (1991).

142. James Gilchrist Stewart, *Demystifying CLS: A Critical Legal Studies Family Tree*, 41 ADEL. L. REV. 121, 128-30 (2020). Critical Legal Studies itself has been concisely defined as a branch of jurisprudence which

insists that the law floats in a power medium. To reveal its truths, Critical Legal Studies makes extensive use of deconstruction, which is a method of critical analysis, to reveal the political and economic infrastructures and forces that produce the laws of our culture. . . . The visible is intensively scrutinized to allow access to what is initially invisible. The quest is for hierarchies, systems, motives and the allocation of values. The “text” (the surface) is cannibalized to reveal its fissures, contradictions and so forth. This work leads the critic to the hidden forces that gave rise to the text. . . . Critical Legal Studies stresses the law is largely indeterminate.

John Batt, *American Legal Populism: A Jurisprudential and Historical Narrative, Including Reflections on Critical Legal Studies*, 22 N. KY. L. REV. 651, 658 (1995).

largely withered away by then,¹⁴³ those writing about law and poverty used and adapted Kennedy's paradigm, in much the same way that scholars writing about race and gender had done.¹⁴⁴ This group of scholars referred to their work and practice by a variety of names, including "critical lawyering," "rebellious lawyering" and "the theoretics of practice."¹⁴⁵

The seminal texts from this period of scholarship focus on the different narratives which low-income clients and their attorneys tell about the clients' lives; they use those narratives as a springboard to examine the dynamics and power balances between client and lawyer.¹⁴⁶

In one groundbreaking text, "Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.," Lucie White describes a composite client who came to her for assistance in a public benefits overpayment case.¹⁴⁷ The client, "Mrs. G.," had received a \$592 payment from her insurance company after she and one of her daughters were injured in a car accident.¹⁴⁸ Although Mrs. G. had reported the payment to her caseworker and had been told she could keep and spend it, two months later she was notified that she had been overpaid and had been summoned to a hearing.¹⁴⁹ When White—then a legal services attorney—was unable to settle the case, she prepared her client to testify at a hearing.¹⁵⁰ After considering the competing narratives she could help Mrs. G. tell the hearing officer, White opted to have her client explain that she had spent the money on necessities, including food and hygiene supplies.¹⁵¹

At the hearing, however, Mrs. G. explained that some of the "necessities" she had purchased were new Sunday shoes for her children; these did not fall within the statutory definition of "necessities" or within the narrative White had shaped.¹⁵² Mrs. G. lost her hearing and White filed an appeal; however, mere days after that the county decided to withdraw its claim in the name of "fairness."¹⁵³ When White told her client about the result, Mrs. G. simply said that she

143. Stewart, *supra* note 142, at 132–33.

144. *Id.* at 126–27; Buchanan, *supra* note 17, at 1033; see Anthony V. Alfieri, *Impoverished Practices*, 81 GEO L.J. 2567 (1993) (turning a critical theory lens on questions of poverty); see Cheryl I. Harris, *Critical Race Studies: An Introduction*, 49 UCLA L. REV. 1215 (2002) (discussing the steps and struggle inherent in formalizing Critical Race Theory generally and UCLA Law's Critical Race Studies program in particular); Kirstin T. Eidenbach, *Critical Legal Studies and the Lawless Frontier*, 1 CRIT 96, 115 (2008) (citing multiple such offshoots of Critical Legal Theory).

145. Buchanan, *supra* note 17, at 1000; Piomelli, *supra* note 11, at 441; Blasi, *supra* note 11, at 1086–87.

146. See generally White, *supra* note 18; Alfieri, *supra* note 144; Alfieri, *supra* note 18; Buchanan, *supra* note 17.

147. White, *supra* note 18, at 24.

148. *Id.*

149. *Id.* at 26–27.

150. *Id.*

151. *Id.* Under then-existing law, this was one of a small handful of reasons state officials were allowed to grant a waiver of the overpayment. Necessities included items such as repairs which landlords refused to make to a home. *Id.*

152. *Id.* at 31.

153. *Id.* at 32.

had wanted to “do the right thing.”¹⁵⁴ White uses this story as a springboard to discuss the silencing, intimidation, and institutional objectification which the system perpetuates against vulnerable groups (particularly those who, like Mrs. G., are poor, Black, and female) and her own complicity in that system.¹⁵⁵ Ultimately, she concludes that without significant public and professional education about the narratives subordinated groups and individuals tell, and without the evolution of a “post-bureaucratic” system, dependent on “diverse, localized institution-building activities that poor Black single women with children—citizens—undertake for themselves, on their own ground,”¹⁵⁶ these narratives will continue to be drowned by the empirical majoritarian norms we claim to have adopted in the law.¹⁵⁷

White’s discussion is highly informed by Duncan Kennedy’s Critical Legal Studies framework and its heirs, critical gender theory and critical race theory,¹⁵⁸ together with Kimberlé Crenshaw’s insights on intersectionality.¹⁵⁹ This analysis of Mrs. G’s story is highly theoretical and academic. Nonetheless, White’s analysis is at bottom a practical, clinical, and client-centered discussion about representing clients and giving them voice—and it harkens back to Stephen Wexler’s conclusion, nearly two decades previously, that organizing, not lawyering, is the best antidote to the problems of low-income individuals.¹⁶⁰

Anthony Alfieri similarly uses the story of his Hispanic client Josephine V. to discuss “the tensions between suppression and resistance operating in daily poverty law practice.”¹⁶¹ Beginning in her seventh month of pregnancy, Mrs. V. attempted to navigate the bureaucratic labyrinth that would allow her to place her baby on her public benefits case immediately after birth.¹⁶² Initially Mrs. V. was given nine days to provide proof of pregnancy; when she brought that in, her caseworker told her that she would only need a “hospital letter” to add the baby to her case.¹⁶³ Although Mrs. V’s benefit was not adequate to pay her rent, her caseworker simply told her to borrow money.¹⁶⁴ After the baby was born, Mrs. V. was advised that she needed to wait for her daughter’s birth certificate; then that she needed a clinic card; then that she had to fill out paperwork about the child’s father.¹⁶⁵ Three months after the child’s birth, Mrs. V. was still not receiving

154. *Id.*

155. *Id.* at 32–44.

156. *Id.* at 58.

157. *Id.* at 55–56.

158. White, *supra* note 27, at n.9; *see also* Stewart, *supra* note 142.

159. White, *supra* note 27, at n.9; Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL. F. 139 (1989).

160. Wexler, *supra* note 16, at 1053.

161. Alfieri, *Speaking out of Turn*, *supra* note 18, at 633–34.

162. *Id.* at 637.

163. *Id.* at 638.

164. *Id.*

165. *Id.* at 638–39.

benefits for the child; she had been forced to borrow from family, friends, and merchants and to pawn her wedding ring to buy basic necessities.¹⁶⁶ After the baby was finally added to the budget at the age of four months, Mrs. V. requested an administrative hearing, seeking retroactive benefits to the date of her daughter's birth and reimbursement of all out of pocket costs.¹⁶⁷

When Alfieri represented Mrs. V. at her hearing, at first she “carefully recounted” her story and explained the barriers that had been raised between her and the assistance she needed.¹⁶⁸ In the face of skeptical questioning by the administrative law judge, however, she demanded, “Can I speak?”¹⁶⁹ With the judge's permission, Mrs. V. stated in her own words the frustrations she had endured, her caseworker's dismissive attitude towards her, the financial difficulties she had suffered, and her belief that the caseworker should have understood that someone in her situation had pressing financial needs.¹⁷⁰

Alfieri uses Mrs. V's story as an exemplar of resistance and rebellion—not only against the ALJ, but against the suppressive lawyer discourse which had informed their attorney-client relationship.¹⁷¹ Mrs. V. reclaimed her right to speak her own truth and experience, “as an impoverished Hispanic woman and mother living in a community actively engaged in practices of self-help and mutual aid.”¹⁷² Alfieri argues that the search for the “ethic of resistance,” typified by this type of moment, must be the collaborative goal of poverty lawyers and their clients.¹⁷³ Again, Alfieri's focus is on community, collaboration, and power in the world of a single client interaction and relationship.¹⁷⁴

These are representative of this wave of scholarship,¹⁷⁵ which prioritized client voices and narratives and focused, in Ruth Buchanan's words, on “the reinscription of clients as empowered subjects into lawyering practices,” “look[ing] to the everyday lives of subordinated people for moments of dignity and resistance.”¹⁷⁶ The lawyer's place is secondary to that of the client; while the attorney serves the important function of getting the client before the court or tribunal, the moment of truth comes when the client tells her story in her own words, refusing to abide by the norms and narratives suggested by society in general or by her

166. *Id.* at 640.

167. Alfieri, *supra* note 18, at 641–42.

168. *Id.* at 642.

169. *Id.* at 643.

170. *Id.*

171. *Id.* at 645.

172. *Id.* at 636.

173. *Id.* at 644–51.

174. *Id.*

175. See, e.g., Alfieri, *supra* note 134; Clark D. Cunningham, *A Tale of Two Clients: Thinking about Law as a Language*, 87 MICH. L. REV. 2459 (1989); Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533 (1992); Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984).

176. Buchanan, *supra* note 18, at 1026.

attorney in particular.¹⁷⁷ The question of whether the client ultimately prevails in the legal matter is, like the attorney, secondary to that moment of rebellious discourse.¹⁷⁸

This wave of scholarship, as exemplified by White and Alfieri, appears at first glance to be abstract and theoretical.¹⁷⁹ It is heavily informed by postmodern and linguistic theories, as filtered through the legal academy, and the authors' narratives and goals appear largely unconcerned with structural or even individual change for clients.¹⁸⁰

A closer examination, however, shows that this wave of scholarship—like the “first wave” or “old” scholarship—is fundamentally concerned with practice. It is true that the seminal texts seek to bring theory to bear on one specific aspect of client representation; nonetheless, they are situated firmly in the dynamics of power between a practitioner, a client, and an adversary.¹⁸¹ Regardless of the theories or paradigms they bring to bear on their experiences, these insights are firmly situated within their direct representation of clients.¹⁸² Moreover, the “new” scholarship is in many ways the spiritual heir to the “old” scholarship.¹⁸³ Where the Cahns and Wexler argued that lawyers should yield power to community groups¹⁸⁴ or to a loosely organized segment of the community,¹⁸⁵ the “new” scholars argue forcefully that lawyers can and should best serve low-income individuals by yielding the floor to individual clients.¹⁸⁶

Like the authors of the first wave of scholarship, the second wave authors are practitioners and clinicians and thus would not have seen Tabitha until she had a “legal” problem.¹⁸⁷ While these scholars clearly understood the systemic nature of the problems their clients faced,¹⁸⁸ they were primarily concerned with their

177. White, *supra* note 18, at 46–51; Alfieri, *supra* note 18, at 651. I use the word “her” advisedly here.

178. Mrs. G. lost the fair hearing where she cited “Sunday shoes” as necessities, although the county welfare director subsequently withdrew the claim and paid her the money without explanation. White, *supra* note 18, at 32. Mrs. V. got retroactive benefits to the time of her baby’s birth, but she did not get paid back for the significant out of pocket expenses that she had incurred. The result is so secondary to Alfieri’s argument and interests that it is relegated to a footnote. Alfieri, *supra* note 18 n.128.

179. See generally Alfieri, *supra* note 18; White, *supra* note 18.

180. See generally Alfieri, *supra* note 18; White, *supra* note 18.

181. Alfieri, *supra* note 18, at 627–37; White, *supra* note 18 at 33–59.

182. Alfieri, *supra* note 18, at 642–42; White, *supra* note 18, at 22–32. It is of note that Ascanio Piomelli, in defending this wave of scholarship against the critiques discussed in Section C, *infra*, adopted explicitly utilitarian and practical arguments, stating with approval that “the critics hone in on the most important test: whether our theories of lawyering, when put into practice, will effectively challenge institutional or structural power” and that “[f]or a literature designed to guide the activist wing of an instrumental profession, it is the right question to pose.” Piomelli, *supra* note 11, at 457.

183. See, e.g., Blasi, *supra* note 11, at 1086; Simon, *supra* note 18, at 1104.

184. Cahn, *Justice*, *supra* note 16, at 937–38.

185. Wexler, *supra* note 16, at 1057–58.

186. White, *supra* note 18, at 33–59; Alfieri, *supra* note 18, at 644–53.

187. White, *supra* note 18, at 22; Alfieri, *supra* note 18, at 637; Cahn, *Civilian*, *supra* note 16, at 1335; Wexler, *supra* note 16, at 1055.

188. White, *supra* note 18, at 23; Alfieri, *supra* note 18, at n.100.

clients' immediate needs—and within that, they were concerned with the dialectics and power structures of the competing narratives which they and their clients told.¹⁸⁹ This group of scholar-practitioners would have considered whether the story they shaped for Tabitha served her immediate material needs at the expense of casting her as dependent or otherwise “less than,” and what the effects of that would be on her.¹⁹⁰ What they would not have done is to use this individual case as a springboard to examine the way in which the various systems identified here act in concert to oppress people in Tabitha's circumstances, and then to use those observations to inform not only their own practice, but scholarship and policy at large.

C. Rebellious Against the Rebellious Lawyer: A Third Tide Emerges

The second wave of scholarship almost immediately attracted critiques, including from those who generally supported its goals and paradigms.¹⁹¹ If this is not a completely distinct wave of poverty law scholarship, it is at the very least a powerful and opposing undercurrent.

At one end of this spectrum, Cathy Lesser Mansfield narrowly critiqued this strand of scholarship from a practitioner's standpoint.¹⁹² Although she acknowledged that client stories are important and can be powerful, she argued that the reconstructive theoretics of practice completely missed the point of legal practice.¹⁹³ In defending a traditional view and practice of poverty law, Mansfield argued that it was a mistake to forget *why* clients tell attorneys their stories.¹⁹⁴ She further maintained that attorneys who believed that they “ha[d] the privilege of hearing clients' stories for a greater purpose than to achieve legal results, and therefore . . . [became] caretakers of or conduits for uninterpreted and unabridged client story, aggrandize[d] and yet eviscerate[d] the role of the poverty lawyer[.]”¹⁹⁵

Mansfield's argument for “traditional practice,”¹⁹⁶ however, takes us back to the most narrow conception of poverty law: the technical understanding of statutes, regulations, and a body of law which particularly affect low-income

189. White, *supra* note 18, at 33–59; Alfieri, *supra* note 18, at 644–53.

190. White, *supra* note 18, at 45; Alfieri, *supra* note 18, at 622.

191. One of the earliest critiques was that by Joel Handler. Joel F. Handler, *Postmodernism, Protest, and the New Social Movements*, 26 LAW & SOC'Y REV. 697 (1992) (characterizing the postmodern school exemplified by White and others as overly pessimistic and insufficiently collectivist to bring about systemic change). See generally Blasi, *supra* note 11; Simon, *supra* note 18; Mansfield, *supra* note 22.

192. Mansfield, *supra* note 22, at 893 (“application of a theory of poverty law such as the one conceived by the theoretics of practice movement fails to take into consideration certain realities of poverty law practice; derives from a singular, romanticized view of the poor; and actually may frustrate client goals by eviscerating the *raison d'être* of the attorney-client relationship”) (citation omitted).

193. *Id.* at 896.

194. *Id.*

195. *Id.*

196. *Id.* at 895.

individuals.¹⁹⁷ While her understanding of the need for individual results and of the demands of direct service¹⁹⁸ is an important part of this discussion, this conception of poverty law does not and cannot situate law and poverty in any context larger than one single client's requirements. It does not and cannot acknowledge the importance of rebellious lawyering, or the reasons why this paradigm arose, or the reasons why clients' voices must be heard. Indeed, Mansfield's critique is so broad that to heed it fully would roll back several of the client- and community-centered arguments which the "old" writers made.¹⁹⁹

In a more comprehensive and sympathetic comparison of the "old" and "new" poverty law scholarship, Gary Blasi noted that the "new" scholarship made several of the same points as "old" scholarship, though from a different standpoint.²⁰⁰ He further characterized the "new" scholarship as being comprised of two distinct strands of research and writing: one by academics, which Blasi criticized as "too narrowly focus[ed] on the individual lawyer/client microworld," and a separate one by law school clinicians, which he characterized as "not yet [having] progressed to analyses that transcend local experience."²⁰¹ While both types of the "new scholarship" depend heavily on narratives, Blasi differentiated between the types of narratives prioritized and argued that neither is sufficient in isolation.²⁰² He singled out Barbara Bezdek's article, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, for praise within the new scholarship, noting that she not only discussed the silencing of Black women in housing court, but connected that to larger narratives.²⁰³ However, Blasi also bemoaned the new poverty law scholarship which "would find [this article] the suitable end of a project, rather than the beginning."²⁰⁴

197. *Id.* at 895. Mansfield glosses over the power of storytelling by means of an anecdote about her failure to use a Navajo client's story in court. On the one hand, she admits that her failure to present his understanding of the events was "[c]onstrained by [her] narrow and traditional interpretation of the word 'evicted'" and that if she had "been willing to consider the usability of [her] client's interpretations in advocacy, [she] might have been able to handle the case in a way that would have been more beneficial to [her] client." *Id.* at 901. On the other hand, however, she considers it "likely" that this argument "might have failed in the face of the court's technical definition of 'eviction[.]'" *Id.* at 901–02. But this underscores the limitations of Mansfield's traditionalist stance; granted that explaining this *might have* failed, but it also *might have* allowed the judge to understand and account for the power differential between her client and his landlord.

198. *Id.* at 901–02, n.27.

199. *Id.* at n.27; *see also* Cahn, *Civilian*, *supra* note 16, at 1329–30; Wexler, *supra* note 16, at 1053–54, 1063–66; Cahn, *Justice*, *supra* note 16, at 938–39.

200. Blasi, *supra* note 11, at 1086–87, 1096.

201. *Id.* at 1087–88.

202. *Id.* at 1096 (proposing that scholars broaden their perspectives to include the insights of legal services attorneys and low-income individuals and use those insights to make sense of larger practice issues).

203. *Id.* at 1091–92.

204. *Id.* at 1092.

Blasi's proposed solution was to use scholarship as "a functional substitute for [the] rare and limited conversations" which poverty law practitioners were and are occasionally able to carry out.²⁰⁵ He envisaged a scholarship which would both stem from practitioners' insights and serve those same practitioners, as scholars "might be engaged in practice with both lawyer/advocates and poor people" and "unearth the past . . . and then communicate it back to others who can make some use of the understanding."²⁰⁶ While Blasi's vision for poverty law scholarship is broader and less centered on individual clients than Mansfield's vision is, he nonetheless assumes that the ultimate goal and aim for this field is to assist practitioners.²⁰⁷

William Simon recognized the limits of the "second wave" scholarship in his 1994 discussion of what he called "progressive lawyering."²⁰⁸ Simon traced the lineage of poverty law scholarship from Wexler to Gary Bellow to contemporary writing and pointed out that the attorneys' goals and ambitions had shrunk over time.²⁰⁹ Simon contrasted Wexler's advocacy for collective action in order to change a fundamentally unfair system, with Bellow's argument that the attorneys should aggregate small individual lawsuits in order to encourage collective action and ameliorate those specific problems.²¹⁰ Simon further contrasted Bellow's call for collective empowerment in service of some degree of large scale change with the scholarship of the rebellious lawyers of the late 80s and early 90s, who argued for individual empowerment in the service of benefits that were "often as much psychological as they were material."²¹¹

Simon specified that he admired the "poverty law practice" scholarship of the period and appreciated that it was "mak[ing] substantial progress towards the goal of bringing theory to bear on practice . . . informed by concrete knowledge of the texture of practice."²¹² However, he also pointed out that "[a]t each stage in this remarkable evolution, the concern with lawyer oppression of clients has increased, while the scale of material and organizational ambitions has declined."²¹³ Simon argued that this was due in large part to the current national hostility towards low-income individuals and their attorneys and the difficulties of being a poverty lawyer during that period.²¹⁴

205. *Id.* at 1096.

206. *Id.*

207. *Id.*

208. Simon, *supra* note 18.

209. *Id.*

210. Wexler, *supra* note 16, at 1053.

211. Simon, *supra* note 18, at 1100.

212. *Id.*

213. *Id.*

214. *Id.* While Simon does not explicitly connect these two things, it seems at least suggestive that the sphere of poverty lawyers' concerns shrunk as our national narrative about poverty coalesced around "personal responsibility" rather than around societal and structural failings. See, e.g., Nick Burns, *Welfare Queens and Work Requirements: The Power of Narrative and Counter-Narrative*, 10 TENN. J. RACE, GENDER, & SOC. JUST. 1 (2020).

Simon identified three primary problems with the new poverty law scholarship, all of which spoke directly to the practice of law and representation of low-income individuals.²¹⁵ First, he pointed out the impossibility of finding a useful role for the attorney without carrying out what the new literature would consider oppression.²¹⁶ Second, he argued that not all attorney power consists of depression and alienation.²¹⁷ And finally, Simon noted that the mantra of “organizing” as the panacea for low-income people simply did not take into account the inherent difficulty of group representation.²¹⁸ How would the attorney resolve any conflicts without inserting his or her values and norms?²¹⁹ How could the attorney select clients while remaining completely neutral and objective?²²⁰

Like the critiques levied by Mansfield and Blasi, Simon’s articulated concerns are deeply practical in nature. His critique rests on two assumptions: first, that poverty law scholarship is of value only insofar as it enhances the goals and interests of low-income clients; and secondly, that even the most abstruse poverty law scholarship is inextricably linked to the practice of poverty law.²²¹

Comparing the second wave scholarship of this period with the critiques of that scholarship shows that they are essentially aligned in their goal: to expound and expand on theories that would explicitly aid poverty lawyers in their practices and, ultimately, assist low-income individuals.²²² The disagreement between the two camps is really one of scope. The “second wave” scholars promote client voices and narratives and argue that highlighting those voices is one of the most important services attorneys can provide to their clients.²²³ Their critics do not fundamentally disagree that scholarship in this area should serve practice,²²⁴

215. Simon, *supra* note 18, at 1104–08.

216. *Id.* at 1105.

217. *Id.* at 1106.

218. *Id.* at 1106–07, 1108.

219. *Id.* at 1103, 1111.

220. *Id.* at 1102.

221. *Id.* at 1102–11. As more fully discussed *supra*, Piomelli’s defense of the “second wave” scholars is itself grounded in their theories’ utility for practitioners. Piomelli, *supra* note 11, at 457.

222. Compare Alfieri, *supra* note 18, at 619, and White, *supra* note 18, at 52, with Mansfield, *supra* note 22, at 928, and Simon, *supra* note 18, at 1114; see Blasi, *supra* note 11, at 1087.

223. Alfieri, *supra* note 18, at 619 (“This article will address the context of poverty law and the ethical dimensions of practice in impoverished communities. My purpose is to augment the expanding body of literature rededicated to the study of poverty law by exploring the tension internal to its distinctive practice.”); White, *supra* note 18, at 52 (A primary lesson from Mrs. G’s story is that “removing formal barriers to participation is not enough in our stratified society to achieve procedural justice, even in the modest sense of enabling all persons to participate in the rituals of their self-government on an equal basis.”).

224. Simon, *supra* note 18, at 1114 (“Unfortunately, however, [the new poverty law] scholars have given less attention to the normatively more controversial issues of ethics and political economy that reveal actual and potential conflict and division among poor people. In doing so, they have tended to sentimentalize poor clients and especially poor ‘communities,’ to ignore the legitimate ethical claims of lawyers to influence their work, and to underestimate the difficulties of collective practice.”); Blasi, *supra* note 11, at 1087 (“As currently constituted, however, the ‘new poverty law scholarship’ suffers from flaws that prevent it from being of much practical consequence for poverty law practice. The critical postmodern scholarship too narrowly focuses on the individual lawyer/client microworld. It

rather, they argue that the goals of both scholarship and practice should be more ambitious.²²⁵

These scholars, therefore, would strive to look at Tabitha's situation and consider it on a larger scale than the "new" scholars would, possibly even before she had what might be considered a traditional legal problem. They would work to connect Tabitha's situation to a larger narrative, although their scholarship does not uniformly suggest that this narrative should be interdisciplinary or collective.²²⁶ Their ultimate goal, however, would not necessarily be to highlight or analyze the over-regulation of this client or the ways in which the various parts of the legal and regulatory state acted upon her. Rather, they would take their insights about *this specific case as it arose* back to their own practice and those of their colleagues in an attempt to inform and improve their individual or collective representation of low-income clients.²²⁷ They would not recognize that Tabitha's story could inform theoretical or policy role in scholarship, assuming instead that its highest and best use is to assist poverty lawyers in their practice.²²⁸

As discussed above, this wave of scholarship was supported by the Interuniversity Consortium on Poverty Law, which sought to bring together poverty law scholarship and practice.²²⁹ However, despite the close connection between theory and practice at this juncture, the Interuniversity Consortium ultimately "foundered on the difficulty of connecting theoretical work with direct client representation, and failed to articulate an empowering vision of the role of law and lawyers in social change on behalf of those clients," while also concluding that "the potential contribution of academics [in the fight against poverty] is more limited than might have been originally hoped."²³⁰ These attitudes and problems in turn arose in the context of ever more draconian restrictions on those legal services organizations which accepted federal funding,²³¹ and interest in poverty law died down again.²³²

disclaims any ambition to look for structure or explanation above the level of local narrative. Its limits are largely a product of its method: only narrative matters, and any single narrative supplies all the information we need."). The exception to this is Mansfield, who as discussed *supra*, takes a fairly traditional view of poverty law. Mansfield, *supra* note 22, at 895.

225. Mansfield, *supra* note 22, at 928; Simon, *supra* note 18, at 1114; Blasi, *supra* note 11, at 1087.

226. Blasi explicitly suggests that scholarship in this area should consist of ongoing dialogue between poverty law practitioners and scholars and that it should possibly include insights from areas such as social science and opinion polls. Blasi, *supra* note 11, at 1096. However, he does not call for collaboration among academics. *Id.* Neither Simon nor Mansfield argues for collective or collaborative scholarship, and Mansfield in particular is quite skeptical of the utility of scholarship for practitioners. *See generally* Simon, *supra* note 18; Mansfield, *supra* note 22.

227. Simon, *supra* note 18, at 1114; Blasi, *supra* note 11, at 1096.

228. *See generally* Mansfield, *supra* note 22; Simon, *supra* note 18; Blasi, *supra* note 11.

229. Davis, *supra* note 13, at 1402–03; Erlanger and Lessard, *supra* note 13 at 199–200; Davis, *supra* note 13, at 1403.

230. Davis, *supra* note 13, at 1403.

231. *Id.*; David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CAL. L. REV. 209, 221 (2003).

232. *See* Buchanan, *supra* note 17, at 1031–32; *see* Davis, *supra* note 13, at 1403–04.

D. Destroying Poverty Law in Order to Save It: The Fourth Wave

When academics again started writing about this field, fueled in part by new mechanisms for collaboration,²³³ they focused almost exclusively on pedagogy in this area—and a surprising number of them argued that the best way to teach poverty law was not to teach poverty law. For example, Martha Davis argued in 2007 that the fundamental questions underpinning poverty law were better addressed in the area of human rights law.²³⁴ This was in part a consumer-driven position, as she posited that “students now enter the academy yearning to prepare for international legal work, often on human rights issues, and often involving cross-cultural and interdisciplinary analyses.”²³⁵ Davis also argued that since human rights law “embrace[s] substantive rights to food, shelter, education, and other basic needs,” using this framework “opens up space in United States advocacy for a dialogue on these issues that is otherwise foreclosed by domestic law.”²³⁶

In that same year, Stephen Loffredo argued that poverty law should be an integral part of constitutional law courses.²³⁷ He acknowledged that questions and concerns about poverty and economic inequality had “faded from the constitutional law curriculum and from active scholarly review” and that it seemed “that each year the major constitutional law casebooks devote[d] fewer pages and less attention to the constitutional status of poverty and economic inequality.”²³⁸ Loffredo further acknowledged that the majority of students would never litigate a constitutional law issue and therefore suggested that the better justification for a constitutional law class was to “train . . . students not only as technical practitioners but also as ‘lawyer-citizens,’ many of whom will assume positions of public power and responsibility.”²³⁹ He believed that constitutional law classes were the “natural and indispensable venue for this broader training” and that the arguments for folding questions of poverty and economic justice into this area were “unanswerable.”²⁴⁰

Ten years later, Vaneeta Saleema Snow argued that the “justice gap,” which left many low-income individuals without attorneys, required that law schools integrate poverty law into individual substantive law classes.²⁴¹ Although Snow said she was defining poverty law “in its broadest context” and acknowledged the influence of societal factors on poverty and opportunity, she nonetheless brought her “broad” definition back to the nuts and bolts of practice:

233. Davis, *supra* note 13, at 1405.

234. *Id.* at 1395.

235. *Id.* at 1406.

236. *Id.* at 1408.

237. See generally Loffredo, *supra* note 19.

238. *Id.* at 1243.

239. *Id.* at 1248–49.

240. *Id.* at 1248.

241. Snow, *supra* note 13, at 646.

[Poverty law] is legal representation and advocacy that addresses those impediments to low-income individuals, families, or communities being able to capitalize on financial opportunities. Poverty lawyers seek to uphold the human rights and dignity of people living in poverty, including the right to healthy food, habitable and affordable housing, property ownership, clean air, safe communities, accessible transportation, and meaningful access to the justice system. My definition also includes any area of law that touches the lives of individuals living in poverty.²⁴²

Snow noted correctly that low-income clients generally present with a multiplicity of legal issues, all of which affect each other, and that this requires poverty lawyers to understand and research a large breadth of substantive legal areas in order to effectively represent that client.²⁴³ She also argued persuasively that learning to identify and address these various legal issues would help students gain the issue-spotting competencies which the ABA has mandated and which the bar exam tests.²⁴⁴ However, having identified this as a valuable and necessary skill, Snow goes on to propose that poverty law be taught in the context of individual courses rather than in a unified way which helps students (and ultimately attorneys) understand and challenge the broader intricacies and interlocking laws and policies that act on low-income individuals.²⁴⁵ In particular, she argues that this would help teach the specific competencies expected of law students and prepare and encourage attorneys to perform pro bono work.²⁴⁶

Two things stand out about this period of poverty law scholarship. First, it is exclusively focused on practice and pedagogy. Secondly, even within those realms it has no room for a broader consideration of poverty and law; in every instance the question of poverty is folded into some other area of inquiry. Certainly, addressing poverty in law school at all is a necessary starting point for a scholarly inquiry or discussion of the broader societal issues which poverty brings with it. However, incorporating poverty into individual courses simply gives students an opportunity to consider how poverty plays into *that specific set of rights and laws*. While this may raise students' awareness of the way the law treats poverty in these areas, and while it may encourage pro bono,²⁴⁷ this approach does not

242. *Id.* at 652.

243. *Id.* at 669–71.

244. *Id.* at 689, nn.28–29.

245. *Id.* at 685–86.

246. *Id.* at 646, 664–65, 692, 697–98. However, Snow never fully reconciles her acknowledgement that poverty law attorneys must acquire experience in multiple areas of law and nonlegal bureaucracies with her suggestion that pro bono attorneys can be a meaningful source of representation for low-income individuals.

247. *But see* Scott L. Cummings & Rebecca L. Sandefur, *Beyond the Numbers: What We Know—And Should Know—About American Pro Bono*, 7 HARV. L. & POL'Y REV. 83 (2013) (surveying literature about pro bono, including questions about its efficacy and quality). Cummings and Sandefur specifically

ultimately encourage challenging—rather than just knowing—the law.²⁴⁸

Davis's proposal is more promising in that regard, in that she argues that viewing poverty law through a human rights lens would allow for a broader understanding of and dialogue about poverty.²⁴⁹ She also argues that while such a shift would not be helpful in American litigation, it could bring about a shift in public policy which would ultimately be more successful at ameliorating poverty.²⁵⁰ However, this approach also relegates poverty law to specific silos within this larger framework (for example, Davis singles out San Francisco's use of CEDAW to consider the way in which it serves women),²⁵¹ and her market-based argument leaves both poverty law and human rights law at the mercy of firms', students', and law schools' changing beliefs and priorities.²⁵² While legal pedagogy has an important place in poverty law, this strand of scholarship is therefore lacking in that it does not fully articulate the ways in which this approach will either inform a systemic understanding of poverty law or usefully inform practice.

These scholars' approach to Tabitha's case would at once be more and less broad than those of the previous waves. They would certainly use their knowledge of their specialized fields to situate her particular circumstances within a larger context, and they would likely do so before she had a "legal problem."²⁵³ In that sense, these scholars would take a larger and contextualized look at Tabitha's case, considering it as part of a larger set or system of laws rather than as an individual case or set of circumstances.²⁵⁴ Moreover, moving this inquiry from the office to the classroom in itself makes it a part of a more wide-ranging and perhaps a more mainstream discussion of the interaction between the law and poverty.

At the same time, however, these scholars would in effect pluck poverty law from the silo of practice only to silo it in their individual areas of expertise within the academy.²⁵⁵ Filtering this inquiry through constitutional law or property law, as Loffredo and Snow suggest,²⁵⁶ would help students understand how due process rights or property rights affect and perpetuate poverty.²⁵⁷ This would not, however, spark an interdisciplinary understanding or discussion of the systems which perpetuate and cause poverty. It would not foster or require cross-disciplinary examination of these systems, nor would it help students or scholars see the interconnection between these bodies of law. So while Loffredo might exhort his

note that there is little proof that exposure to pro bono as a value in law school encourages attorneys to carry out pro bono work. *Id.* at 93–94.

248. See Snow, *supra* note 13, at 673.

249. Davis, *supra* note 13, at 1408.

250. *Id.* at 1408–09.

251. *Id.* at 1409.

252. *Id.* at 1406.

253. See generally Davis, *supra* note 13; Loffredo, *supra* note 19; Snow, *supra* note 13.

254. See generally Davis, *supra* note 13; Loffredo, *supra* note 19; Snow, *supra* note 13.

255. See generally Davis, *supra* note 13; Loffredo, *supra* note 19; Snow, *supra* note 13.

256. See Loffredo, *supra* note 19; see Snow, *supra* note 13.

257. See Loffredo, *supra* note 19; see Snow, *supra* note 13.

Constitutional Law students to consider the due process to which Tabitha is entitled before losing any of her benefits, and while Snow would ensure that a graduate knew that this client is entitled to a safe and habitable home,²⁵⁸ the ultimate outcome would be that these students were equipped to issue-spot in very specific areas of law within very specific settings.²⁵⁹

Davis's proposal to situate poverty law within human rights law is perhaps the most promising in that it could possibly locate a spectrum of laws within another spectrum of laws, rather than a single discrete area.²⁶⁰ She also argues that marrying poverty law and human rights law would equip students to make policy arguments for substantive change within the American systems of justice and distribution.²⁶¹ Unlike any of the other scholarship around poverty law, this would force a big-picture examination of Tabitha's relationship to specific bodies of law and how she is regulated by them.²⁶² However, as Davis herself admits, this approach does not lend itself to litigation in the American system or to immediate change.²⁶³ While the type of policy shift she discusses is important, creative, and necessary, it is not equipped to either learn from or inform poverty law as it is currently constituted in the United States.²⁶⁴ Moreover, Davis's arguments, like those of Loffredo and Snow, are focused squarely on legal education and pedagogy rather than scholarship.²⁶⁵ While this approach may ultimately foster a searching consideration of the entire constellation of laws governing and regulating low-income people, it is not suited to bridge the gap from pedagogy to theory to practice.

E. ClassCrits: A Separate Track of Inquiry

Although the ClassCrits began their work at approximately the same time as the third wave of poverty scholarship, and although they explicitly set out to consider socioeconomic status as an intersectional characteristic, their work stands separate and apart from poverty law scholarship. Despite this, it has much to add to this discussion.

258. Loffredo, *supra* note 19, at 1240; Snow, *supra* note 13, at 685–99. While Snow suggests that students should be presented with poverty law hypotheticals that require them to spot multiple issues, she does not explain how precisely the law schools would equip the students to do so. For example, as she correctly notes, a legal problem which presents as a landlord-tenant issue could easily implicate federal housing regulations and also state and federal public benefits regulations. Is the Property Law professor to assume that all students are currently taking an administrative law course which has covered the primary regulations governing low-income individuals? Is the professor expected to have the wherewithal to cover these areas under the aegis of property? Snow, *supra* note 13, at 699, 669–71. The idea is excellent from a pedagogical, social justice, and bar preparation point of view, but the specifics are unclear.

259. Loffredo, *supra* note 19, at 1248–49; Snow, *supra* note 13, at 668–85.

260. See Davis, *supra* note 13.

261. *Id.*

262. *Id.* at 1407–08.

263. *Id.* at 1408–09.

264. See *id.*

265. *Id.*

Like the “new” scholarship of the 1990’s, the rise of the ClassCrit movement and literature was informed by critical legal studies and its progeny: critical race theory, critical feminist theory, LatCrit, and queer theory.²⁶⁶ The ClassCrits also explicitly folded class into the concept of intersectionality: the understanding first articulated by Kimberlé Crenshaw that people who identify with two or more vulnerable groups will be disadvantaged in multiple ways, based on both or all those identities.²⁶⁷

At the inaugural ClassCrit workshops in 2007, a group of progressive legal scholars gathered to “‘foreground economics in progressive jurisprudence and to reconsider longstanding assumptions and approaches in legal scholarship and practice’ around economic issues.”²⁶⁸ This project was explicitly conceived in order to “develop an alternative to the predominant discussions of ‘law and economics’ grounded in neoclassical economic theory and its denial of ‘class.’”²⁶⁹ The participants began their discussions and analyses with a set of shared assumptions and understandings; perhaps most central to this work are (1) that law not only mediates between different actors but “shap[es], defin[es], and structure[es] social groups—framing people’s understandings, identity and actions—and the relations between them”²⁷⁰ and (2) that the law comes from hidden political choices, although it uses objective language and its own distinctive discourse both to mask these choices and to confer an “air of legitimacy” on the law and on the institutions it serves.²⁷¹

Similarly, these scholars understood “the market” in a fundamentally different way from those promulgating “law and economics”—not as a reified independent phenomenon but as a product of political, social, and individual choices.²⁷² Just as with the law itself, these choices are both hidden and legitimated by the law which structures, organizes, and regulates “the market.”²⁷³

The initial organizers also discussed the need to deconstruct the false notion of “class-blindness” as well as gender and color blindness.²⁷⁴ They noted five primary problems with these formulations. First, although these principles were intended to encourage equality, they have been “practiced and interpreted . . . to render law blind to the structured nature of inequality historically constructed.”²⁷⁵ Second, they “reinforce . . . assimilation to the . . . privileged norms of maleness, whiteness, and wealth or middle-classness.”²⁷⁶ Third, they complicate efforts to redress inequality and subordination because they promulgate the idea that the

266. Mutua, *supra* note 20, at 865; *cf.* White, *supra* note 18, at 4; Alfieri, *supra* note 18, at 635.

267. Crenshaw, *supra* note 159; Mutua, *supra* note 20, at 907–10.

268. Mutua, *supra* note 20, at 860.

269. *Id.* at 860–61.

270. *Id.* at 866.

271. *Id.*

272. *Id.* at 867–68.

273. *Id.* at 868.

274. *Id.* at 870–71.

275. *Id.* at 871.

276. *Id.*

subordinated “are getting something extra or asking for something more than those who are privileged.”²⁷⁷ Fourth, when group inequalities are noticed, “this inequality is then portrayed as natural,” arising out of personal characteristics and choices.²⁷⁸ And finally, this discourse generally does not acknowledge the “power, privilege, and actions of the privileged group.”²⁷⁹ These beliefs and understandings underpinned the group’s goals and its scholarship moving forward.²⁸⁰

Mutua laid bare the areas where the scholars disagreed about the shape and scope of the project,²⁸¹ but she also set forth the areas of broad agreement. These included a commitment to exploring the ways in which “economic power controls people and the market, and distorts the market and the state.”²⁸² The group agreed that its work must be interdisciplinary; it should include the work of progressive economists but must also be related to fields of study including “history, politics, culture, language [and] narrative.”²⁸³ As part of its commitment to praxis,²⁸⁴ the group also agreed that its analysis “should be informed by the actual practice and social justice efforts occurring throughout the country” and that “some portion of their written work [should be] accessible to the general public.”²⁸⁵

One of the group’s final agreements was that their work “should go beyond poverty.”²⁸⁶ The workshop attendees agreed that studying law and economic inequality “was not simply about the study of law and poverty or the poor.”²⁸⁷ The group was clear that it was concerned about economically disadvantaged individuals and committed to studying poverty.²⁸⁸ However, the group determined that its interest was in economic inequality writ large—the ways in which law helps the privileged as well as the ways in which it disadvantages others.²⁸⁹

The work of the ClassCrits is groundbreaking, but it remains theoretical legal scholarship.²⁹⁰ This is another point of divergence between the “second wave” of scholarship and the ClassCrits. The “second wave” scholars used critical theory

277. *Id.* at 872.

278. *Id.*

279. *Id.*

280. *Id.* at 870–71.

281. *Id.* at 892–95.

282. *Id.* at 897.

283. *Id.* at 899.

284. Praxis has been defined as “transcend[ing] the theory and practice dichotomy” by allowing an ongoing dialogue and feedback between personal experience and the theories that spring from that initial experience and are refined due to later and ongoing experiences. Buchanan, *supra* note 17, at n.140 (citing Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women’s Movement*, 61 N.Y.U. L. REV. 589, 602 (1986)).

285. *Id.* at 899. *But cf.* Wendy A. Bach & Lucy Jewel, *Classcrits VIII: New Spaces for Collaboration and Contemplation*, 45 SW. L. REV. 779, 781–83 (2016) (acknowledging initial failure during planning to meaningfully engage with the community).

286. Mutua, *supra* note 20, at 899.

287. *Id.* at 900.

288. *Id.*

289. *Id.*

290. Harris, *supra* note 21, at 632–33.

as the lens of a microscope, focusing on the interactions and narratives that drive the attorney-client relationship;²⁹¹ the ClassCrits, however, have fashioned a telescope lens out of that same theory, training it on the broader economic and political forces at play. Although one of the ClassCrits' stated aims was to work with activists,²⁹² these groups do not appear to have been brought into the conversation in any serious way until 2015—and even then as a second thought.²⁹³ Despite the group's stated emphasis on praxis, until 2016 the group's output consisted solely of what Angela Harris called “diagnosis, the hallmark of the critical legal tradition.”²⁹⁴

In 2015, the annual symposium contained a single paper which suggested a solution to an economic problem.²⁹⁵ In that paper, Elizabeth Carter suggested that low-income communities should work with rebellious lawyers to construct alternative economies;²⁹⁶ Harris referred to this as “an important new direction for ClassCrits” and “a . . . companion project, the pursuit of economic justice” which “open[ed] up new possibilities for the pursuit of economic justice outside elite-driven spaces.”²⁹⁷ Harris contrasted this with the overall mission of the ClassCrits:

ClassCrits scholars hope to get students, and ultimately the next generation of American lawyers, to see that the political and the economic are not two different realms subject to wholly different rules of governance. Rather, they are intimately intertwined with one another, and both are created and maintained by law. Several of the papers in this Symposium pursue this pedagogical agenda, continuing to point out that the emperor has no clothes.²⁹⁸

If other families of poverty law scholarship lack a broad analytic vision, the ClassCrits make up for that. However, the work of these scholars has not made a successful leap from the academy to praxis or to practice, nor is it grounded in the experiences of low-income individuals in particular. Their insights as to the intersectional nature of class, as well as their broad systemic view of economic and

291. See generally Alfieri, *supra* note 18; White, *supra* note 18; Blasi, *supra* note 11.

292. Mutua, *supra* note 20, at 899; Desautels-Stein, *supra* note 20, at 652.

293. Bach & Jewel, *supra* note 285, at 779, 781–83.

294. Harris, *supra* note 21, at 632–33.

295. Elizabeth L. Carter, *Community Planning, Sharing Law and the Creation of Intentional Communities: Promoting Alternative Economies and Economic Self-Sufficiency Among Low-Income Communities*, 44 SW. L. REV. 669 (2015).

296. *Id.* at 676, 679–84. This particular proposal has strong echoes of the Cahns' proposal that neighborhoods should be run to some degree by informal grass-roots institutions, as well as Edgar Cahn's later proposal for “time dollars” as a medium of exchange. Cahn, *Justice*, *supra* note 16, at 950–54; Cahn, *supra* note 108, at 2137–44.

297. Harris, *supra* note 21, at 633–34.

298. *Id.* at 634.

political forces, therefore remain to be fully realized in the study and practice of poverty law.

Of all the movements and schools working with and around poverty law, the ClassCrits are the most apt to look at Tabitha's circumstances and analyze the systems and policy choices which conspire to keep her poor and insecure. Their emphasis on political economy also gives this group of scholars the wherewithal to discuss the interlocking nature of the laws which are designed to regulate her actions and situation. However, their analysis is not explicitly grounded in or informed by her lived experience, nor is it overtly intended to propose or fuel policy or practical changes which would assist low-income people or those who work with them.²⁹⁹ The ClassCrits have made up for the earlier waves' lack of systemic analysis, but they have not as of yet been able to bring this analysis to bear on the practice of poverty law.

F. To Sum It All Up

If poverty law has been a topic of study for two generations in human years,³⁰⁰ it has spanned five generations in scholarship years. The first four generations—the “old” scholarship of the early practitioners, the “new” critical or rebellious lawyers, the scholars who critiqued them, and the academics who followed that wave of scholarship—all focused on representing low-income individuals. Their priorities differed; while both the “old” and “new” scholarship emphasized client empowerment, the “old” scholarship stressed direct action and client organizing.³⁰¹ By contrast, the “new” scholarship focused on the interactions between client and lawyer, honing in on the ways in which lawyers did (and whether they should) control their clients' narratives and voices.³⁰²

The third wave of scholarship reacted to the “new” scholarship by critiquing the paucity of its ambitions, questioning the efficacy of representation which so heavily prioritized client narrative over client results, and querying whether there was really a role for attorneys in this paradigm.³⁰³ Like the prior scholarship, its ultimate goal was to identify and deploy the best possible ways to represent low-income people. It is therefore ironic that this wave of scholarship ultimately halted *because* of the difficulty connecting scholarship to practice.³⁰⁴

The fourth wave of scholarship is nominally focused on the pedagogy of poverty law, but ultimately its goals are practical. It seeks to educate and train a new generation of law students who are excited about helping low-income individuals

299. Mutua, *supra* note 20, at 899–900.

300. *Generation*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/generation> (last visited Nov. 9, 2023) (defining a generation as generally 25–30 years).

301. *See generally* Cahn, *Civilian Perspective*, *supra* note 16; Cahn, *Justice*, *supra* note 16; Wexler, *supra* note 16.

302. *See generally* White, *supra* note 18; Alfieri, *supra* note 18; López, *supra* note 175.

303. *See generally* Blasi, *supra* note 11; Simon, *supra* note 18; Mansfield, *supra* note 22; Handler, *supra* note 191.

304. Davis, *supra* note 13, at 1403.

(even if that means teaching them something other than poverty law); who will seek creative solutions; who will be good citizens of the legal and broader communities; and who have a firm understanding of the importance of pro bono work.³⁰⁵

The ClassCrit movement, which I am here considering the fifth generation of poverty law scholarship,³⁰⁶ is the mirror image of the prior generations. Where those generations were highly practice-oriented, this scholarship is analytical and theoretical. Even the second wave of scholarship, which has common roots in the Critical Legal Studies movement and its heirs, was focused on how to bring those insights to practice.³⁰⁷ The ClassCrits' mission, by contrast, is to analyze and use those insights to broadly deconstruct the American political and economic system, exposing the ways in which it creates and perpetuates divisions based on class, race, gender, and ethnicity.³⁰⁸ While one of the movement's original goals was to use relationships with community organizations as an opportunity both to learn and teach, as of this writing this had not come to fruition,³⁰⁹ and the founders of the movement consider specific structural and prescriptive proposals to be a related but separate discipline.³¹⁰

There has therefore been no body of scholarship which has explicitly set out to inform policy, scholarship, and practice by analyzing the intersections of the legal, regulatory, and administrative systems which form layers of regulation on the lives of low-income individuals. I here propose such a field: Systems of Poverty.

IV. SYSTEMS OF POVERTY

A. What Is Systems of Poverty?

This approach is both ambitious and collaborative. The first area of inquiry must be simply mapping the multiplicity of systems which act on or disproportionately affect low-income individuals under the color or threat of law. A partial list of these includes an alphabet soup of federal agencies—SSA,³¹¹ the IRS,³¹² HUD,³¹³ HHS³¹⁴—and their state counterparts (in New York these might include

305. See generally *id.*; Snow, *supra* note 13; Loffredo, *supra* note 19.

306. See generally Mutua, *supra* note 20; Desautels-Stein, *supra* note 20. I must add here the caveat that the ClassCrits' stated and actual interests in political economy go beyond the ways in which the law affects low-income individuals, and I do not want to present their vision as unduly limited. Mutua, *supra* note 20, at 899. However, the fact remains that the ClassCrits' unique attention to class of necessity includes considerations of the law and its structures as they affect low-income individuals.

307. See generally White, *supra* note 18; Alfieri, *supra* note 18; López, *supra* note 175; Blasi, *supra* note 11; Simon, *supra* note 18; Piomelli, *supra* note 11.

308. See generally Mutua, *supra* note 20; Desautels-Stein, *supra* note 20.

309. Bach & Jewel, *supra* note 285, at 779, 781–83.

310. Harris, *supra* note 21, at 633–34.

311. The Social Security Administration.

312. The Internal Revenue Service.

313. Housing and Urban Development.

314. The Department of Health and Human Services.

the DOH,³¹⁵ the DMV,³¹⁶ OTDA,³¹⁷ SSP,³¹⁸ CPS,³¹⁹ and DSS³²⁰) as well as more abstract systems such as the housing market, payday loan companies, rent-to-own companies, and the laws that regulate them.

It is not enough, as many have done, to consider the inadequacy of the social safety net alone and to propose ways in which it could be better.³²¹ It is not enough to consider the adequacy of tenant protections (which of course vary dramatically among states)³²² in a vacuum, or to consider whether a civil right to counsel would help those who are being evicted.³²³ It is not enough to look at a single puzzle

315. The Department of Health.

316. The Department of Motor Vehicles.

317. The Office of Temporary and Disability Assistance.

318. State Supplement Program. This is the agency which, under the broad umbrella of OTDA, is responsible for paying the state supplemental to recipients of SSI. “New York State Supplement Program,” <https://otda.ny.gov/programs/ssp/#overview> (last visited Nov. 9, 2023).

319. Child Protective Services.

320. The Department of Social Services.

321. I want to emphasize that excellent and important work has been and is being done in this area, including discussions of areas such as bankruptcy, pandemic protections, and the unremunerated labor of women as integral parts of the social safety net. *See, e.g.*, Leanne Fuith & Susan Trombley, *COVID-19 and the Caregiving Crisis: The Rights of Our Nation’s Social Safety Net and a Doorway to Reform*, 11 U. MIA. RACE & SOC. JUST. L. J. REV. 159 (2021) (arguing that the pandemic highlighted the reliance of the United States on women as caregivers in lieu of a social safety net and suggesting structural reforms to better support caregivers); Frank Munger, *Beyond Welfare Reform: Can We Build a Local Welfare State*, 44 SANTA CLARA L. REV. 999 (2004) (arguing in the wake of the “welfare reform” of the mid-90s that local communities and alliances should find ways to take over the functions served by the federal welfare programs and offering some examples); Richard J. Manski et al., *Medicaid, Managed Care, and America’s Health Safety Net*, 25 J.L. MED. & ETHICS 30 (1997) (arguing that the managed care structures which were developed in a fee for service medical model are not appropriate for Medicaid and that the policy must be overhauled in general); Catherine R. Albiston & Catherine L. Fisk, *Precarious Work and Precarious Welfare: How the Pandemic Reveals Fundamental Flaws of the U.S. Social Safety Net*, 42 BERKELEY J. EMP. & LAB. L. 257 (2021) (discussing the inherent problems with tying aspects of the social safety net to employment and arguing for specific changes to ameliorate these problems); Jaclyn Tweedy, *Social Insecurity: A Proposal to Reform the United States Social Security Retirement System*, 28 IND. INT’L & COMP. L. REV. 129 (2018) (suggesting alternative models for Social Security retirement in the face of the Social Security fund’s approaching insolvency). My argument here is not that this scholarship is deficient, but rather that these specific issues are best considered in tandem, not in isolation.

322. *See, e.g.*, Lee Harris, *Judging Tenant Protections: The Evidence from Enforcement of Landlord Penalties*, 42 U. MEM. L. REV. 149 (2011) (reviewing specified tenant protections in Connecticut and determining that they do not significantly assist tenants or disadvantage landlords); Andrea J. Boyack, *Responsible Devolution of Affordable Housing*, 46 FORDHAM URB. L. J. 1183 (2019) (reviewing federal housing policy in light of the affordable housing crisis and suggesting specific federal interventions which might help); Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants’ Rights*, 27 GEO. J. ON POVERTY L. & POL’Y 97 (2019) (arguing that low-income people are unlikely to be able to have their substandard housing fixed because of their socioeconomic status and suggesting public, private, and market-based interventions).

323. *See, e.g.*, Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. WOMEN’S L.J. 55 (2018) (analyzing New York City’s then-new right to counsel for eviction defendants, noting its importance to Black women in particular, and discussing its impact and weaknesses); Maria Roumiantseva, *Patching the Patchwork: Moving the Civil Right to Counsel Forward with Key Data*, 36 J. C.R. & ECON. DEV. 199 (2022) (reviewing data with respect to right to counsel in civil litigation, with an eviction as a case study); Jennifer S. Prusak, *Expanding the Right to Counsel in Eviction Cases: Arguments for and Limitations of “Civil Gideon” Laws in a Post-COVID-19 World*, 36 J. C. R. & ECON.

piece and describe how it could be a more pleasing shape or a better color. Any serious consideration of poverty must join the pieces, look at the entire picture, and then discuss how these systems could work together to assist the human beings who they affect and regulate.

Laying bare the multiplicity of ways in which we choose to regulate low-income individuals is a preliminary step towards determining what their *cumulative* effect on low-income individuals is and whether that is a healthy, useful, or even intended effect. Only then can theory, policy, practice, and experience work together, in a fully realized way, to ameliorate the ways in which these bodies of law interlock to cause and exacerbate poverty.

A full systemic analysis of Tabitha's situation, for instance, would of necessity consider the regulations governing the safety net and other benefits which might be available to her, as well as what practical barriers stand between her and them. It would fully consider the limits on assets and income for SSI recipients and what the practical effects of that are on her life. It would additionally review and consider the laws and practices governing available housing, including whether housing assistance or public housing is realistically available to her, how evictions are carried out, and how the jurisdiction regulates minimum property standards. It would consider how race, gender, ethnicity, and similar characteristics affect any and all of these areas. And having taken all these issues together, it would interrogate the intent and effect of these various systems, with a particular emphasis on ways they actively work against individuals and each other, and also offer policy solutions for how they might be fixed—not piecemeal, but as a part of a seamless whole with a full understanding of how each piece would affect the other.³²⁴ It is therefore a fundamentally different approach from any prior form of scholarship in this area.

This approach is rooted firmly in the practice of poverty law and the experience of low-income individuals. However, it also includes the ClassCrits' understanding of class as an intersectional factor while singling out poverty (as opposed to economics writ large) for attention. It gives scholars an anchor to help bring theory to life, while requiring a collaborative and interdisciplinary approach and while respecting the truths, narratives, and experiences of low-income individuals and those who advocate on their behalf. And it not only allows for but requires an ongoing collaboration—not only among legal and other scholars in the many areas which regulate low-income individuals, but among academics, practitioners, community organizations, and policymakers.

DEV. 235 (2022) (reviewing data with respect to attorney representation in eviction cases and describing the limitations with the first right to counsel programs).

324. This is, of course, one single example based on one single hypothetical case; a very small sampling of other areas that can and should be scrutinized includes the criminal justice systems, with a particular emphasis on fines and fees; the family court and child protective systems; and the jurisdiction's public transportation system. Scholarship of this type could also be carried out comparatively, as between two states or localities.

B. *Why Not Poverty Law?*

This paradigm can be, and quite possibly has been, an individual approach to *teaching* poverty law. However, the time has come for a new and holistic approach to poverty law *scholarship*, and for both practical and historical reasons this discipline should not be called “poverty law.” As discussed above, poverty law has generally been defined as some combination of the substantive body of laws with which low-income individuals interact; the practice of law on behalf of low-income individuals; and an understanding of the cultural humility³²⁵ needed to work effectively and compassionately with these individuals.³²⁶ While it is an important area of study in its own right, poverty law as we understand it has historically been intimately bound up with legal representation of low-income clients. I include here the first three waves of scholarship: the seminal works of the Cahns and Wexler; the second wave of scholarship which was largely devoted to analyzing the balance of power between attorney and client; and the third wave which critiqued the second wave on largely practical grounds.

These, in addition to the fourth wave’s debate on how best to teach this field in law school, are important questions which doctrinal faculty, clinical faculty, and practitioners should consider and discuss. I have no wish to discount either these questions or this substantial body of scholarship. However, these are fundamentally different questions from those which should form the nucleus of Systems of Poverty, and the writings in this area have been for different audiences.

Finally, this systemic scholarship will of necessity both learn from and assist practitioners. A legal scholar who does not have the perspective born of serving low-income individuals—whether through personal experience or through observation of or collaboration with practitioners—will have difficulty anticipating or recognizing all the various ways in which our legal systems coordinate to over-regulate those living in poverty.³²⁷ Building this practical understanding of the

325. I prefer the term “cultural humility” to “cultural competency.” For an explanation of the difference between these two terms, see Jann L. Murray-Garcia & Victoria Ngo give an explanation of the difference between these two terms:

Multiple professions have embraced cultural humility, the foundation of the scripts analogy, as an alternative to the goal of cultural competence as a training outcome. These professions recognize that the notion of “competence” implies a static endpoint and mastery, which is unrealistic in our national community’s increasing intersectionality, diversity, and historical, sociopolitical complexity. . . . Cultural humility de-emphasizes diversity training events and, instead, prioritizes the deep, ongoing identity work required to unlearn and interrupt the hurtful and exclusive performances of the -isms of a highly stratified society.

Jann L. Murray-Garcia & Victoria Ngo, “*I Think He’s Nice, Except He Might Be Mad about Something*”: *Cultural Humility and the Interruption of Scripts of Racial Inequality*, 25 U.C. DAVIS SOC. JUST. L. REV. 73 (2021).

326. Buchanan, *supra* note 17, at 1000; Wizner & Resnick, *supra* note 72, at 1308–09; Fleming, *supra* note 73, at 1386; Long, *supra* note 74, at 783; Loffredo, *supra* note 19, at 1241–42.

327. I do not in any way mean to suggest that a single scholar can reasonably be expected to fully discuss and analyze multiple areas of law; this is why this must be a collaborative and interdisciplinary

experience of those living in poverty is thus an important part of this agenda. There are a variety of ways in which scholars have learned and can learn about these systems and interactions: these include in-court observations;³²⁸ interviews with legal services practitioners,³²⁹ and interviews directly with affected individuals.³³⁰

As things stand, practitioners and scholars from a variety of schools and viewpoints have noted, with good reason, the difficulties inherent in using legal representation as a tool to reform law, policy, or practice.³³¹ Practitioners and clinicians working with low-income individuals have also stated that the “theoretics of practice” seem to have no real relationship to or place in their professional lives.³³² This is, of course, exacerbated by what Paul Tremblay has called the “triage” or “emergency room” setting of most legal services offices.³³³

Systems of Poverty has the power and potential both to bridge this gap and to assist with reform of the “sharp legal things”³³⁴ which low-income people continually run into. The approach I here propose is rooted firmly in the lived experiences of low-income individuals and those who serve them, but it also contains room for more abstract concepts such as Greene’s “legal immobility,”³³⁵ and the theoretics of client/lawyer relations and domination. At the same time, this academic perspective and literature has the potential to bring these experiences to a broader policymaking audience, thus benefitting real-world change and reform in a way that has proven difficult through legal action alone.

project. I do believe, however, that this exposure will allow a legal scholar to recognize when a case or issue implicates multiple systems and when expertise in another area is necessary or useful.

328. See, e.g., Bezdek, *supra* note 175.

329. See Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. SOC. JUST. 51 (2010); Snow, *supra* note 13.

330. See Sarat, *supra* note 1.

331. See generally Ressler-Moyer, *supra* note 92; Wexler, *supra* note 16; Cahn, *Justice*, *supra* note 16; Buchanan, *supra* note 17; Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L. REV. 123 (1992).

332. Tremblay, *supra* note 331; see also Robert D. Dinerstein, *Theoretics of Practice: The Integration of Progressive Thought and Action*, 43 HASTINGS L.J. 971 (1992). In both critiquing and appreciating the theoretics of practice literature, Dinerstein (himself a clinical professor) quotes a colleague as follows:

Practicing poverty lawyers read [The] *Clearinghouse* [Review]-and that’s it. Any article in *Clearinghouse* is short, has few footnotes, and does what poverty lawyers need most: succinctly presents research which they don’t have time to do, in support of new theories which they are too exhausted to conceptualize.

Id. at 982.

Dinerstein also argues for a greater connection between theory and practice, concluding that while the theoretics of practice “has much to offer thoughtful practitioners and writers . . . it must confront honestly the difficulties that inhere in writing about the open-textured world of law practice: it must speak plainly to those practitioners who most need its insights; it must strive to capture the authentic voices of clients.” *Id.* at 988–89.

333. Tremblay, *supra* note 331, at 139–40.

334. Wexler, *supra* note 16, at 1050.

335. Greene, *supra* note 23, at 767.

V. CONCLUSION

Scholarship that is explicitly about poverty law has taken a variety of forms and figures throughout its lifetime; however, none of those forms or figures has looked systemically at the ways in which various parts of the legal system collaborate to create and perpetuate poverty. Systems of Poverty, the discipline and approach I here propose, is an ambitious and collaborative form of scholarship which will allow for a stronger understanding of the multiplicity of forces which interact on low-income individuals while simultaneously allowing practitioners, academics, and policymakers to reach, teach, and learn from one another.