

The Changemaker Lawyer: Innovating the Legal Profession for Social Change

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ABSTRACT

As lawyers today confront existential challenges to their profession, from globalization to technological change, they face demands to innovate. In a world of rapid change, individuals must have certain skills to succeed; they must be “changemakers.” Changemakers are individuals who harness innovation to solve social challenges, a notion arising from the global movement of social entrepreneurship that has captured the attention of sectors spanning international development and the business world. This Note argues that through their innovative work, “changemaker lawyers” present a new set of skills and concepts to support a struggling legal profession. They can serve as exemplars and guides for lawyers in an evolving profession, and the principles that undergird their work can provide significant advantages to the profession as a whole. Starting from the proposition that these changemaker lawyers exist, I conducted interviews with ten attorneys whose unconventional work or expertise embodies changemaker lawyering. Drawing on my interviews, I identify three key themes that changemaker lawyers appear to have in common: (1) they seek to overcome long-standing norms in the legal profession; (2) they design novel organizational structures that reflect their values, and (3) they create trans-disciplinary practices that bridge legal fields and sectors. I then suggest challenges that handicap changemaker lawyers. By proposing the idea of changemaker lawyers, this Note seeks to help create a new identity, unite a diverse community of advocates, and trigger a new movement in the legal profession.

DOI: <https://doi.org/10.15779/Z38HH6C59C>

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INTRODUCTION

The early days of the Trump Administration unleashed a cataclysm in the legal profession. Long the subject of popular jokes, disdain, and resentment, lawyers suddenly were in vogue, especially as advocates for positive social change. Amid chants of “let the lawyers in” during the demonstrations in airports in January 2017 against Trump’s first travel ban (later enjoined), lawyers received great popular acclaim for rushing to counsel detained migrants.¹ As lawyers have made the news for taking on executive actions that restrict immigration, ban transgender military recruits, and roll back environmental regulations, applications to law school have risen.² Lawyers have become allies in the resistance to Trump’s conservative agenda. Confronted with increasing challenges to the rule of law principles that lawyers hold dear, lawyers have an

at Ashoka provided valuable assistance in framing the theories of changemaking: Sachin Malhan, Reem Rahman, Megan Strickland, and Anamaria Schindler. I also wish to thank Marice Ashe, Ann Southworth, and Tirien Steinbach for their helpful comments. Lastly, I am grateful to the ten changemaker lawyers who opened up to me about their work and whose stories form the backbone of this Note.

1. See Jonah Engel Bromwich, *Lawyers Mobilize at Nation’s Airports After Trump’s Order*, N.Y. TIMES (Jan. 29, 2017), <https://www.nytimes.com/2017/01/29/us/lawyers-trump-muslim-ban-immigration.html> [https://perma.cc/G7PB-PSP3]; Dahlia Lithwick, *The Lawyers Showed Up*, SLATE (Jan. 28, 2017), http://www.slate.com/articles/news_and_politics/jurisprudence/2017/01/lawyers_take_on_donald_trump_s_muslim_ban.html [https://perma.cc/4VVA-J2BH].

2. See Sara Randazzo, *Law School is Hot Again as Politics Piques Interest*, WALL STREET JOURNAL (Dec. 15, 2017), <https://www.wsj.com/articles/law-school-is-hot-again-as-politics-piques-interest-1513333801> [https://perma.cc/363K-2GQ2].

enormous opportunity to innovate and advance positive social change.³ To best devise its growth strategy, fueled by an unprecedented \$24 million fundraising haul in the weekend following the President's announcement of the travel ban, the American Civil Liberties Union (ACLU) enrolled in Y Combinator, the renowned startup incubator that produced AirBnB and Dropbox.⁴ Calling Y Combinator and its president "true pioneers in innovation," ACLU Executive Director Anthony Romero indicated that entrepreneurialism and innovation, especially when channeled toward positive societal change, are fundamental for the legal profession today.⁵

Innovation seems to be on other lawyers' minds too, especially as the legal profession faces significant challenges to how it has long operated.⁶ Today's historical moment figures into a wider pattern for lawyers, particularly for public interest attorneys who sought to use the law as a tool to achieve social justice. Demands for greater innovation and entrepreneurship among the legal profession are commonplace considering lawyers face a shrinking job market and low levels of job satisfaction.⁷ In its 2016 Recommendations on the Legal Profession, the American Bar Association (ABA) declared that today's lawyers "will have to be entrepreneurs rather than employees"⁸ and that "lawyers who learn entrepreneurial skills can help solve the justice gap."⁹ The ABA recommended establishing a Center of Innovation that "would be responsible for proactively and comprehensively encouraging, supporting, and driving innovation in the

3. See generally Shirin Sinnar, *Human Rights, National Security, and the Role of Lawyers in the Resistance*, 13 STAN. J. C.R. & C.L. 37, 44–46 (2017) (offering suggestions for lawyers and law students in the "resistance" to the Trump Administration, based on experiences from human rights advocacy).

4. Casey Newton, *How the ACLU became Silicon Valley's favorite startup*, VERGE (Feb. 6, 2017), <http://www.theverge.com/2017/2/6/14523466/aclu-y-combinator-trump-silicon-valley-donations> [https://perma.cc/6H6D-2V3D]. Y Combinator has since helped the ACLU—one of a "select number of nonprofits" the incubator has worked with—to revamp its tech infrastructure and data security. Ariel Schwartz, *The world's hottest startup factory is transforming the ACLU in powerful ways*, BUS. INSIDER (May 10, 2017), <http://www.businessinsider.com/y-combinator-transforming-the-aclu-2017-5> [https://perma.cc/7YMQ-QU7S].

5. Matt Drange, *After \$24 Million Anti-Trump Windfall, ACLU Heads to Silicon Valley for Startup Lessons*, FORBES (Jan. 31, 2017), <http://www.forbes.com/sites/mattdrange/2017/01/31/aclu-flush-with-24m-in-wake-of-trump-immigration-orders-partners-with-tech-incubator-y-combinator/#7ee8d9657c1d> [https://perma.cc/JU9N-E8A2].

6. See *infra* Part I.

7. See, e.g., DEBORAH L. RHODE, *THE TROUBLE WITH LAWYERS* 147–49 (2015) [hereinafter RHODE, *TROUBLE WITH LAWYERS*]; DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE* 23–48 (2000) [hereinafter RHODE, *INTERESTS OF JUSTICE*] (evaluating studies about attorneys' discontent with their profession).

8. AM. BAR ASS'N, *REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES* 49 (2016), <http://abafuturesreport.com/2016-fls-report-web.pdf> [https://perma.cc/D9CF-3VDW] (quoting Richard S. Granat & Stephanie Kimbro, *The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm*, 88 CHI.-KENT L. REV. 757, 762 (2013)).

9. AM. BAR ASS'N, *supra* note 8, at 48–49 (2016).

legal profession and justice system” and “partner[ing] with other disciplines and the public for insights about innovating the delivery of legal services.”¹⁰

Amid the context of widespread change and a movement in the law for social change, this Note recommends a solution: the promotion of “changemaker lawyers.” Changemaker lawyers are, broadly speaking, lawyers who put forth innovative, creative legal solutions that achieve a social end.¹¹ This Note argues that changemaker lawyers represent an emerging trend of innovators who reframe existing legal practices in ways that offer solutions to the technological, economic, and societal challenges that the wider legal profession faces.¹² The notion of lawyers innovating for social good serves to give a new meaning and identity to those attorneys whose vision and practice for social justice distinguishes them from their colleagues in more conventional public interest practices.¹³ My objective is not to determine whether their strategies are “new” compared to those of traditional public interest lawyers. Rather, I seek to define and analyze changemaker lawyers to help provide these lawyers with a unifying identity, which can enable them to feel a sense of purpose and integration within a larger community.¹⁴ I also seek to show that the insights we can draw from their work generate value for the legal profession as a whole.

To assess the work of changemaker lawyering, I draw out three themes that seem common to the practice: (1) that through their work, changemaker lawyers are reenvisioning and subverting long-standing norms in the legal profession; (2) that they are organizing themselves and their practices in novel ways premised on their values and missions; and (3) that they are crafting “trans-disciplinary practices” that break down silos, incorporate experiences from across legal areas,

10. *Id.* at 48–50.

11. While the term does not appear in Merriam-Webster, the Oxford English Dictionary defines *change-maker* as “a person who works actively to effect positive social change.” See *Changemaker*, MERRIAM WEBSTER (2018), <https://www.merriam-webster.com/dictionary/changemaker> [<https://perma.cc/4U5X-GFSZ>]; *Change-maker*, OXFORD ENGLISH DICTIONARY (2018), <https://en.oxforddictionaries.com/definition/change-maker> [<https://perma.cc/SP5T-69EP>] (noting that while this is the second definition for *change-maker* (hyphenated in original), this is “now the usual sense”). As discussed *infra* Part I, the definition of *changemaker* as involving creativity and innovation is largely accepted albeit with some differentiation at the margins. See, e.g., REEM RAHMAN ET AL., ASHOKA CHANGEMAKERS, MORE THAN SIMPLY “DOING GOOD”: A DEFINITION OF CHANGEMAKER: WHAT CHILDREN, TRUCKERS, AND SUPERHEROES ALL HAVE IN COMMON 2 (2016), https://issuu.com/ashokachangemakers/docs/more_than_simply_doing_good_definin [<https://perma.cc/HMP9-NLCQ>] [hereinafter MORE THAN SIMPLY “DOING GOOD”]; see also Reem Rahman et al., *What Is A Changemaker?* FAST COMPANY (Aug. 4, 2016), <https://www.fastcoexist.com/3062483/what-is-a-changemaker> [<https://perma.cc/246X-WSUC>] (elaborating on certain qualities common to changemakers).

12. For greater discussion of these challenges, see *infra* Part I.

13. See, e.g., J. KIM WRIGHT, LAWYERS AS CHANGEMAKERS: THE GLOBAL INTEGRATIVE LAW MOVEMENT 5–9 (2016) (attempting to craft a definition of a relatively synonymous term, “integrative lawyers,” and showing how it helped to provide a sense of identity to those attorneys it describes). For a discussion of the difference between changemaker lawyers and traditional public interest lawyers, see *infra* Part II.

14. See *infra* Part I.

and collaborate with non-legal professions to provide comprehensive change to their clients. I arrive at these themes through personal interviews I conducted with ten attorneys whose unconventional work or expertise amounts to changemaker lawyering as we might broadly define it.¹⁵ These individuals are diverse in their legal practices, ranging from founders of non-profit organizations to corporate lawyers, yet they all share a common commitment to using the law to advance positive social change.

This Note proceeds as follows. In Part I, I briefly present the challenges that the legal profession faces and then offer a theoretical definition of changemaking, which I rely on as a framework to appraise changemaker lawyers. In Part II, I trace the changing public interest law field to show its evolution and current state, as it represents the principal context where changemaker lawyers work now (although not exclusively). After explaining my methodology in Part III, I divide the bulk of my analysis into the three themes of changemaker lawyers I mentioned above in Part IV. In Part V, I discuss how certain professional rules erect barriers for changemaker lawyers to flourish, as my interviews suggested. In Part VI, I recommend further areas of research, and, in Part VII, I conclude.

I.

DEFINING CHANGEMAKING IN AN EVOLVING LEGAL PROFESSION

It is not news to members of the bar that the legal profession is confronting a critical, almost existential, juncture. The former chair of the ABA's standing committee of professionalism recently declared that "[w]hat the legal profession is experiencing is not just change, but disruptive change," which "leaves us with an inescapable choice: adapt, and seize our future; or resist, and settle for lost relevant in the world around us."¹⁶ This disruptive change means that lawyers must reconcile their traditional practices with a variety of new technological, social, and economic phenomena. These include technologies that have increased access to quick and more comprehensive legal advice for anyone seeking it, while rendering certain rote legal tasks obsolete.¹⁷ Also, an

15. As acknowledged *infra* Part III, the number of interviews undertaken is too small to permit drawing overarching conclusions, correlations, or statistical evaluations about changemaker lawyers. What the interviews do offer is qualitative data that in turn furnishes a concrete, empirical foundation from which to draw common themes and potentially frame future quantitative research, which I address in Part VI.

16. Frederic S. Ury, *Saving Atticus Finch: The Lawyer and the Legal Services Revolution*, in THE RELEVANT LAWYER: REIMAGINING THE FUTURE OF THE LEGAL PROFESSION 3, 5 (Paul A. Haskins ed., 2015).

17. See Stephen Gillers, *The Legal Industry of Tomorrow Arrived Yesterday: How Lawyers Must Respond*, in THE RELEVANT LAWYER: REIMAGINING THE FUTURE OF THE LEGAL PROFESSION, *supra* note 16, at 13, 16–20; see also Carolyn B. Lamm & Hugh Verrier, *Large Law Firms: A Business Model, a Service Ethic*, in THE RELEVANT LAWYER: REIMAGINING THE FUTURE OF THE LEGAL PROFESSION, *supra* note 16, at 103, 104–08 (naming four forces that are reshaping Big Law firms: persistent cost pressure, accelerating globalization, the rising importance of technology, and the proliferation of new entrants). Advances in artificial intelligence and the outsourcing of rote tasks like document review are some examples of structural change. See, e.g., Jason Koebler, *Rise of the*

increasingly global economy and society has uprooted lawyers with state and local expertise and forced an internationalization of legal services.¹⁸ Meanwhile, there is an increasing consciousness of the profession's lack of diversity (especially among women, people of color, LGBT people, and people from economically disadvantaged backgrounds), and the law's reliance on rigid, elitist, and patriarchal frameworks.¹⁹ Amid these profound changes and realizations, access to justice is still unequal, as over 80 percent of low-income Americans still do not receive adequate legal help because it is too expensive or inadequate.²⁰ This disparity is growing; while economic instability, especially after the Great Recession, has tested the strength and security of multimillion dollar law firms at the top of the economic pyramid, legal services for the bottom of the pyramid have shrunk.²¹ As the former ABA official quoted above warned, “[w]e cannot afford to stand still and think that if we just wait long enough, business will return to the way it was conducted ten years ago.”²²

The dynamics of a changing legal profession are a microcosm of the changing global economy. Few can dispute that the world is undergoing rapid change and that archaic, hierarchical, and repetitive institutions have given way

Robolawyers: How legal representation could come to resemble TurboTax, THE ATLANTIC (Apr. 2017), <https://www.theatlantic.com/magazine/archive/2017/04/rise-of-the-robolawyers/517794/> [<https://perma.cc/2LBS-JU5M>]; Steve Lohr, *A.I. Is Doing Legal Work. But It Won't Replace Lawyers, Yet*, N.Y. TIMES (Mar. 19, 2017), https://www.nytimes.com/2017/03/19/technology/lawyers-artificial-intelligence.html?_r=0 [<https://perma.cc/DE8X-DEDZ>].

18. See Gillers, *supra* note 17, at 17.

19. See, e.g., Arin N. Reeves, *Diversity and Inclusion as Filters for Envisioning the Future*, in THE RELEVANT LAWYER: REIMAGINING THE FUTURE OF THE LEGAL PROFESSION, *supra* note 16, at 67, 70–71, 75–76; Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271, 316–19 (2014); Deborah L. Rhode & Lucy Buford Ricca, *Diversity in the Legal Profession: Perspectives from Managing Partners and General Counsel*, 83 FORDHAM L. REV. 2483, 2483–86 (2014); Edward Williams, *Diversity, the Legal Profession, and the American Education Crisis: Why the Failure to Adequately Educate American Minorities is an Ethical Concern for the Legal Profession*, 26 GEO. J. LEGAL ETHICS 1107, 1108–13 (2013); Monique R. Payne-Pikus, John Hagan & Robert L. Nelson, *Experiencing Discrimination: Race and Retention in America's Largest Law Firms*, 44 LAW & SOC. REV. 553, 576–78 (2010); Kathleen E. Hull & Robert L. Nelson, *Assimilation, Choice, or Constraint? Testing Theories of Gender Differences in the Careers of Lawyers*, 79 SOC. FORCES 229, 250–53 (2000).

20. Richard S. Granat & Stephanie Kimbro, *The Future of Virtual Law Practice*, in THE RELEVANT LAWYER: REIMAGINING THE FUTURE OF THE LEGAL PROFESSION, *supra* note 16, at 83, 96.

21. See Eli Wald, *The Economic Downturn and the Legal Profession, Foreword: The Great Recession and the Legal Profession*, 78 FORDHAM L. REV. 2051, 2061 (2010) (arguing that the Great Recession transformed “not only the practice realities, the organization, and the structure of large law firms, but also their professional ideologies”); LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 9 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [<https://perma.cc/MS3D-8LCY>] (declaring that the “justice gap—the difference between the civil legal needs of low-income Americans and the resources available to meet those needs—has stretched into a gulf”); Latonia Haney Keith, *Poverty, the Great Unequalizer: Improving the Delivery System for Civil Legal Aid*, 66 CATH. U. L. REV. 55, 57 (2016) (observing that “as a result of the economic downturn, more and more people began falling into poverty. This, in turn, had led to a significant increase in the number of Americans who cannot afford to pay for the legal assistance that they need”).

22. Ury, *supra* note 16, at 5.

to evolving, changing systems.²³ Communities and nations are deeply interconnected through globalized industries, communications, and financial systems; the 2008 financial crisis showed that economic setback in one country can trigger global chaos.²⁴ Changemakers are the people equipped with the skills to survive and compete in this new world of rapid change. The term “changemaker” is a relative neologism that has quickly entered the American lexicon as a person using innovative, creative means to effect social change (albeit not universally accepted as such).²⁵ The origin of the term is unclear, but it is closely associated with the global non-profit organization Ashoka and its founder, Bill Drayton.²⁶ Ashoka is a pioneer in identifying and catalyzing the worldwide movement of social entrepreneurs—individuals with fundamentally new, highly creative, and systemic solutions to intractable social problems.²⁷

23. See, e.g., THOMAS L. FRIEDMAN, THANK YOU FOR BEING LATE: AN OPTIMIST’S GUIDE TO THRIVING IN THE AGE OF ACCELERATIONS 33 (2016) (“[E]ven though human beings and societies have steadily adapted to change, on average, the rate of technological change is now accelerating so fast that it has risen above the average age at which most people can absorb all these changes. Many of us cannot keep pace anymore.”).

24. See *id.* at 129 (describing how globalization and “digital global flows” are “making the world so much more interdependent in financial terms, so every country is now more vulnerable to every other country’s economy”).

25. See *supra* note 11 (defining *changemaker*). References to *changemakers* have appeared in liberal and conservative political discourse, business publications, social activism, etc. See, e.g., Leigh Ann Caldwell, *Bill on Hillary Clinton: ‘The Best Darn Change-Maker I’ve Ever Met,’* NBC NEWS (July 27, 2017), <https://www.nbcnews.com/storyline/2016-conventions/bill-hillary-clinton-best-darn-change-maker-i-ve-ever-n617581> [<https://perma.cc/ANA8-A7NJ>] (describing former President Bill Clinton praising his wife and former presidential candidate Secretary Hillary Clinton at the 2016 Democratic National Convention before an adoring crowd waving signs displaying the word); Michael Barone, *What does ‘Change Maker’ Mean?*, WASH. EXAM’R (July 27, 2016), <http://www.washingtonexaminer.com/what-does-change-maker-mean/article/2597910> [<https://perma.cc/B8VJ-8J4P>] (commenting on the same episode described but from the perspective of a conservative columnist); Paula Goldman, *How a New Generation of Business Leaders Views Philanthropy*, HARV. BUS. REV. (Feb. 29, 2015), <https://hbr.org/2016/02/how-a-new-generation-of-business-leaders-views-philanthropy> [<https://perma.cc/4QYK-KB6H>] (“The opportunities to harness the power of markets for social good is enormous—especially for the next generation of change-makers who can build on these ideas.”); Renee Lertzman, *What Kind of Change Maker Are You?*, SUSTAINABLE BRANDS (May 5, 2015), http://www.sustainablebrands.com/news_and_views/stakeholder_trends_insights/renee_lertzman/what_kind_change_agent_are_you [<https://perma.cc/B5SC-CXFX>] (suggesting theories on how to promote sustainability in organizations and promote change in branding and business); *Who We Are*, UNDER 30 CHANGEMAKERS, <https://www.under30changemakers.com/about-us/> [<https://perma.cc/6NTW-CDSR>] (establishing a “community organization that provides emotional and professional support to young social innovators”).

26. At this stage, I must disclose that I worked for Ashoka for five years before law school. My experiences there informed and shaped my understanding of changemaking and social entrepreneurship, and I unabashedly admit that the intersection of law and changemaking that I engaged with at Ashoka motivated me to go to law school and to write this article. I do not intend any references to theories and literature by my former Ashoka colleagues as a paean to their continuing work; rather, I must be practical in accepting that Ashoka is one of the few institutions that has written extensively about changemaking.

27. For a history of Ashoka and the movement of social entrepreneurship, see generally DAVID BORNSTEIN, HOW TO CHANGE THE WORLD: SOCIAL ENTREPRENEURS AND THE POWER OF NEW IDEAS (2004) [hereinafter BORNSTEIN, HOW TO CHANGE THE WORLD]; DAVID BORNSTEIN & SUSAN

Over the course of its work, Ashoka began to recognize communities of local changemakers, people who are creatively taking action to solve social problems around them, and dubbed them “changemakers.”²⁸ Changemakers are intentionally motivated to tackle a social problem for the greater good with the courage and ingenuity to act differently from the status quo.²⁹ Not every person with a positive social intention counts either; changemakers drive change because they are empathic leaders who work in teams and “teams of teams” to mobilize entire communities toward positive social good.³⁰ Yet adapting to and

DAVIS, SOCIAL ENTREPRENEURSHIP: WHAT EVERYONE NEEDS TO KNOW 7–20 (2010). As the field of social entrepreneurship has grown, so have increasing academic and popular studies seeking to define, analyze, and critique it. The movement has spawned numerous terms and concepts, including social entrepreneurship, social enterprise, and changemaking. *See, e.g.*, BORNSTEIN & DAVIS, *supra*, at xviii–xix, 1; RYSZARD PRASZKIER & ANDRZEJ NOWAK, SOCIAL ENTREPRENEURSHIP: THEORY AND PRACTICE 9 (2012); BOB DOHERTY ET AL., MANAGEMENT FOR SOCIAL ENTERPRISE 33 (2009); Roger L. Martin & Sally Osberg, *Social Entrepreneurship: The Case for Definition*, 5 STAN. SOC. INNOVATION REV. 29, 35 (2007); PAUL C. LIGHT, THE SEARCH FOR SOCIAL ENTREPRENEURSHIP 4–5 (2008); Noga Leviner, Leslie R. Crutchfield & Diana Wells, *Understanding the Impact of Social Entrepreneurs: Ashoka’s Answer to the Challenge of Measuring Effectiveness*, in RESEARCH ON SOCIAL ENTREPRENEURSHIP: UNDERSTANDING AND CONTRIBUTING TO AN EMERGING FIELD 89, 93 (Rachel Mosher-Williams ed., 2006). Some definitions of social entrepreneurship are intertwined or conflated with social enterprise. This phenomenon encompassed profit-seeking businesses that engage in socially beneficial activities (for example, corporate social responsibility), hybrid social businesses that seek profit and a social objective, and non-profit organizations that generate revenue. In other words, the common feature of social enterprises is that they are entities using earned income strategies to generate revenue. This article does not seek to engage in the ongoing debate about social entrepreneurship versus social enterprise. For more information on social enterprises, see Janelle A. Kerlin, *Social Enterprise in the United States and Abroad: Learning from Our Differences*, in RESEARCH ON SOCIAL ENTREPRENEURSHIP: UNDERSTANDING AND CONTRIBUTING TO AN EMERGING FIELD, *supra*, at 105, 105–106; Björn Schmitz, *Social Entrepreneurship, Social Innovation, and Social Mission Organizations: Toward a Conceptualization*, in CASES IN INNOVATIVE NONPROFITS: ORGANIZATIONS THAT MAKE A DIFFERENCE 17, 18–31 (Ram A. Cnaan & Diane Vinokur-Kaplan eds., 2015); LIGHT, *supra*, at 5 (“Whereas social entrepreneurship seeks tipping points for innovation and change, social enterprise seeks profits for reinvestment and growth.”); J. GREGORY DEES ET AL., ENTERPRISING NON-PROFITS: A TOOLKIT FOR SOCIAL ENTREPRENEURS 9, 14–18 (2001); *see also* BOB DOHERTY ET AL., *supra*, at 26 (noting that in the United Kingdom, “social enterprise” similarly refers to a “business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community rather than . . . to maximize profit”).

28. *See* David Brooks, *Everyone a Changemaker*, N.Y. TIMES (Feb. 8, 2018), <https://www.nytimes.com/2018/02/08/opinion/changemaker-social-entrepreneur.html> [<https://perma.cc/SEB5-H6AW>] (interviewing Bill Drayton and summarizing the vision of changemaking that Ashoka espouses); William Drayton, *Everyone a Changemaker: Social Entrepreneurship’s Ultimate Goal*, 1 INNOVATIONS 80, 82–84 (2006); *see also supra* note 11. Changemakers are not necessarily social entrepreneurs who are distinguished by their commitment to innovation that sparks systems-wide or “pattern-breaking” change. *See, e.g.*, LIGHT, *supra* note 27, at 12; Leviner et al., *supra* note 27, at 92–93.

29. MORE THAN SIMPLY “DOING GOOD,” *supra* note 11, at 2–3, 9; Brooks, *supra* note 28 (defining changemakers as “people who can see the patterns around them, identify the problems in any situation, figure out ways to solve the problem, organize fluid teams, lead collective action and then continually adapt as situations change”).

30. *See* Henry F. De Sio, Jr., *Everything You Change Changes Everything*, LINKEDIN (Aug. 28, 2014), <https://www.linkedin.com/pulse/20140828155710-3694871-everything-you-change-changes-everything> [<https://perma.cc/K534-U9AD>] (relating how the author, the Chief Operating Officer of

managing change as a changemaker requires a commitment to social benefit. As Drayton says, amid systems and institutions “bumping one another” in a changing environment, “[t]here has to be a powerful force constantly pulling society back to the center.”³¹ Changemaking is attractive because it naturally implies a positive social mission.

Drayton observes that changemakers have mastered the following four critical skills: empathy; horizontal and collaborative leadership; an ability to work across fluid teams; and positive, action-oriented problem solving to drive change.³² Equipped with these skills, changemakers are prepared to act and contribute in a rapidly evolving world. “[I]n this world you cannot afford to have anyone on your team who is not a changemaker . . . [or] to have anyone without the skills to spot and help develop change opportunities.”³³

If changemakers act creatively to solve a social challenge, then by extension changemaker lawyers are lawyers who use their legal skills creatively for social ends.³⁴ All lawyers who are committed to positive change in society through creative means, whether or not they identify as *public interest* lawyers, can thus be changemaker lawyers. In the context of the changing legal profession, the growing phenomenon of changemaker lawyers offers a novel solution. Just as businesses continue to seek “double” and “triple bottom lines” that emphasize environmental sustainability and social impact in tandem with profit,³⁵ even the ABA believes that all lawyers, not just those in the public interest, will likely need to become more socially engaged and contribute to societal benefit.³⁶ Changemaker lawyers are at the forefront of this new direction for the profession.

At this definitional stage, it is also critical to emphasize that using new technology is a prerequisite for changemakers, including changemaker lawyers. Innovation, especially in the popular Silicon Valley context, often connotes

President Barack Obama’s 2008 presidential campaign, came to understand the importance of changemaking).

31. Bill Drayton, *A Team of Teams World*, 11 STAN. SOC. INNOVATION REV. 32, 34 (2013).

32. Bill Drayton & Valeria Budinich, *Get Ready to Be a Changemaker*, HARV. BUS. REV. (Feb. 2, 2010), <https://hbr.org/2010/02/are-you-ready-to-be-a-changema> [<https://perma.cc/A4XP-FPTJ>].

33. Drayton, *supra* note 31, at 34.

34. Attorney and motivational speaker J. Kim Wright presents a vision of changemaker lawyers in her study of “integrative law” that is similar to my own. Distilling the insights from dozens of interviews and her compilation of a hundred contributions from practitioners worldwide, she argues that integrative lawyers are “reflective professionals” with a “systemic view of the world” who are “guided by purpose and values . . . the harbingers of a new cultural consciousness and . . . [the] leaders in social evolution.” WRIGHT, *supra* note 13, at 6–7. Whether “changemaker,” “integrative,” or another term altogether becomes a fixture in the legal lexicon matters less than if its principles take root and serve to influence the direction of the profession.

35. See, e.g., SHEILA BONINI & STEVEN SWARTZ, MCKINSEY & CO., PROFITS WITH PURPOSE: HOW ORGANIZING FOR SUSTAINABILITY CAN BENEFIT THE BOTTOM LINE (2014), <https://www.mckinsey.com/~media/McKinsey/Business%20Functions/Sustainability%20and%20Resource%20Productivity/Our%20Insights/Profits%20with%20purpose/Profits%20with%20Purpose.ashx> [<https://perma.cc/6TJH-XXQG>].

36. See Lamm & Verrier, *supra* note 17, at 111–12.

technology, but it far exceeds this interpretation. For example, over the past eight years, the ABA has profiled 134 so-called “Legal Rebels,” whom it describes in a way that is reminiscent of the changemaker lawyer described here.

The legal profession is undergoing a structural break with the past. The profession that emerges will be different in fundamental ways. More and more lawyers aren’t waiting for change: They’re remaking their corners of the profession. These mavericks are finding new ways to practice law, represent their clients, adjudicate cases and train the next generation of lawyers. Most are leveraging the power of the Internet to help them work better, faster and different.³⁷

A review of the profiles, however, indicates that many of the Legal Rebels use technology, such as apps, to make lawyering more efficient and accessible.³⁸ Yet the key to changemaker lawyering is its use of new and creative approaches to solve a challenge; the phenomenon is not incumbent on using technology, which is a *mechanism*, not an *end*, for these approaches. The Legal Rebels represent a piece of this larger changemaking movement that I seek to critique.

As I will describe in greater detail in Part IV, most of the lawyers I spoke with did not refer to themselves as “changemaker lawyers”; indeed, unless they personally were associated or affiliated with groups in the ecosystem of social entrepreneurship, “changemaking” itself was a foreign term of art. Yet instinctively, they all understood the term’s meaning and could perceive themselves as changemakers. Creating a sense of identity unifies individuals with a common purpose and gives each one a sense of being a part of something larger than themselves.³⁹ It is this Note’s hope that “changemaker lawyer” can provide a similar sense of purpose, identity, and network unification to these legal innovators for social change.

II.

THE CHANGING PROFESSION OF LAW FOR SOCIAL CHANGE

A. *Public Interest Law Organizations*

In order to understand and position changemaker lawyers within the legal field, it is necessary to compare and distinguish them from groups of lawyers who are more widely considered among the legal community as committed to social good and social change. Social entrepreneurship and changemaking, two

37. Legal Rebels, *Who’s a Legal Rebel?* AM. BAR ASS’N, available at <http://www.abajournal.com/legalrebels/about/> [https://perma.cc/X6NX-MYLD].

38. See Legal Rebels, *The Rebels: 134 Legal Rebels profiles and counting.*, AM. BAR ASS’N, <http://www.abajournal.com/legalrebels/profiles> [https://perma.cc/VEH7-CG8P].

39. Likewise, the social entrepreneurs that Ashoka supported felt an enormous sense of personal satisfaction and connection to a wider community through the creation of a label and identity. Ashoka Fellow Vera Cordeiro said it was essential for her to be able to identify as a social entrepreneur and have “the vote of confidence and the connection to a network of like-minded people” like Ashoka’s. See BORNSTEIN, *HOW TO CHANGE THE WORLD*, *supra* note 27, at 142–43.

theories that are closely intertwined with social impact today in contexts as diverse as business, healthcare, academia, and philanthropy,⁴⁰ are relatively untouched in legal professions research. The most commonly identified conceptions of law for social good—public interest law and social enterprise or entrepreneurial law—nonetheless fail to encapsulate fully what constitutes changemaker lawyering. In this Part, I provide a short history of these two subsets of law that converge around changemaker lawyering, starting with public interest law.

Public interest law generally focuses on providing access to justice and advocacy for the most marginalized groups.⁴¹ Significant literature has argued that public interest law is undergoing major transformation as it has grown and institutionalized.⁴² A comprehensive history of movement is outside the scope of this essay; here, I seek only to highlight the evolutions of the movement. Albiston and Nielsen have described three eras of public interest law, starting with the pre-1965 “Emergent Era” in which legal aid largely remained the purview of private pro bono practice.⁴³ During this time, the ACLU and the NAACP Legal Defense Fund arose as the pioneers of social impact litigation,

40. See Chris Steyaert & Daniel Hjorth, *Introduction: what is social in social entrepreneurship*, in *ENTREPRENEURSHIP AS SOCIAL CHANGE: A THIRD MOVEMENTS IN ENTREPRENEURSHIP BOOK 1*, 4–7 (Chris Steyaert & Daniel Hjorth eds., 2006).

41. The definition of public interest law is itself the subject of scholarly debate. See, e.g., ALAN K. CHEN & SCOTT L. CUMMINGS, *PUBLIC INTEREST LAWYERING: A CONTEMPORARY PERSPECTIVE* 6–8 (2013); Ann Southworth, *What is Public Interest Law? Empirical Perspectives on an Old Question*, 62 *DEPAUL L. REV.* 493, 495; Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 *STAN. L. REV.* 2027, 2057 (2008); Laura Beth Nielsen & Catherine R. Albiston, *The Organization of Public Interest Practice: 1975–2004*, 84 *N.C. L. REV.* 1591, 1601–03 (2006) [hereinafter Nielsen & Albiston, *Organization of Public Interest Practice*]; Thelton Henderson, *Social Change, Judicial Activism, and the Public Interest Lawyer*, 12 *WASH. U. J.L. & POL’Y* 33, 35 (2003). For the purpose of this paper, I will assume Chen and Cumming’s conception of public interest law as the “broad and contested range of activities that includes legal advocacy focused on the representation of individuals shut out of the private market for legal services as well as lawyering to advance the collective interests of defined groups or constituencies (liberal and conservative).” See CHEN & CUMMINGS, *supra*, at 7.

42. See, e.g., Catherine Albiston, Su Li & Laura Beth Nielsen, *Public Interest Law Organizations and the Two-Tier System of Access to Justice in the United States*, 42 *LAW & SOC. INQUIRY* 990, 991 (2017) [hereinafter Albiston & Nielsen, *Two-Tier System of Access*] (offering a comprehensive analysis of public interest law original survey data that “examines the modern state of the [public interest law organizations] field, considers how the field came to look the way it does, and explores how patters of [public interest law organizations] development shaped access to justice in the United States”); CHEN & CUMMINGS, *supra* note 41, at 41–93 (providing a “historical overview of public interest lawyering” that reveals “a dynamic set of institutions and practices that have deep historical roots in promoting the basic rule of law, but also have responded to and been shaped by crucial social and political ferment of the times”); Rhode, *supra* note 41, at 2032 (finding that “size” was the “most obvious change” in public interest law and that “the number, scale, and diversity of public interest legal organizations has markedly increased”); Southworth, *supra* note 41, at 498 (noting that public interest legal organizations have experienced “tremendous expansion of the types of [their] political missions espoused” and “grow[th] in terms of the strategies employed by such organizations and the geographic reach of their agendas”).

43. See Catherine R. Albiston & Laura Beth Nielsen, *Funding the Cause: How Public Interest Law Organizations Fund Their Activities and Why It Matters for Social Change*, 39 *LAW & SOC. INQUIRY* 62, 63–64 (2014) [hereinafter Albiston & Nielsen, *Funding the Cause*].

the latter designing and implementing the litigation strategy that culminated in *Brown v. Board of Education*.⁴⁴ The public interest movement then accelerated during the “Expansion Era” of the 1960s and 1970s as an arm of the War on Poverty to provide representation to traditionally unrepresented or underrepresented classes, particularly the poor and indigent, with limited or no access to legal system.⁴⁵ The support of the federal Legal Services Corporation (LSC) to finance public interest legal organizations furthered the proliferation of public interest practices.⁴⁶ Then, during the “Embattled Era,” the 1980s to the present, the movement faced reactionary pushback from an increasingly hostile political and judicial system.⁴⁷ Since the Reagan Administration, conservative lawmakers and courts have sought to hamstring many public interest law organizations, such as imposing significant restrictions on recipients of LSC funding in 1996.⁴⁸ Throughout these three eras, public interest organizations have diversified in scope and practice area,⁴⁹ political agenda,⁵⁰ financing,⁵¹ and even ideology.⁵²

Another significant dimension of change among public interest law organizations includes their strategies for social impact. Organizations initially relied on litigation, but for decades public interest lawyers argued that litigation alone cannot achieve the social objectives of public interest law.⁵³ Even the

44. See *id.*; Robert L. Rabin, *Lawyers for Social Change: Perspectives on Public Interest Law*, 28 STAN. L. REV. 207, 209, 217 (1976).

45. See Albiston & Nielsen, *Funding the Cause*, *supra* note 43, at 64–66; see also CHEN & CUMMINGS, *supra* note 41 at 6–7; Rabin, *supra* note 44, at 230.

46. For a history of federally funded legal aid, including the creation of the LSC, see CHARLES K. ROWLEY, *THE RIGHT TO JUSTICE: THE POLITICAL ECONOMY OF LEGAL SERVICES IN THE UNITED STATES* 4–16 (1992).

47. See Albiston & Nielsen, *Funding the Cause*, *supra* note 43, at 66–69. Such reactionary restrictions include Congressional constraints on LSC grantees’ ability to engage in impact litigation or represent certain clients and judicial limits on fee-shifting statutes that served to incentivize private litigation for civil rights violations. See, e.g., ROWLEY, *supra* note 46, at 82; CHEN & CUMMINGS, *supra* note 41, at 128–31; Catherine R. Albiston & Laura Beth Nielsen, *The Procedural Attack on Civil Rights: The Empirical Reality of Buckhannon for the Private Attorney General*, 54 UCLA L. REV. 1087, 1092 (2007) [hereinafter Albiston & Nielsen, *Procedural Attack on Civil Rights*].

48. See Albiston & Nielsen, *Funding the Cause*, *supra* note 43, at 66–67.

49. See Nielsen & Albiston, *Organization of Public Interest Practice*, *supra* note 41, at 1598; CHEN & CUMMINGS, *supra* note 41, at 77.

50. See, e.g., CHEN & CUMMINGS, *supra* note 41, at 100–15; Rhode, *supra* note 41, at 2036.

51. See Albiston & Nielsen, *Funding the Cause*, *supra* note 43, at 88–89.

52. Conservative public interest law organizations emerged in the 1980s as a counterweight to the more progressive organizations that dominated the public interest community and as an advocate for rightwing causes. See, e.g., Ann Southworth, *Conservative Lawyers and the Contest over the Meaning of “Public Interest Law,”* 52 UCLA L. REV. 1223 (2005).

53. See, e.g., GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 155–57 (1991) (arguing in a seminal work that litigation may be a futile strategy to effect social change by finding “no evidence that [*Brown v. Board of Education*’s] influence was widespread or of much importance to the battle for civil rights. The evidence suggests that *Brown*’s major positive impact was limited to reinforcing the belief in a legal strategy for change of those already committed to it.”); Catherine Albiston, *The Rule of Law and the Litigation Process: The Paradox of*

pioneer organizations like the ACLU and NAACP diversified their portfolio of strategies beyond impact litigation to employ popular mobilization, policy influence, and educational outreach.⁵⁴ Now, many organizations employ multidisciplinary strategies in addition to litigation, including direct services, legislative and policy advocacy, coalition building, public education, and communications and media outreach.⁵⁵ Some public interest lawyers even engage in transactional practices for community economic development.⁵⁶

Notwithstanding its diversity and complexity, today's public interest field faces internal challenges and external pressures. On a strategic, internal dimension, some critics argue that current public interest lawyers are not fully equipped to ensure effective advocacy for their constituencies, forge coalitions with legal and non-legal allies, and cope with diminished funding streams.⁵⁷ Moreover, external pressures like a hostile conservative political climate and globalization of public interest issues (e.g., immigration law) are forcing public interest lawyers to reframe their strategies, and even their organizations.⁵⁸ Public interest lawyers increasingly need to innovate how they deliver legal services and develop new, groundbreaking strategies to affect social change so that they can energize and sustain their work.⁵⁹ The following themes from changemaker lawyers⁶⁰ may serve in this endeavor.

B. Social Enterprise and Legal Entrepreneurs

Advancing positive social change through law, as the public interest law movement epitomized, is but one avenue for creating social good. Another conception often considered is social enterprise law—the law of socially

Winning by Losing, 33 LAW & SOC'Y REV. 869, 869–70 (1999) (citing several law and society works that assess the capacity of the law to produce social change).

54. CHEN & CUMMINGS, *supra* note 41, at 232–72; Rhode, *supra* note 41, at 2046–49; Rabin, *supra* note 44, at 218.

55. See CHEN & CUMMINGS, *supra* note 41, at 232; Rhode, *supra* note 41, at 2056.

56. See, e.g., Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 302, 304–08 (Austin Sarat & Stuart A. Scheingold eds., 2006).

57. See CHEN & CUMMINGS, *supra* note 41, at 511–34; Albiston & Nielsen, *Funding the Cause*, *supra* note 43, 91–92; Rhode, *supra* note 41, at 2075–77.

58. See generally Scott L. Cummings, *The Future of Public Interest Law*, 33 U. ARK. LITTLE ROCK L. REV. 355, 355–56 (2011) (“[I]dentifying four critical developments in the field—professionalization, privatization, conservatism, and globalization—and suggesting the challenges they pose for the future of public interest law.”). The current administration's policy is showing itself to be especially hostile to the ideals and objectives of public interest law; President Trump's first draft budget included elimination altogether of the Legal Services Corporation. Sharon LaFraniere and Alan Rappeport, *Popular Domestic Programs Face Ax Under First Trump Budget*, N.Y. TIMES (Feb. 17, 2017), https://www.nytimes.com/2017/02/17/us/politics/trump-program-eliminations-white-house-budget-office.html?_r=0 [https://perma.cc/WPM9-WYJG].

59. See DEBORAH L. RHODE, *LAWYERS AS LEADERS* 56–60 (2013) (arguing that leadership in the legal profession requires fostering innovation yet that the “leaders of the American legal profession have fiercely resisted such innovation”).

60. See *infra* Part IV.

responsible businesses—and legal entrepreneurship, or lawyers acting like entrepreneurs themselves. These fields, though, do not completely approximate changemaker lawyering because at the core, changemaking obligates a social objective.⁶¹ I will touch on social enterprise lawyers and entrepreneurial lawyers to the extent that they effect a social end, but these fields do not squarely dovetail with changemaker lawyering due to their lack of a fundamental social motivation.

First, social enterprise law refers to the provision of legal services on matters such as business formation, financial and investment regulations, tax compliance, and intellectual property to legitimize, enable, and grow social entrepreneurs' organizations.⁶² Lawyers have helped design and lobby for new legal entities such as the B Corporation, flexible purpose benefit corporations, or low-profit limited liability corporations (L3C's), which are designed to help hold entities accountable to their social missions.⁶³ Now, social enterprise law has become a field of law with distinct theories and practitioners. Law schools, including U.C. Berkeley, teach social enterprise law and host transactional legal clinics that support early-stage social enterprises.⁶⁴ Social enterprise law nonetheless situates the lawyer in a somewhat conventional professional position, employing their transactional business, financial, and corporate expertise for social enterprise clients. The lawyer is not the social entrepreneur, but rather operates in service of the social entrepreneur. However, to the extent that they operate for a social end, a social enterprise lawyer might be considered a changemaker lawyer.

Second is research on lawyers as entrepreneurs. These analyses characterize the lawyer as an entrepreneur seeking new opportunities to earn profits and tap new markets of previously underserved clients.⁶⁵ Daniels and

61. See *supra* Part I.

62. Brendan Conley, *Law Collectives*, in JANELLE ORSI, *PRACTICING LAW IN THE SHARING ECONOMY: HELPING PEOPLE BUILD COOPERATIVES, SOCIAL ENTERPRISE, AND LOCAL SUSTAINABLE ECONOMIES* 43, 53–56 (2012).

63. See, e.g., Allen R. Bromberger, *A New Type of Hybrid*, 9 STAN. SOC. INNOVATION REV. 49, 50–52 (2011); Robert A. Katz & Antony Page, *The Role of Social Enterprise*, 35 VT. L. REV. 59, 86–97 (2010). For a discussion and evaluation of the L3C entity, see J. Haskell Murray & Edward I. Hwang, *Purpose with Profit: Governance, Enforcement, Capital-Raising and Capital-Locking in Low-Profit Limited Liability Companies*, 66 U. MIAMI L. REV. 1, 22–51 (2011). For a discussion of new applications of traditional business entities, new types of entities (such as L3C's, Benefit Corporations, and Flexible Purpose Corporations), cooperatives, and non-profits, see Jenny Kassan & Janelle Orsi, *New Kinds of Organizations*, in ORSI, *supra* note 62, at 151, 151–237.

64. See, e.g., Deborah Burand et al., *Clinical Collaborations: Going Global to Advance Social Entrepreneurship*, 20 INT'L J. CLINICAL LEGAL EDUC. 299 (2014); *Social Enterprise Law*, UNIV. OF CAL., BERKELEY, LAW SCH., <https://www.law.berkeley.edu/php-programs/courses/coursePage.php?cid=18498&termCode=B&termYear=2017> [<https://perma.cc/CBN9-SXYV>] (description for social enterprise law course).

65. See, e.g., Robert L. Nelson & Laura Beth Nielsen, *Cops, Counsel, and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations*, 34 LAW & SOC'Y REV. 457, 469, 487–88 (2000) (studying in-house counsels and naming the so-called “entrepreneurial” attorneys as the most successful at advocating for their corporate employers' interests); Carrie Menkel-Meadow, *Culture*

Martin observe that “[t]he literature focusing on lawyers typically equates entrepreneurship with commercialism . . . [and] strips out of the concept of ‘entrepreneur’ the idea that animates it, innovation.”⁶⁶ They argue that lawyer-entrepreneurs focus on “innovation in the provision of legal services,” while adhering to a “minimum requirement” of profit seeking.⁶⁷ Much of the criticism that urges the legal profession to embrace innovation and entrepreneurship emerges from this literature.⁶⁸

Third, as noted above,⁶⁹ the public interest law community has long represented the category of attorneys driven by social missions. Yet not all public interest lawyers are changemaker lawyers—many organizations rely on traditional and non-innovative strategies and structures.⁷⁰ And not all changemaker lawyers are public interest lawyers—many of them, including some that I interviewed, are private firm attorneys who use their legal prowess in innovative and social ways that standard public interest lawyers might find unusual.⁷¹

Rather than carve out these types of categories, my perception of changemaker lawyers is more capacious, encompassing all lawyers with novel and creative solutions to social challenges and the skills that they employ. While these categories are certainly valuable to the legal world and provide important critiques to conventional lawyering, this “umbrella” understanding of changemaker lawyers serves several objectives. The challenges facing the legal profession today are great and almost existential, requiring solutions and innovations with a social purpose that match the scale of the problem. Also, creating subsets of “social enterprise lawyers” or “lawyer-entrepreneurs” could produce rigid boxes that define who counts and who does not. The concept I propose of changemaker lawyers is broader, more intricate and more multifaceted, offering a unifying characterization for all types of lawyers. Notably, none of the lawyers I interviewed self-identified as changemaker

Clash in the Quality of Life in the Law: Changes in the Economics, Diversification, and Organization of Lawyering, in *LAWYERS’ ETHICS AND THE PURSUIT OF SOCIAL JUSTICE: A CRITICAL READER* 99, 102–03 (Susan D. Carle ed., 2005) (calling the “real innovation in the profession” the rise of “entrepreneurial lawyers” who have “‘revolution[ized]’ . . . client-getting techniques” and “how law is practiced”).

66. Stephen Daniels & Joanne Martin, “*We Live on the Edge of Extinction All the Time: Entrepreneurs, Innovation and the Plaintiffs’ Bar in the Wake of Tort Reform*,” in *LEGAL PROFESSIONS: WORK, STRUCTURE AND ORGANIZATION* 149, 152–53 (Jerry Van Hoy ed., 2001) (arguing that “the concepts of entrepreneur and innovation can provide a useful framework for understanding” the practices of plaintiff-side lawyers in Texas).

67. Daniels & Martin, *supra* note 66, at 152–53.

68. See, e.g., Stephanie Dangel & Michael J. Madison, *Innovators, Esq.: Training the Next Generation of Lawyer Social Entrepreneurs*, 83 *UMKC L. REV.* 967, 967 (2015); RHODE, *supra* note 59, at 57.

69. See *supra* Part II.A.

70. See *infra* notes 100–06.

71. See *infra* Part IV.

lawyers, yet the ends, means, and style of their work can characterize them as such.

III.

METHODOLOGY

My research seeks to evaluate my proposed definition of changemaker lawyers by assessing three key themes that appear to be common to them: (A) a commitment to overcoming long-standing norms in the legal profession, such as in the attorney-client dynamic, (B) novel constructions of their organizations, and (C) an attempt to create more trans-disciplinary practices. I present these themes as trends I found through analysis of existing literature in addition to ten personal interviews. While my themes are not meant as categorical elements that must all be present to define someone as a changemaker lawyer, I intend them as aspects that might be helpful in distinguishing such work, stimulating specific and more-in depth research, and inspiring future changemaker lawyers to develop innovative practices of their own.⁷² Forging a common definition and identity could help spark a unifying purpose for all types of lawyers who are innovating for social change.⁷³

Changemaker lawyers could represent examples or guideposts for how the legal profession may cope in a changing world. To evaluate changemaker lawyers' practices, I conducted personal, semi-structured interviews with ten lawyers with "unconventional practices"; that is, that their work might differ from the norm in their field.⁷⁴ As noted above, I adopted broad definitions of public interest law and changemaking to avoid presupposing any specific qualities or traits of changemaker lawyers. All of the interviewees are lawyers whose work has a social mission or vision. To ensure a broad spectrum of opinions and experiences, I sought variation in the types of professional sectors represented. The subjects include founders, executive directors, and legal directors of non-profit organizations; attorneys in private firms whose practices

72. In her study of integrative lawyers, J. Kim Wright explores different elements that comprise this group and proffers a similar caveat: "I am not claiming that all integrative lawyers practice with all of these elements, but I have seen that it is common for integrative lawyers to adopt several elements in their practices." See WRIGHT, *supra* note 13, at 14.

73. See *supra* note 41. I have purposely foregone analysis of other themes that emerged from this research. For instance, many of the attorneys employed diverse, multidisciplinary approaches beyond litigation. While this is a useful insight, it is already well documented that public interest lawyers rely on multiple strategies, and it likely does not represent a distinctive characteristic of changemaker lawyers. See, e.g., Nielsen & Albiston, *Organization of Public Interest Practice*, *supra* note 41, at 1611–12. Also, I did not address resources and financing mechanisms because the interviews failed to indicate any novel themes or strategies that have not been explored already. For a comprehensive empirical study of public interest funding, see Albiston & Nielsen, *Funding the Cause*, *supra* note 43.

74. The University of California, Berkeley Committee for Protection of Human Subjects approved this research (Protocol ID 2016-11-9311). Pursuant to Institutional Review Board requirements, I have maintained the confidentiality of the identities of these interview subjects.

are not standard to typical private practice; solo practitioners; and attorneys in academia and the public sector.⁷⁵

I identified these interview subjects through personal recommendations, preexisting contacts, and the Berkeley Law alumni network. I do not purport to represent this group as an empirical sample of lawyers. No systematic database of changemaker lawyers exists. In this regard, this research faces many of the same problems that confront other academic researchers in this area, namely the relative absence of systematic studies in the field and a lack of a public database of public interest organizations.⁷⁶ I attempt to add modestly to the existing stock of empirical information by providing some demographic information about each subject in Appendix II of this Note.

To protect the interview subjects' privacy and assure their comfort in discussing their practice's inner operations, I kept them anonymous by removing all identifying information from the notes and recordings and providing pseudonyms. During the interview, which lasted between forty-five minutes to one hour, I asked subjects to describe the nature of their practice, their strategies, how they developed these strategies, and the skills and expertise that they employ. I also asked about their organizational models (such as size and leadership style), financing schemes, and external partners. I further asked them for their interpretation of other lawyers' and non-lawyers' opinions of their work, what insights they drew from legal and non-legal fields, and what differentiated their practices from other lawyers' practices. I asked about their relationships with their clients, but I did not ask them to describe individual clients to avoid any breach of client confidentiality. In reproducing their comments below, all remarks are unedited except where needed to achieve concision.

Despite having widely disparate practices, certain themes are common to them all, from the more traditional to the more "radical." Most obvious were commonalities in practice type and organizational strategy. Less obvious but more valuable to my research were the subjects' discussions about the nature of their relationships to other parties, such as clients, lawyers, non-lawyers, and strategic partners. Subjects frequently offered insights into the position of their organizations and approaches within the larger legal profession.

Finally, I relied on theoretical aspects of changemaking to inform and guide some of my larger conclusions, although I was careful to let my data direct me to the relevant theories and not the reverse. This is especially relevant given that none of these lawyers in their interviews self-identified as changemaker lawyers. Yet significantly, they are each chipping away at the monolithic conventions of the legal profession and presenting examples of innovative legal advocacy.

75. The interview subjects from academia and the public sector are better described as expert lawyers who may not be practicing as changemaker lawyers but who are nonetheless knowledgeable about the field.

76. See Rhode, *supra* note 41, at 2028–29.

IV.

COMMON THEMES IN CHANGEMAKER LAWYERING

A. Subverting Power Dynamics and Norms in the Legal Profession

One of the most important contributions that changemaker lawyers offer is on the shape of the legal profession itself by dismantling some of the hierarchical structures and rigid protections that lawyers have adopted to preserve their elite status in society. Changemaker lawyers acknowledge that their practice might be subtly subversive, they alter relationships of power with their clients in part by demystifying legal concepts, and ultimately, they extend greater agency and autonomy to clients in their decision making.

The professional monopoly that lawyers enjoy has contributed to the high cost and low supply of legal services, rendering complete access to justice unattainable for lower income communities.⁷⁷ Lawyers have constructed their profession by establishing licensing requirements, prioritizing certain bodies of technical knowledge, and upholding rules of ethics that elevate lawyers to a privileged position in society and “exacerbate power differentials between professional[s] and client[s].”⁷⁸ Public interest lawyers are not immune from this power dynamic; their elite training and use of more institutionalized advocacy mechanisms like litigation can sometimes conflict with the grassroots nature of their causes and clients.⁷⁹ This can generate an asymmetrical relationship between public interest attorneys and their more marginalized clients.⁸⁰ By extending access to justice to disadvantaged groups, public interest law seeks to expand the market of individuals who can claim legal services.⁸¹ However, this reinforces the market’s traditional norms and framework without fundamentally transforming the market itself. In other words, the growth and consolidation of public interest legal organizations over the past few decades has not meant any change as such to the underlying power structures of the legal profession and legal system.⁸²

But as the public interest field has changed and grown more complex, new theories and models of lawyering have arisen with the potential to alter certain conventions that structure how lawyers operate. Concepts like client-centered practice have sought to change the oft-problematic lawyer-client relationship by

77. CHEN & CUMMINGS, *supra* note 41, at 343.

78. COREY S. SHDAIMAH, NEGOTIATING JUSTICE: PROGRESSIVE LAWYERING, LOW-INCOME CLIENTS, AND THE QUEST FOR SOCIAL CHANGE 21 (2009); Richard L. Abel, *Why Does the ABA Promulgate Ethical Rules*, in LAWYERS’ ETHICS AND THE PURSUIT OF JUSTICE: A CRITICAL READER, *supra* note 65, at 18, 21–22 (noting that promulgating ethical rules is a natural upshot of lawyers’ attempts to regulate their profession and control the market for attorneys).

79. See Anna-Maria Marshall, *Social Movement Strategies and the Participatory Potential of Litigation*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS, *supra* note 56, at 164, 166.

80. *Id.*

81. See, e.g., NAN ARON, LIBERTY AND JUSTICE FOR ALL: PUBLIC INTEREST LAW IN THE 1980S AND BEYOND 3 (1989); Rabin, *supra* note 44, at 227.

82. See Nielsen & Albiston, *Organization of Public Interest Practice*, *supra* note 41, at 1619.

identifying challenges from the client's perspective and actively involving the client in designing comprehensive solutions.⁸³ Similarly, the concept of client autonomy—granting more agency to clients—has taken root. Social change strategies often recognize the centrality of “legal empowerment,” which “seek[s] to cultivate the agency and power of the people with whom they work . . . [by saying for instance] ‘I will work with you to solve this problem, and give you the tools with which to better face such problems in the future.’”⁸⁴ The field of grassroots lawyering has often sought a relationship of client empowerment that “avoids the rigidity of traditional lawyer-client interactions” and instead attempts to develop “solidaristic bonds” between them.⁸⁵ Lawyers in the field strive to allow clients to make their own decisions autonomously as an “expression and affirmation of the belief that clients and lawyers are equals.”⁸⁶ Their work also values the diverse perspectives that embracing a wide array of stakeholders can bring.⁸⁷

Changemaker lawyering demonstrates a natural evolution of this trend toward reconceiving professional norms in the profession, especially norms of hierarchy and power.⁸⁸ First, the changemaker lawyers I interviewed showed recognition that their work might run counter to traditional professional norms. “Carmen” is an attorney who founded a non-profit that uses insights from alternative dispute resolution, restorative justice, and mediation to support youth involved in the juvenile justice system. Staff members and collaborators with the organization are stationed inside courthouses and engage directly with young people facing detention to offer legal help. Then, they facilitate group dialogues and leadership trainings with the young people to help them overcome their personal challenges and set positive life goals. Carmen said:

Traditionally, [juvenile defense attorneys] seek to get their clients off on technical grounds. They are not looking from a broader picture or viewpoint of the client; they aren't equipped to do anything

83. DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 19–23 (1991).

84. Vivek Maru, *Allies Unknown: Social Accountability & Legal Empowerment*, 12 HEALTH AND HUM. RTS. J. 83, 85 (2010).

85. See Thomas M. Hilbink, *You Know the Type. . . : Categories of Cause Lawyering*, 29 LAW & SOC. INQUIRY 657, 688–89 (2004).

86. SHDAIMAH, *supra* note 78, at 68.

87. WRIGHT, *supra* note 13, at 295.

88. Of course, racial and economic justice critiques have often described oppressive hierarchical paradigms in the law and urged a more diverse, “anti-essentialist” approach to challenge these norms in all their forms. See, e.g., Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S L.J. 16 (1995); JOHN A. POWELL, *RACING TO JUSTICE: TRANSFORMING OUR CONCEPTIONS OF SELF AND OTHER TO BUILD AN INCLUSIVE SOCIETY* (2012); Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, in *LAWYERS' ETHICS AND THE PURSUIT OF SOCIAL JUSTICE: A CRITICAL READER*, *supra* note 65, at 230, 230–37; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990). Changemaker lawyers are not the first to promote this concept, but they represent a group of advocates putting the concept into practice.

more. . . . They are instead trained to be circumscribed, limited in their ability to do what is necessary for the child's long-term interest. . . . The legal profession never saw itself as a helping profession . . . and what we want to have is a broader conversation of what the justice system means.

Carmen saw her work as challenging the norms of the adversarial criminal justice system, in particular how attorneys and courts conceive of their young clients. Her goal was to develop positive, long-term solutions for clients in the criminal justice system.

"Alexis" founded a non-profit organization supporting community economic development by counseling small-scale entrepreneurs and cooperatives and devising policy solutions to promote grassroots economic sustainability. She celebrated the organization's work as a redefinition of notions of wealth and equality through law.

We are challenging conventional notions around business and the concept of the American dream . . . [and] we are challenging the boundaries of the legal profession itself by empowering people to help each other. We see lawyers not as service providers, but as individuals working within the communities to create a different world. This reconceives the role of lawyers.

Alexis noted that her organization often collaborates with private firm attorneys who offer pro bono counsel in transactional business development to their clients. However, their traditional training in corporate law sometimes paralyzed the pro bono attorneys from offering more novel, creative legal solutions and therefore hindered the organization's goals.

Lawyers are sometimes the choke point for our movement. We in fact would like to work with more non-lawyer professionals, or at the very least activists or educators who are using the law in similar ways [as we are] There is a lack of recognition that all law should be public interest law; instead, legal workers are stuck in their old hierarchies and are not empowered to make change.

Two private sector attorneys made the same point, remarking that their work frequently ran up against the standard professional norms of public interest law. "Donna," an attorney at a corporate law firm who specializes in social enterprise development, observed that most private firm lawyers conceive of legal work with a social mission through the typical public interest framework. In contrast, she was committed to a large-scale transformation of the legal and financial industry frameworks around social enterprise.

Few people get [my work] in Big Law. I know them all [the ones that do understand], but most don't see it . . . they see entrepreneurship as tech-centered. They are still focused only on getting on boards, non-profit organizations and pro bono work. What I am talking about is the corporate form and capital markets altogether.

While Donna is using traditional legal skills as a transactional Big Law partner, her objectives are wholly different than most similarly-situated lawyers driven by an innovative, social mission. She is dedicated to using her private sector skills to wholesale disrupt economic systems.

Another attorney, “Gary,” with legal experience in the non-profit and corporate transactional sectors, offered the same judgment of a somewhat narrow-minded private legal field. Although he now works in the public sector, Gary had served as an adjunct professor on social enterprise and had coordinated activities with different social enterprise legal clinics. He argued that his perspective, the belief in “law as a means to create positive change for the good of all,” was the product of a generational difference among private lawyers. Younger lawyers like himself instinctively recognized that lawyers could use their skills to create social impact outside public interest fields.

Millennial lawyers are more on the same page as me. We don’t have to define “blended value” to them. They see that we need more positive change in the law, and they have a tendency to self-identify as changemaker lawyers. They don’t see things so rigid. The older generation of lawyers is more confused with these labels and definitions. They say, “stick to what you know; stick to your sector.” They are very rigid and see that doing social good is only something for a pro bono practice.

Gary observed that older generations of lawyers were also less likely to know how to apply their day-to-day legal expertise to advance a social cause.

The interviewees all acknowledged intuitively that their practice as changemaker lawyers was distinct and might conflict with traditional notions of the legal profession, including of public interest law itself. Their insights indicated that lawyering for social change today might seek to shift whole paradigms of practice, far more fundamentally than the original public interest lawyer sought to do. The changemaker lawyers described here, in their own small way, all recognized the failure of certain norms in the frameworks within which they worked, and they are devising new legal notions and ideas that challenged those frameworks. Although their ultimate objectives might not extend to full-scale societal change, they nonetheless are committed to questioning norms and engineering new legal solutions to effect change.

So-called “radical lawyers” call for similar redefinitions of the legal system, “even if they chose to play by its rules” to achieve their goals.⁸⁹ The attorneys I interviewed are *themselves* playing by the rules; i.e., the laws of the criminal justice, economic, and financial systems, respectively. But their creative mechanisms that harness the law for a different social purpose render their work both radical and innovative.

89. See Corey S. Shdaimah, *Intersecting Identities: Cause Lawyers as Legal Professionals and Social Movement Actors*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS*, *supra* note 56, at 220, 230.

By undermining lawyers' elite status as a profession and demystifying the legal profession's jargon, changemaker lawyers restructure the attorney-client relationship. For example, "Erica," the executive director of a prominent legal aid organization, shared that in providing direct services to lower-income clients, she is firm that their advocacy must be clear and understandable to the client. She paraphrased a quote she attributed to Van Jones, the civil rights lawyer and former Obama Administration official:

You can take simple things and make them complicated to benefit yourself, or you can take complicated things and make them simple to benefit others.

She described the first clause of the quote as the philosophy of most attorneys and the norm in the profession. Alternatively, the contrasting client-centered and equalizing notion served as Erica's guidepost in her leadership practice and her organization's mission.

"Jessica" is another attorney who studies other practices and coaches attorneys to develop more values-based legal practices. She described examples that she found among other lawyers, first drawing attention to contract law as an area where lawyers can create a more equitable relationship with their clients. By creating "conscious contracts," lawyers write their documents in plain and understandable language for all parties to interpret, and to establish a relationship and partnership between the parties. She offered a different example that came from studying legal innovations in other countries, such as South Africa:⁹⁰

One exciting development I've seen in the law is the use of cartoon contracts. These are creative and innovative methods that are visual and accessible for every person, even people who are illiterate.

Alexis, who worked in community economic development, also recommended the use of images to share information and create small business and cooperative agreements that were nonetheless legally binding.

Most lawyers try to make their work harder by obscuring information or skills [from their clients]. That's not me. I want to make it super easy to share legal documents.

Many interview subjects stressed that enhanced client agency and positions of equal standing were central to their practices. "Benjamin" is a private attorney who has a solo practice that counsels small businesses and public entities to develop sustainable and collaborative infrastructure-type projects that inherently engage the wider community in their formation. He also advises governments on policies that promote these collaborative development projects. Benjamin affirmed that he enters into relationships with his clients seeking an equitable playing field.

90. For more information about conscious contracts as an approach for changemaker lawyers, see Christopher Halburd, *Doing the Deal: Contracts for Conscious Capitalists*, in WRIGHT, *supra* note 13, 148, 148–50.

[As a lawyer] you want to try to cultivate a peer relationship. It can't be one completely because you're serving them and working with them to advance their goals. This is not an equal partnership of course . . . and I have to always be careful not to import my own policy goals into the equation. The basic "lawyer set-up" of the relationship does help protect this.

Organizations that pursue social change through impact litigation or policy may have a more distant relationship with their clients, yet they are no less committed to equality in the relationship. "Helen," the legal director of a small non-profit conducting civil rights impact litigation, described the organization's community-centered approach. In her case, she identified that the objectives to traditional impact litigation sometimes conflict with the client's interests, and that the lawyers, despite their desired socially beneficial outcomes, largely remove themselves from the clients. Helen emphasized that her organization sought to counter this norm.

We have less of a relationship with individual clients than a standard legal aid agency might. Many of them are wary of legal organizations that came in to support their work but later abandoned them. We are looking to the clients to figure out the remedies and how they achieve what they want. We identify as community lawyers. We want them to lead. They are the ones responsible for carrying it out after we leave.

For example, in one significant civil rights case against a public entity, Helen's organization and their co-counsel engaged community organizations in addition to specific individuals as plaintiffs to help ensure greater buy-in from groups that are in touch with the needs of the community. These organizations can then mobilize community members who may not even be directly involved in the lawsuit around the issues in the case and equip them with the knowledge and skills to monitor the public agency's actions after the suit concludes.

These changemaker lawyers intuit the possible contradictions within so-called "mandatory autonomy" that "represents a paternalistic or 'best interest' view that forces even reluctant clients . . . to make decisions that they might not want to make."⁹¹ They recognize that their clients come to them for their legal counsel, which inherently generates a relationship of the knowledgeable service provider counseling the passive recipient. Their experiences might represent a more "relational" version of autonomy that acknowledges the values that each party in the relationship brings, and that "the marshalling of resources . . . is an exercise of agency and self-determination that further enables clients to retain or regain control of their lives."⁹²

By shifting power dynamics, changemaker lawyers pave the way for a natural evolution within legal practice, or at least within the subset of public interest or social justice lawyers. During the 1990s, many public interest law

91. SHDAIMAH, *supra* note 78, at 68.

92. *Id.* at 97.

organizations steered away from professional legal strategies like litigation and formal legal norms and toward “lay lawyering” that “decisively rejected established narratives about the centrality of the public interest lawyer in movements for social change.”⁹³ This dynamic has played out in diverse organizational settings, from more grassroots-type entities to more impact litigation-focused groups like Helen’s. Downplaying the lawyer and elevating the client has, in many social movements, served as a more effective tool for collective action,⁹⁴ and the evidence here suggests that this dynamic is also manifest in other legal settings. Empowering clients to contribute their voices and stories can enhance the changemaker lawyer’s larger strategy.⁹⁵

B. Reenvisioning a Values-Driven Organization

A second critical theme among changemaker lawyers is their rejection of conventional management schemes in favor of constructing their teams and organizations to reflect their social values. Generally, the legal profession has specialized into niche legal practice areas, centralized power and decision making in the practice area and within the firm, and formalized policies and procedures.⁹⁶ The largest firms typically feature rigid, hierarchical decision making and corporate, rather than entrepreneurial, values.⁹⁷ Smaller firms tend to be more entrepreneurial, make their decisions ad hoc, and are driven by the values—and the ultimate power—of their founders.⁹⁸ Trained in the law, not in organizational management, many law firm partners and other high-level attorneys frequently lack the day-to-day leadership and operational skills to run a successful business and manage their staff.⁹⁹

While traditional public interest law organizations generally “do not resemble the business-like model of modern private law offices,”¹⁰⁰ they have nevertheless adopted at least some of the cultural and organizational aspects of

93. Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CALIF. L. REV. 1879, 1906–07 (2007).

94. *See id.* at 1907.

95. Simone Campbell, *Lawyer as Agent of Change*, in WRIGHT, *supra* note 13, at 311, 311–13. Indeed, a “strategic alliance or partnership” model might even better suit traditional private law firms and their corporate clients. *See* David B. Wilkins, *Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship*, 78 FORDHAM L. REV. 2067, 2070 (2010).

96. *See* DAVID J. PARNELL, *THE FAILING LAW FIRM: SYMPTOMS AND REMEDIES* 71–77 (2014).

97. *Id.* at 88–90. Large firms’ increasing adoption of traditional corporate management structures could risk challenging some of the basic principles of professionalism that lawyers ascribe to, like commitment to the rule of law and access to justice. *See* Jayne R. Reardon, *Professionalism as Survival Strategy*, in *THE RELEVANT LAWYER: REIMAGINING THE FUTURE OF THE LEGAL PROFESSION*, *supra* note 16, at 255, 256.

98. *See* PARNELL, *supra* note 96, at 82–83. While top-down management styles might still pervade these smaller firms, they are more likely than larger firms to encourage collaboration in management decisions. *Id.*

99. Rhode, *supra* note 41, at 2064–65.

100. *See* Albiston & Nielsen, *Funding the Cause*, *supra* note 43, at 63.

their private sector peers. Many lawyers in public interest law organizations may bring experiences from hierarchical firm backgrounds. At the very least, they all experienced a law school pedagogical model that emphasizes hierarchy and precedence over creativity.¹⁰¹ Over time, public interest organizations underwent a relative standardization and professionalization of their management structures.¹⁰² As new public interest law organizations emerged, they began to adopt relatively uniform organizational models irrespective of their practice or political positions.¹⁰³ Funding also influenced organizational approaches, including limiting the types of cases and work in which the organizations could engage.¹⁰⁴ To achieve prominence, sustainability, and effectiveness, public interest organizations sought a seemingly elite status through their own professionalization, often at the expense of their structural malleability and grassroots culture.¹⁰⁵ Within the organizational environment of larger social cause coalitions and movements, the most bureaucratic or “professionalized” organizations (as defined based on their staffing, funding, and strategy decisions) tended to gain more legitimacy with the other institutions, like courts and private firms, with which they needed to cooperate to achieve their legal objectives.¹⁰⁶

In contrast with these general characterizations, changemaker lawyers’ organizations establish new institutional models that derive from the values they espouse. These lawyers face organizational hurdles akin to the problems that traditional public interest lawyers experience, but the internal structures of their organizations may afford them greater flexibility, opportunities to build tools for consensus, and action. Their leadership deliberately designed these internal policies and structures to reflect their mission, further enable their teams to achieve these goals and serve a demonstrative function that might help shift legal practice more broadly.

Changemaker lawyers articulated this theme of a values-driven organization in different ways. “Jessica,” who coaches attorneys to integrate their values into their work and structure it around innovation and collaboration, described how conventional lawyers separate their values from their practices. Lawyers with values-driven practices underlie her conception of changemaker lawyers.

Most of us fall into the silos we are given by law school and the culture of law. Yet when people suddenly align their law practices based on what they love, what their values are, and what is the difference they

101. See, e.g., *id.*; Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL ED. 591, 602–03 (1982).

102. Albiston & Nielsen, *Funding the Cause*, *supra* note 43, at 70.

103. *Id.*

104. *Id.* at 88–89.

105. See Sandra R. Levitsky, *To Lead with Law: Reassessing the Influence of Legal Advocacy Organizations in Social Movements*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS, *supra* note 56, at 145, 148; Rhode, *supra* note 41, at 2064–65.

106. *Id.*

want to make [in order] to make value in the world, they have given themselves permission to break out of the silos.

When attorneys adopt this kind of integrated orientation toward their practice, Jessica said, they organize themselves and their work differently too.

They learn how to manage their time based on their values. They have a different relationship with their staff—it becomes a really positive place to work with lots of respect. There is a division of labor based on skills and what [each person] likes to do.

Coming from a wholly different practice, Donna is a Big Law attorney who advocates for creative forms of social enterprise development, around which she dreams of redesigning the entire financial system. She recognized that her social enterprise clients' organizations were their distinguishing factors, and not necessarily their social missions. Much of her work, then, centered on advising her clients to craft sustainable organizations that might attract investment and increase their impact.

The uniqueness is in the business model, not the end product. It is *how* they are doing their work as a way to promote positive change.

Implicit in her remark is an understanding that the organizational mechanism (the “how”) is critical to accomplishing the social mission (the “what”). While Donna's practice differs from those of public interest lawyers, she also understood the importance of an organizational model to achieve the social mission and prioritized her legal advice toward that objective.

Creating an organizational model that reflects the lawyers' values depends on certain factors. First, organizations have purposely designed flat or non-hierarchical structures that oppose the traditional hierarchies of other entities. The organization achieves its purpose better and maximizes limited resources by enabling a greater number of stakeholders to make decisions, share information, and gain access to the organization's outcomes.¹⁰⁷

Alexis described how the community economic development non-profit organization she co-founded implemented an internal structure that modeled the values it aspires. The organization advocates for more cooperative and collective ownership, and the internal makeup of the organization reflects this mission. Alexis said that this serves a demonstrative role to other organizations.

We have created a unique structure of governance. We are made up of unique, semi-autonomous circles, not shaped by a mastermind, but by people on the ground. We use consensus-based decision-making to maximize everyone's leadership potential without a hierarchy. This is more powerful and makes changemaking more effective. As a result, we have more empowered people too, with more equitable work and a diversity of voices. Now based on our model, we are helping other non-profits to restructure themselves in a similar way.

107. ORSI, *supra* note 62, at 152–53.

She further explained that the innovation of her practice is in how they address their mission, as other groups focus on similar thematic goals. They incubate new organizations and contribute their own personal experience of leadership and decision making to grow the wider field of collaborative and cooperative organizations. Alexis indicated that organizational role modeling might serve as a key tactic for public interest lawyers to advocate their values.

It is more difficult to create a values-driven organizational model when the culture and preexisting structure is rooted in more traditional expectations of organizational hierarchy. “Erica,” who leads a free and low-cost legal services organization, lamented the tension that she and her team face between attaining the radical, revolutionary change they aspire to and the inherent restrictions of the legal profession.

We have to have opportunities to get up close and personal with inequality—to be proximate to understand what we as lawyers need to do differently . . . This requires us to be creative and less risk averse . . . Yet we are operating within set structures and power dynamics. Our work must be then creative within those narrow confines.

Therefore, the radical notion Erica and her organization espouses is a “holistic and multimodal” approach to legal services that contemplates the distinct yet deeply interconnected legal and non-legal challenges their clients face. This recognition arose directly from the close exposure to the community that the organization sought. Yet implementing a holistic approach brought her into some internal conflict. For instance, when Erica championed a new practice area that combined elements from civil legal aid and criminal law to provide services to formerly incarcerated individuals, she faced skepticism from other attorneys in the office.

Our resources and [general legal] narratives create silos, and we are taught, “Don’t bend or mess with the silos” . . . but people are not in the same silos. This was hard even for the attorneys to understand and to buy into a different narrative. It made some people uncomfortable.

Erica also described an interdisciplinary project at the organization to expand affordable housing. The project joined its housing and economic rights departments to develop short term (e.g., eviction defense) and long-term (e.g., affordable housing policy) solutions. This cross-team partnership encompassed regular accountability measures and routine team discussions about incorporating new strategies for fair housing policy such as cooperative or land trust development. Facilitating interdisciplinary practice collaboration within the organization allowed the organization to reify its mission of promoting holistic legal services. Erica connected the inter-organizational plan with a larger narrative of challenging traditional norms of the legal profession.

Creative lawyers making change must be brilliant at breaking narratives . . . and challenging existing structures. By working within these structures, we [the organization] were losing opportunities.

Erica recognized that to achieve the organization's mission, it was imperative to think creatively and confront many of the structural conventions that define legal organizations.

Another way changemaker lawyers embed their mission and values into their structures is through intentional staffing of boards and leadership. "Francis" founded a non-profit several years after working independently as an advocate for a particularly marginalized social group. Hers is the first and only organization working directly to promote the rights of this group, which she admits is a relatively small and largely invisible community. Despite founding the organization, she later stepped down from the executive director role and replaced herself with an individual who identified as a member of the target community.

Because we work on a unique issue, we function more in an advisory role to the community. We have made sure that our staff and board members come from within the . . . community. We also don't have lawyers defining the legal strategy. We go to the clients and say, "Here are the arguments we want to make; what do *you* think of them?"

For Francis, the organizational strategy and makeup must reflect the identity and values of her client base. The narrowness of her legal issue facilitates this approach. If the organization were to amplify its mission, it could possibly dilute the uniform cultural identity of the organization. Changemaker lawyers with a more diverse target community or practice area may have difficulties in following this subject's organizational model.

These attorneys altogether underscore the importance of integrating their values into their organizational models. Creating a values-driven and values-reflective organization is a popular phenomenon in the business world, epitomized by such theories as "conscious capitalism."¹⁰⁸ Frederic Laloux, a prominent management consultant and organizational theorist, describes a new type of organizational model that embraces three elements.¹⁰⁹ First is "self-management" that relies on "a system based on peer relationships."¹¹⁰ Second is "wholeness," referring to a "consistent set of practices that invite us to reclaim our inner wholeness and bring all of who we are to work."¹¹¹ Last is "evolutionary purpose," in which "members of the organization are invited to listen in and understand what the organization wants to become, [and] what

108. See, e.g., R. EDWARD FREEMAN & ELLEN R. AUSTER, *BRIDGING THE VALUES GAP: HOW AUTHENTIC ORGANIZATIONS BRING VALUES TO LIFE* (2015); RICHARD BARRETT, *BUILDING A VALUES-DRIVEN ORGANIZATION: A WHOLE SYSTEM APPROACH TO CULTURAL TRANSFORMATION* (2006); Sherry Hakimi, *Why Purpose-Driven Companies Are Often More Successful*, *FAST CO.* (July 21, 2015), <https://www.fastcompany.com/3048197/hit-the-ground-running/why-purpose-driven-companies-are-often-more-successful> [<https://perma.cc/65JD-RTQR>].

109. FREDERIC LALOUX, *REINVENTING ORGANIZATIONS: A GUIDE TO CREATING ORGANIZATIONS INSPIRED BY THE NEXT STAGE OF HUMAN CONSCIOUSNESS* 56 (2014).

110. *Id.*

111. *Id.*

purpose it wants to serve.”¹¹² Paramount to these new organizations is teamwork, self-management, and less hierarchical decision making.¹¹³ Zappos, the online shoe retailer, ventured into this new paradigm when it transitioned to a “holocracy,” a theory based on a fully egalitarian organizational structure. While the restructuring has been rocky, Zappos’s leadership team remains committed to the principle of a flat organization that draws from, and reinforces, its idiosyncratic and fun company culture; they also believe that its tribulations are the expected growing pains of injecting a radically new and innovative structure into their workforce.¹¹⁴

Additionally, one of the defining characteristics of for-profit social enterprises is that they “embed” their core social mission into their organizational model and legal requirement to generate profit.¹¹⁵ The ideal structure “enhance[s] the entity’s ability and prospects for identifying, fostering, and expanding a sustainable, embedded social technology to achieve a desirable social mission.”¹¹⁶ The structure should be flexible, pragmatic, and attractive to potential donors, investors, employees, and other aspiring social entrepreneurs who might want to replicate the model.¹¹⁷ These characteristics, if properly enacted, enable the organization to achieve its larger objectives and aspire to its values.¹¹⁸

While values-based organizational structures are thus more accepted in the business space, they may be more novel in the law. The “alternative law collectives” trend that arose in the 1960s and 1970s, in which a group of lawyers structured their legal practice around cooperative arrangements with common ideological commitments and salary parity, generally disappeared in the 1980s.¹¹⁹ They are only now returning as a possible model for legal practices.¹²⁰ Other models that consider “less hierarchy and more consensual decision-making” are recognized but given scant attention.¹²¹ Changemaker lawyers

112. *Id.*

113. *See id.* at 61–83, 99–107.

114. *See* Zack Guzman, *Zappos CEO Tony Hsieh on getting rid of managers: What I wish I'd done differently*, CNBC (Sept. 13, 2016), <http://www.cnbc.com/2016/09/13/zappos-ceo-tony-hsieh-the-thing-i-regret-about-getting-rid-of-managers.html> [https://perma.cc/4AG9-396T]; Jennifer Reingold, *How a Radical Shift “to Self-Management” Left Zappos Reeling*, FORTUNE (Mar. 4, 2016), <http://fortune.com/zappos-tony-hsieh-holacracy/> [https://perma.cc/UK7D-GK82].

115. Katz & Page, *supra* note 63, at 90.

116. *Id.* at 92.

117. *Id.* at 92–93.

118. *See id.* at 102.

119. *See* Menkel-Meadow, *supra* note 65, at 103; Conley, *supra* note 62, at 43–44; John Montgomery, *A Law Firm Based on Love*, in WRIGHT, *supra* note 13, at 267, 270 (recommending that changemaker lawyers demonstrate their core values of “integrity, respect, teamwork, and quality” by converting their law firms into certified B corporations with social responsibility as a core measure of achievement).

120. *See* Menkel-Meadow, *supra* note 65, at 103; Conley, *supra* note 62, at 43–44; Montgomery, *supra* note 119, at 267, 270.

121. *See* Menkel-Meadow, *supra* note 65, at 103. Pangea Legal Services, a non-profit organization based in San Francisco that represents immigrants in detention and advocates for

might offer insight to the larger legal field in how they embed their outward values inward. Changemaker lawyers want to “practice what they preach” by creating organizations that emblemize these concepts through flatter and more autonomous decision making, cross-practice collaboration, and teams that are reflective of their constituencies. As collaboration and teamwork becomes more critical in the economy, too, lawyers will face the imperative of constructing organizations that catalyze these values.¹²²

C. *Crossing Silos and the Trans-Disciplinary Practice*

Despite the law’s intertwined relationship with other social institutions and elements, the legal profession prides itself on its independence. Yet this in part gives rise to a profession that traditionally guards against allowing lawyers to fully collaborate and cooperate with other professionals, like social workers, doctors, or accountants, to make decisions affecting clients.¹²³ Many of the changemaker lawyers with whom I spoke criticized the “silo-ization” of the legal profession—its rejection of partnership and contributions from non-legal fields in the pursuit of resolving clients’ challenges. They discussed fomenting trans-disciplinary “holistic” practices to confront both the legal and the non-legal dimensions of the challenges their clients face. These entailed adopting different roles as an individual advisor, incorporating non-lawyers into their organizations, and forming coalitions with non-lawyers.

Changemaking collaborations present numerous significant advantages to legal advocacy. They come in different forms: as “in-house collaborations” whereby legal organizations integrate different legal and non-legal practices to address clients’ challenges holistically and as coalitions of diverse groups advocating for comprehensive social change. Lawyers with broader exposure and diversified areas of expertise can proffer more useful and comprehensive advice in service of a more integrated society.¹²⁴ While demands for interdisciplinary practices have frequently arisen in the corporate context, such as fomenting greater partnership between lawyers and accountants,¹²⁵ Big

immigration policy, developed a model in this regard. They have “adopted a shared leadership structure to distribute ownership and accountability horizontally throughout the organization” that practically entails “[e]qual salaries,” “[t]ask redistribution” to be “better able to see and freely propose new projects where needed,” and “[i]ndividual autonomy and collective responsibility” that ensures the “efficiency of our structured system and shared decision-making policies.” *Horizontal Structure*, PANGEA LEGAL SERVS., <http://www.pangealegal.org/horizontal-structure/> [https://perma.cc/V28M-7UAG]. Organizational structures like theirs merit additional attention.

122. See Reardon, *supra* note 97, at 265.

123. See MODEL RULES OF PROF’L CONDUCT Preamble ¶ 11 (AM. BAR ASS’N 2016). For a history of this notion of an independent legal profession that disapproves of so-called “multidisciplinary practices,” see L. Harold Levinson, *Collaboration between Lawyers and Others: Coping with the ABA Model Rules after Resolution 10F*, 36 WAKE FOREST L. REV. 133, 137–43 (2001).

124. Reardon, *supra* note 97, at 261.

125. See RHODE, INTERESTS OF JUSTICE, *supra* note 7, at 138; see also Levinson, *supra* note 123, at 146–62 (providing hypothetical examples of lawyer and non-lawyer relationships, all pertaining to business-related partnerships).

Business would not solely benefit from in-house collaborations. Partnerships with non-lawyers might “increase access to cost-effective assistance” for low-income communities who “need assistance cutting across occupational boundaries.”¹²⁶ Meanwhile, building coalitions with different external stakeholders enables greater exchange of information and forms the basis for innovative, systems-changing advocacy.¹²⁷ It also ensures inclusivity of all marginalized groups and intersectionality, a key objective for achieving greater access to justice, and a focus on the cross-cutting, systemic challenge at the root of a problem.¹²⁸

While advocacy through networks is relatively common, in-house collaborations and trans-disciplinary practices are more novel for changemaker lawyers, despite professional responsibility rules that largely circumscribe these tactics.¹²⁹ Changemaker lawyers have crafted creative ways to pursue more holistic practices without violating ethics rules. My interview subjects described an “advocate of many hats” phenomenon whereby they rely on skills from non-legal fields in advising their clients. For instance, Benjamin defined his work as a solo practitioner as blending legal and policy skills. The nature of the client, typically either a public entity’s legal department or the project manager of a community based organization, determined which set of skills he would employ.

I work with a lawyer and consultant hat on. How much of my work could be done with a lawyer or a non-lawyer hat depends on the type of project I am consulting on and the client I’m working with. . . . If a law office of the public entity comes in, I work as a lawyer. This entails a full slate of lawyer privileges, like [attorney-client] privilege, malpractice insurance, and working with their in-house lawyers. . . . Other times, when project managers bring me in as a consultant, I don’t have the professional responsibilities of a lawyer, but the actual work is very similar. I still prepare a draft document written in a “lawyerly way.” I don’t have the responsibility of being legally sound, but I must show though that it *is* legally sound. . . . My consultant hat is not legal work technically speaking, but what feels like legal work on “transactional matters” comes down to what responsibilities I’m taking on.

The so-called hat that this changemaker lawyer wears does not necessarily establish a distinct work product, but rather affects *how* he presents himself and his work. He has incorporated different experiences and skills from distinct disciplines under the guise of one practice area.

Another way that changemaker lawyers involve non-legal work is through staffing their organizations with non-lawyers. Some legal services organizations

126. RHODE, INTERESTS OF JUSTICE, *supra* note 7, at 138.

127. Louise G. Trubek, *Crossing Boundaries: Legal Education and the Challenge of the “New Public Interest Law,”* 2005 WIS. L. REV. 455, 462–63 (2005).

128. See WRIGHT, *supra* note 13, at 295.

129. For a discussion on these rules, see *infra* Part IV.

depend on non-lawyer volunteers to conduct certain tasks like interviewing, researching, and engaging in non-legal advocacy that are nonetheless crucial components of client representation and that might be narrowly perceived as the unauthorized practice of law.¹³⁰ Carmen, the lawyer working on juvenile justice reform, incorporates skills and techniques from mediation, counseling, and social work into her organization. Volunteers working within courthouses interact with juvenile defendants, conduct initial intake interviews, organize them into small peer groups, and facilitate dialogue and discussion circles that challenge young people to reflect on their personal values and goals. Carmen did not equivocate as to the value of involving insights from other disciplines.

Most of our volunteers are not lawyers. Lawyers often can't predictably be available for these kids because of their schedules, and we have them meet at least one night a week. So we are always looking from other disciplines, communities, and professions to help. Psychology and psychiatry are two examples.

Erica, the director of the legal aid organization, explained that their pursuit of holistic advocacy involves professional students from other disciplines as interns in their juvenile justice and housing practices.

We currently have three social work students working in our practice. We want people from social work practices who have a different understanding and approach to social welfare to inform our work. We are always looking for collaborations with other service providers . . . but we have to think about how our resources will allow us to do this.

Erica's remark calls attention to two important considerations. First, some of the first forays into interdisciplinary collaborations for lawyers incorporated social work in the legal aid context, and this changemaker lawyer hints at why. Social workers provide a different understanding of clients' needs and can offer distinct services. However, because social workers have different ethical rules, such as those regarding confidentiality, a changemaker lawyer leading an organization blending attorneys and social workers must be careful not to blur their roles too much.¹³¹

Erica also observed that resources may limit collaborations. Tactically, changemaker lawyers' resources may affect their strategies for change.¹³² Likely the funding organizations and foundations ascribe to the traditional notion of lawyers' independence, and this informs their giving policies. They may thus feel uncomfortable or uncertain about funding an organization's innovative,

130. See Haney Keith, *supra* note 21, at 88. For potential ethics violations related to the unauthorized practice of law that arise from lawyers' collaboration with non-lawyers, see *infra* note 141.

131. See Alexis Anderson, Lynn Barenberg & Paul R. Tremblay, *Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism, and Mandated Reporting*, 13 CLINICAL L. REV. 659, 664–78 (2007) (distinguishing between the ethical and professional obligations of lawyers and social workers in the context of an interdisciplinary practice involving both).

132. See Albiston & Nielsen, *Funding the Cause*, *supra* note 43, at 89.

trans-disciplinary strategies with non-lawyers. Erica alluded to this point, observing that in fundraising for the holistic programs that involve multiple programmatic areas within her organization, she sometimes had trouble convincing her usual funders of the value of such transversal work. Further research, including interviews with philanthropists, would be helpful to better understand this point.

While in-house collaborations can offer distinct advantages to their organizations, interview subjects advised that professional responsibility rules can somewhat inhibit them. Benjamin, the solo practitioner, said that he has to self-regulate to ensure his ethical conduct and not overly blend his legal and non-legal policy practices.¹³³ Insofar as he tries to synthesize these skills, some separation is required because of the rules governing his strictly legal work.

You have to be responsive to your clients in a practice. It's up to you to maintain lines and be clear if you're acting as a lawyer or not. If you are, then you have to abide by professional responsibility rules; if you aren't, then you don't have to. I learned this by being responsive to my clients with the framework of the professional responsibility guidelines.

In a sense, Benjamin here implies that he stays faithful in his transdisciplinary practice as a consequence of his own personal sense of integrity and obedience to the spirit of the rules. Similarly, Alexis reported that fidelity to other ethical rules becomes complicated in a transdisciplinary practice.

Because we are creating a seamless experience between lawyers and non-lawyers, we sometimes face a blurriness around attorney-client privilege.

In Alexis's conception, a client who communicates the same matter to her (an attorney) and a non-lawyer collaborating with her (like a business advisor) within the same organization could not invoke the attorney-client privilege, even if the two professionals are working together toward the same end on behalf of the client. For sensitive matters, the possible repudiation of the powerful privilege rules might disincentivize lawyers and potential clients from entering into a transdisciplinary, holistic engagement, even if that would suit the matter. Benjamin and Alexis both suggest that fidelity to the rules is more complicated for unconventional practices, and that changemaker lawyers must tread lightly around this issue.

The figure of the independent, siloed attorney that the ethics rules embody does not seem to reflect a twenty-first century notion of changemaker lawyering that encompasses approaches premised on mediation, collaboration, a more comprehensive "whole-person" view of one's client, and community

133. Note that the Model Rules themselves expect such self-regulation: "Compliance with the Rules . . . depends primarily upon understanding and voluntary compliance." See MODEL RULES OF PROF'L CONDUCT Preamble ¶ 16 (AM. BAR ASS'N 2016).

advocacy.¹³⁴ Yet nonetheless, the rules today still inhibit changemaker lawyers from forming in-house collaborations with non-lawyers.¹³⁵ On the other hand, coalition building enables them to broaden their scope while retaining their more traditional strategic models. Francis evaluated how she works with her traditional adversaries to push her agenda. Her non-profit organization advocates novel constitutional and tort law arguments on behalf of patient autonomy in medical decisions that physicians generally make without the patient's consent. A typical case might be brought on behalf of the patient against doctors and hospitals, which would naturally trigger their mistrust toward Francis's organization.

I knew it would be hard to find plaintiffs for our cases to establish precedent, so I had to go directly to the medical community, which knew these patients. We are now educating them, for instance by attending medical conferences. At first they [doctors] were afraid of us, but as a result [of this fear], they are inviting us to their conferences and to consult with their ethics and treatment teams at hospitals to protect themselves. . . . Now, we have many closet doctor allies.

Francis saw cross-disciplinary coalitions with doctors—even clandestinely—as a shrewd mechanism to achieve her goals, despite the “distrust” she described among the doctors. Now, the organization is trying to establish greater trust and legitimacy by inviting doctors into their strategy. While Francis's organization does not formally involve medical professionals in the day-to-day strategy, such as by employing doctors to give medical advice to clients or educate hospitals, they consider partnerships as a critical element for the strategy.

We involve medical and therapist skills in our work and with clients. We have even had doctors on our board. You have to have compassion for doctors.

Helen, the legal director of another civil rights advocacy organization, also indicated that their unique strategy required that they collaborate with non-lawyers. To boost the effectiveness of their litigation and policy strategies, Helen's organization seeks to change individual consciousness around social issues. They rely on social science data to buttress and substantiate legal arguments and the arts to confront implicit biases. Helen emphasized her organization's role in communicating information and creating a platform to engage a diversity of actors around their mission.

The academics and social scientists feel excited that their work has an impact beyond academia. We are trying to engage with folks, lawyers and non-lawyers . . . by borrowing their skills and data and putting them

134. See Robert Rubinson, *The Model Rules of Professional Conduct and Serving the Non-Legal Needs of Clients: Professional Regulation in a Time of Change*, 2008 J. PROF. LAW. SYMP. ISSUES 119, 121–27 (2008). The “whole person” lawyering or “holistic advocacy” approach seeks to provide more comprehensive answers to clients' issues that might involve wellness, psychological, and economic counseling, beyond just legal advice. See *id.* at 124–25.

135. See MODEL RULES OF PROF'L CONDUCT r. 5.4(b) (AM. BAR ASS'N 2016). Part V, *infra*, discusses this rule in the context of changemaker lawyering.

to use. . . . The challenge of creating a “grand alliance” is pushing beyond our silos to create the community that we want.

Like Francis’s organization, Helen’s does not directly employ non-lawyers on their staff, but they share non-lawyer information and knowledge to create lasting partnerships. Because their practices are more impact-driven, they can avoid running afoul of rules that bar in-house collaborations that often constrain organizations with direct client services.

Such a strategy also lends itself to more coalition building. Public interest lawyers have long relied on coalitions, and the law and social movement research has demonstrated that diverse interest groups can sometimes comprise these coalitions.¹³⁶ The coalition members often include community groups, other public interest and advocacy organizations, and private firms and pro bono partners.¹³⁷ What may distinguish the lawyers I interviewed, however, are their intentional partnerships in their day-to-day operations with non-legal professionals and even possible adversaries.

In an age of greater diversity and complexity among advocacy coalitions, establishing diverse collaborations with non-lawyers is an intriguing tactic for changemaker lawyers. This tactic is especially pronounced as social change strategies diversify and incorporate more non-traditional and non-legal tactics like education, media campaigns, and public outreach.¹³⁸ Social innovators largely work together to build new patterns for cooperation and networks of often seemingly different stakeholders to produce a more comprehensive solution.¹³⁹ Bill Drayton says that changemakers work in “fluid, open teams of teams” comprised of interdisciplinary groups that can rapidly coalesce, coordinate, and collaborate on specific complex issues as they arise.¹⁴⁰ Changemaker lawyers are working with teams of non-lawyers, even traditional adversaries (like the doctors, noted above), to tackle specific issues and more effectively advocate for their clients. They may be less likely to remain tied to strict, long-standing and

136. See, e.g., Rhode, *supra* note 41, at 2064–65 (finding that public interest lawyers found grassroots collaboration “critical in securing sustainable social change”); Ashar, *supra* note 93, at 1917 (retelling the experiences of an immigrant restaurant workers’ movement that found that the labor organizers and the workers themselves played more of the protagonist role while public interest lawyers supported their efforts); Kathleen M. Erskine & Judy Marblestone, *The Movement Takes the Lead: The Role of Lawyers in the Struggle for a Living Wage in Santa Monica, California*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS, *supra* note 56, at 249, 265–68 (finding that lawyers in a municipal movement advocating for a living wage had a secondary role, acting more as volunteers and less formally as lawyers).

137. See Rhode, *supra* note 42, at 2064–75.

138. See CHEN & CUMMINGS, *supra* note 41, at 515–24, 529–32. Working through partnerships and coalitions also allows for more efficient use of scarce resources to provide more sustainable social impact. Haney Keith, *supra* note 21, at 92–94.

139. See RAHMAN ET AL., *supra* note 11, at 4–5; BORNSTEIN, HOW TO CHANGE THE WORLD, *supra* note 27, at 241–42; LIGHT, *supra* note 27, at 113; Martin & Osberg, *supra* note 27, at 35 (in the context of social entrepreneurship).

140. See Drayton, *supra* note 31.

restricted coalitions, opting instead to work more fluidly and on an ad hoc basis with other disciplines.

V.

ETHICAL CHALLENGES FACING CHANGEMAKER LAWYERING

Many interviewees referred, sometimes obliquely, to challenges that changemaker lawyers face. Some of these were expected, such as scarce financial resources, high cost of legal education forcing aspiring changemaker lawyers to pursue more conventional routes, etc. Others dealt with the ethical rules that govern the legal profession itself. The current framework for lawyers discourages innovation, creativity, and collaboration—the fundamental elements that characterize changemaker lawyers. In this section, I will briefly consider two of the challenges that interview subjects raised and explore the literature on those subjects: first, the prohibition on partnership and fee-sharing with non-lawyers; and second, on lawyers acting simultaneously as “third party neutrals.” I then offer suggestions to change this professional framework.¹⁴¹

While serving ostensibly august ends by promoting high-quality and independent legal judgment, lawyers’ regulatory model rules preserved a professional monopoly on legal services. Yet this model, constructed in part through the ethical rules to which lawyers abide, severely restricts the supply of lawyers and militates against innovation.¹⁴² Key contributing factors are the

141. While these rules were most commonly mentioned, other longstanding professional rules or norms that the interview subjects mentioned are also somewhat problematic for changemaker lawyering. First, rigid prohibitions on the unauthorized practice of law, ostensibly in place to protect the public from charlatans, reduce changemakers’ ability to provide comprehensive advocacy and involve non-lawyers. Scholars and practitioners have also called for reforming those prohibitions to encourage innovation, especially since past complaints have arisen by lawyers and have not caused significant harm to clients. For greater analysis and some examples of state-led reforms to unauthorized practice of law rules, see, for example, RHODE, INTERESTS OF JUSTICE, *supra* note 7, at 135–37 (recommending greater involvement of non-lawyers in legal services as “many nonlawyer specialists are equally or more qualified than lawyers to provide assistance on routine matters”); Richard Zorza & David Udell, *New Roles of Non-Lawyers To Increase Access to Justice*, 41 *FORDHAM URB. L.J.* 1259, 1287–98 (re-envisioning what constitutes the unauthorized practice of law after assessing roles in which non-profit and for-profit lawyers can engage non-lawyers in their practices). Second, interview subjects decried revenue and compensation models, such as the “billable hour,” as disincentivizing creativity or innovation and prohibiting sustainable law practices. See Montgomery, *supra* note 119, at 271–72; Menkel-Meadow, *supra* note 65, at 102; ORSI, *supra* note 62, at 63–79; PARNELL, *supra* note 96, at 219–59. Both of these standards are deeply entrenched in legal practice, and further analysis could help determine how innovating in those areas would help changemaker lawyering and benefit the legal profession more generally.

142. See, e.g., Gillian K. Hadfield & Deborah L. Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 *HASTINGS L.J.* 1191, 1194–95 (2016); Gillian K. Hadfield, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control over Corporate Legal Markets*, 60 *STAN. L. REV.* 1689, 1690–93, 1720 (“Professional regulation effectively blocks the inventive activities that might transform legal markets both directly and, probably more importantly, indirectly.”); Abel, *supra* note 78, at 22–24.

Model Rules of Professional Conduct, which states have adopted wholly or in part to govern legal practice in their jurisdictions.¹⁴³

Particularly challenging to innovation in the legal profession is Rule 5.4. This rule proscribes lawyers from sharing fees or forming partnerships with non-lawyers “if any of the activities of the partnership consist of the practice of law.”¹⁴⁴ While purportedly seeking to “protect the lawyer’s professional independence of judgment” from interference by non-legal professionals,¹⁴⁵ as Alexis and Benjamin alluded to, the rule ultimately bars lawyers from interacting with other professionals and providing multidisciplinary, comprehensive advice to their client.¹⁴⁶ It may also serve to preserve the “core values of the legal profession” from any “irreversible change[]” or dilution caused by establishing partnerships with non-lawyers.¹⁴⁷ Any lawyer who might wish to collaborate with a non-lawyer risks disciplinary action, fee forfeiture, or disqualification for running afoul of fee-sharing or joint ownership rules.¹⁴⁸ Hence, this rule constrains changemaker lawyers from embarking on the trans-disciplinary collaborations discussed above.¹⁴⁹

None other than Supreme Court Justice Neil Gorsuch has suggested that Rule 5.4 hinders access to civil legal services. “With a restricted capital base (limited to equity and debt of individual partners), the output of legal services is restricted and the price raised above competitive levels,” unlike in other professions, where “consumers may obtain basic medical and accounting services cheaply and conveniently in and thanks to (say) Walmart.”¹⁵⁰ He notes that in the United Kingdom, where multidisciplinary law services are allowed as “alternative business structures” these structures have met the needs of the poor and middle class and have reached consumers online at higher rates than

143. See MODEL RULES OF PROF’L CONDUCT Preamble ¶¶ 14, 16 (AM. BAR ASS’N 2016) (declaring that the Model Rules “provide a framework for the ethical practice of law” by “defin[ing] proper conduct for purposes of professional discipline” and “the nature of relationships between the lawyer and others”).

144. See *id.* r. 5.4(b). For a history of Rule 5.4 and the ABA’s justification of it, see Emil Sadykhov, Comment, *Nonlawyer Equity Ownership of Law Practices: A Free Market Approach to Increasing Access to Courts*, 55 HOUS. L. REV. 225, 229–42 (2017).

145. MODEL RULES OF PROF’L CONDUCT r. 5.4(b) cmt .1 (AM. BAR ASS’N 2016).

146. See *supra* p. 133.

147. See Levinson, *supra* note 123, at 144.

148. See *id.* at 134; MODEL RULES OF PROF’L CONDUCT r. 5.4 cmt. 1 (AM. BAR ASS’N 2016); see also *Jacoby & Meyers, LLP v. Presiding JJ. of the First, Second, Third & Fourth Dep’ts*, 852 F.3d 178 (2d Cir. 2017) (upholding the constitutionality of New York’s application of Rule 5.4 preventing non-lawyer investment in private firms). The court intimated, however, that non-profit “advocacy group[s] like the ACLU or NAACP” have a First Amendment right to associate with their clients that might militate against a rigid application of this rule. See *Jacoby & Meyers*, 852 F.3d at 186–89. Whether this exception might sanction a non-profit changemaker lawyer’s establishment of a transdisciplinary practice with a non-lawyer remains a question for further analysis.

149. See *supra* Part IV.C.

150. Neil M. Gorsuch, *Access to Affordable Justice: A Challenge to the Bench, Bar, and Academy*, 100 JUDICATURE 46, 49 (2016).

traditional firms.¹⁵¹ Remarking that other rules tailor but not altogether forbid a lawyer's specific behavior to ensure her independent judgment, Gorsuch recommends revision of this rule to lower the cost of legal services.¹⁵²

While liberalizing Rule 5.4 may appear at first glance to help mainly business-focused firms seeking to provide, say, legal and tax advice or to raise capital for litigation costs,¹⁵³ it could present major advantages to changemaking in the law more generally.¹⁵⁴ Lawyers' closer engagement with non-lawyers could continue to energize the field by bringing new ideas.¹⁵⁵ Involving non-lawyer expertise (and capital) with legal practices could serve efficiency goals, and providing basic legal services within businesses could expand the legal services market to underserved communities.¹⁵⁶ Non-lawyer involvement could also help re-shift the narrative of power between the lawyer and the client. A non-lawyer like a social worker or therapist collaborating with an attorney might be able to support clients in a way that a lawyer might not. Finally, lawyers might be able to better align their organizational structures with their values, the common theme discussed above,¹⁵⁷ were they to allow the non-lawyers in their organization actual stakeholder rights to make decisions, currently prohibited by Rule 5.4.¹⁵⁸ The legal profession could conceivably create new regulatory schemes to govern lawyer and non-lawyer engagements, such as through licensing regimes, to safeguard the quality of these relationships, ensure independent judgment, and adhere to other ethical rules.¹⁵⁹ Because non-lawyers may have different ethical rules to follow than the lawyers, lawyers collaborating in a multidisciplinary practice with non-lawyers will have to think carefully about how they will best serve their clients' interests while remaining faithful to their respective ethical standards.¹⁶⁰

151. *Id.* at 50.

152. *Id.*

153. *See* Sadykhov, *supra* note 144, at 242–46.

154. *See* Hadfield, *supra* note 142, at 1727; RHODE, INTERESTS OF JUSTICE, *supra* note 7, at 138.

155. “[S]ignificant innovation most often comes through interaction between those in different fields and networks. The legal profession would benefit from more cross-disciplinary alliances, and its leaders need to become more engaged in efforts to permit them.” *See* RHODE, *supra* note 59, at 60.

156. *See* Zorza & Udell, *supra* note 141, at 1268–67.

157. *See supra* Part IV.B.

158. Lucille A. Jewel, *Indie Lawyering*, in *THE RELEVANT LAWYER: REIMAGINING THE FUTURE OF THE LEGAL PROFESSION*, *supra* note 16, at 113, 125.

159. *See* Hadfield & Rhode, *supra* note 142, at 1216–22.

160. *See* Ury, *supra* note 16, at 10 (suggesting that, in a multidisciplinary practice, all members including non-lawyers must “live up to the high standards of the Rules of Professional Conduct, because all legal service provider entities will continue to be regulated”); Reardon, *supra* note 97, at 261 (noting that “nonlawyers are not subject to the same ethical and professional obligations as lawyers” and that lawyers must “ensure that subordinates in their organization conduct themselves in a way that is compatible with the lawyer’s professional obligations” and “be proactive about educating others with whom they collaborate.”). Consider this conundrum facing social workers and lawyers collaborating:

From the lawyer’s perspective, it appears possible, and perhaps even likely, that an attorney working in tandem with a social worker will tend to offer legal services which are less zealous than those offered by a ‘solo’ lawyer, because social workers see disputes and problems with

The Model Rules of Ethical Conduct also bar lawyers acting as so-called “third party neutrals”—which the rulemakers narrowly define as mediators or arbitrators involved in alternative dispute resolution—from providing legal advice or representation, even when the mediator or arbitrator is the advocate herself acting in a strictly non-legal capacity.¹⁶¹ In such circumstances, typical rules governing the attorney-client relationship do not apply, such as attorney-client privilege, and that later legal representation by the advocate could trigger conflicts of interest.¹⁶²

Adherence to this “third party neutral” rule complicates changemaker lawyers with multifaceted “many hats” practices, like Benjamin contemplated,¹⁶³ or those whose “client” consists of multiple parties, and they must represent only one to avoid conflicts of interest. The rule forces changemaker lawyers into some linguistic and ethical gymnastics to provide “legal information” rather than “advice” on a certain matter, refer clients to a different attorney to represent them on that issue, or obtain the parties’ consent to switch roles from lawyer to mediator, for instance.¹⁶⁴ In cases such as Benjamin described, the lawyer must carefully emphasize to the client which “hat” predominates to avoid conflicts and deception.¹⁶⁵ A changemaker lawyer can protect herself by informing her clients when the privilege does and does not apply, or, in jurisdictions that permit it, design collaborative law arrangements that allow for multiple client and lawyer representation.¹⁶⁶

Amid an evolving legal world, the profession will need to evaluate the effectiveness and applicability of these long-standing rules further. There is some indication that courts and ethics committees are open to considering them. The D.C. professional rules permit lay partners or non-lawyer shareholders as long as “all individuals commit in writing to following the same ethics rules which bind lawyers,”¹⁶⁷ and the ABA recently affirmed that collaborative law practice does not break ethical rules.¹⁶⁸ Even the former chair of the ABA standing committee on professionalism is now calling for multidisciplinary practice reforms to encourage innovation in the face of “disruptive change” in the

a more inclusive perspective, and care more about a broader audience, than do lawyers. It also seems possible, and perhaps even likely, that the lawyer collaborating with a social worker, and influenced by the social worker’s best interests-focused orientation, will tend to be more paternalistic than the ‘solo’ lawyer.

See Anderson et al., *supra* note 131, at 664. Ultimately, the authors conclude that this concern is “unfounded” and “overblown,” although “ultimately not without substance,” and that it is therefore important to consider these “potential sources of interdisciplinary tension.” *See id.* at 664–65.

161. See MODEL RULES OF PROF’L CONDUCT r. 2.4 cmt. 1 (AM. BAR ASS’N 2016).

162. *Id.* cmts. 3–4.

163. See *supra* p. 131.

164. See ORSI, *supra* note 62, at 89–93.

165. See *id.* at 51–52.

166. See *id.* at 88.

167. JOHN M. BURKOFF, CRIMINAL DEFENSE ETHICS: LAW AND LIABILITY § 11.11 (2d ed. 2001).

168. Rubinson, *supra* note 134, at 132–33.

profession.¹⁶⁹ Yet, in other instances recently, the ABA rejected such proposals and reaffirmed its conviction that non-lawyer participation threatens lawyers' judgment.¹⁷⁰ Justice Gorsuch argues that "the road to change" for reforming civil legal aid "should begin by asking first what we can do on our own and without expense to the public fisc" by reconsidering how lawyers' self-imposed regulations constrain them.¹⁷¹ The profession would do well to adapt its own framework for behavior to better address the challenges facing the legal profession more broadly and the opportunities that changemaker lawyers provide.¹⁷²

VI.

AREAS FOR FURTHER STUDY

This research only scratches the surface of changemaker lawyering, and, in many cases, it raises questions for additional research. While studies have examined organizational change among non-profit organizations, social enterprises, and private law firms, minimal research exists on legal entities with a social mission (primarily public interest non-profit organizations or small private firms). Much of the pertinent studies evaluate changes in size, budget, and strategies and focus less on the organization's structure and leadership models.¹⁷³ As this changemaker lawyer research indicates, more targeted evaluations of organizational models and leadership could provide insight by reviewing how evolving organizational management styles for non-profit and social change-driven entities operate. This could also inform a study of leadership among public interest legal organizations that may provide recommendations for other practitioners and aspiring changemaker lawyers.

Second, in evaluating the data, I also discerned a fourth noteworthy common theme among changemaker lawyers: that these attorneys might foment and mobilize social capital as a resource that sustains the larger community. Social capital comprises the "networks, norms, and trust" that permeate a society and "enable participants to act together more effectively." Changemaker lawyers might harness social capital by creating longer-term bonds within their client communities that likely lasts after their legal interventions. My interviews did not present sufficient qualitative information to present a greater evaluation of this hypothesis. Therefore, further research directed at social capital building might validate and explain a key mechanism by which changemaker lawyers interact with their client base.

169. Ury, *supra* note 16, at 7–11.

170. RHODE, INTERESTS OF JUSTICE, *supra* note 7, at 138.

171. Gorsuch, *supra* note 150, at 151.

172. *See also* Hadfield, *supra* note 142, at 1732 ("Truly innovative lawyering for the new economy, however, needs a far less restrictive and myopic regulatory model").

173. *See, e.g.*, CHEN & CUMMINGS, *supra* note 41, at 142–46; RHODE, TROUBLE WITH LAWYERS, *supra* note 7, at 176–84; Rhode, *supra* note 41, at 2049–53; Nielsen & Albiston, *Organization of Public Interest Practice*, *supra* note 41, at 1606–15.

Third, while I have avoided discussion of ideology, many people popularly associate “changemaking” with a more progressive leaning. Yet, public interest law organizations advocating for conservative causes also occupy a sizeable share of this sector and are the subject of significant research.¹⁷⁴ Social enterprise and changemaking has also captured conservatives’ imagination.¹⁷⁵ Different political ideologies view social change differently, but changemaker lawyering no doubt exists on the right as conservative political organizations seek to creatively influence policies that further their notions of social change. The themes presented here common to changemaker lawyers may very well apply for conservative changemakers, and further evaluation of them may provide greater insights into the wider field.

Fourth, the current literature on public interest organizations analyzes their funding models and the influence of financing on their strategies. In their survey of public interest organizations, Albiston and Nielsen found that funding structures were similar despite variations in practice area and that funding patterns shifted toward public sector funding, although conservative organizations depended more on private sources of funding.¹⁷⁶ My research does not identify any new or different trend among changemaker lawyers regarding their financial models, but this absence does not mean that the trend is not occurring. Those who operated private firms earned income through client fees, while those in non-profits relied on traditional philanthropic giving. Yet a theoretical application of entrepreneurship and innovation to these legal practices could raise research questions about their financial model, given the popular—albeit incomplete—understanding of entrepreneurs as profit-driven.¹⁷⁷ The literature on public interest through private or “low bono” practice is relatively robust,¹⁷⁸ and alternative financial models were not a subject of my inquiry. Whether such models are arising and how is an area for a more targeted study.

Finally, due to the small number of lawyers I interviewed, I do not intend to pose specific normative recommendations for the legal profession. Rather, the utility of the study lies in unearthing some principles that might provide salutary

174. See, e.g., CHEN & CUMMINGS, *supra* note 41, at 100–15; Southworth, *supra* note 52; Anthony Paik et al., *Lawyers of the Right: Networks and Organization*, 32 LAW & SOC. INQUIRY 883 (2007); John P. Heinz et al., *Lawyers for Conservative Causes: Clients, Ideology, and Social Distance*, 37 LAW & SOC’Y REV. 5 (2003).

175. See, e.g., Barone, *supra* note 25 (offering a conservative columnist’s perspective); James A. Phillips, Jr., *Q&A: David Gergen*, 6 STAN. SOC. INNOVATION REV. 19, 20 (2008) (interviewing former Nixon, Ford, Reagan, and Clinton advisor and regulator political commentator David Gergen and noting that social entrepreneurs’ solutions are attractive to conservatives who have “long believed that problems are best solved by people outside the governmental sphere”).

176. See Albiston & Nielsen, *Funding the Cause*, *supra* note 43, at 88.

177. This is an assumption, for example, that Daniels and Martin make in their research of entrepreneurial plaintiffs’ lawyers. See Daniels & Martin, *supra* note 66, at 153.

178. See, e.g., Scott L. Cummings, *Privatizing Public Interest Law*, 25 GEO. J. LEGAL ETHICS 1 (2012).

effects for a changing profession.¹⁷⁹ Further research could also concentrate on more extensive empirical study of organizations using more rigorous sampling techniques.¹⁸⁰

CONCLUSION

Scholars and commentators across the legal field argue that leadership in today's legal profession requires innovation and entrepreneurship.¹⁸¹ Lawyers advocating for social good confront similar challenges in this respect as their private sector peers. The most effective social change lawyers “anticipate and address the sources of resistance . . . work in multiple settings with multiple constituencies . . . [and have] deep knowledge of the communities affected and a willingness to consult widely on goals and strategies.”¹⁸² These are the hallmarks of changemakers who innovate to reframe social inequalities, develop new organizational models and networks, and work with a broad community of stakeholders.¹⁸³ And their contributions to society seem to be catching wider attention; recently, the California Bar Foundation changed its name to California Changelawyers, recognizing that “[l]egal changemakers—we call them changelawyers—are the ones who work every day to right historical wrongs in our courtrooms, classrooms, and beyond.”¹⁸⁴

Changemaker lawyers may apply different bodies of legal knowledge, employ a variety of strategies and skills, and depend on disparate resource models, but common among them are certain characteristics and traits in *how* they pursue innovations for the public interest. First, they challenge longstanding norms in the legal profession, notably the power dynamics of the attorney-client relationship. Second, they construct organizational models that reflect their values and missions. Third, they establish novel, trans-disciplinary partnerships that bridge silos within the legal profession and between lawyers and non-lawyers. These are the qualities of changemakers, irrespective of their fields of work.

179. See *supra* Part I for elaboration on this change.

180. For examples of empirical studies of public interest organizations and their methodologies, see Albiston et al., *Two-Tier System of Access*, *supra* note 42, at 999–1002; Albiston & Nielsen, *Funding the Cause*, *supra* note 43, at 72–74; Rhode, *supra* note 41, at 209–32; Nielsen & Albiston, *Organization of Public Interest Practice*, *supra* note 41, at 1601–05; Albiston & Nielsen, *Procedural Attack on Civil Rights*, *supra* note 47, at 1116–18; see also Southworth, *supra* note 41, at 501–02 (evaluating definitions of public interest law through organizational self-reporting in Supreme Court amicus briefs and newspaper coverage).

181. See RHODE, *supra* note 59, at 57.

182. See *id.* at 202.

183. See Patrick Valéau, *Social entrepreneurs in non-profit organizations: innovation and dilemmas*, in HANDBOOK OF RESEARCH ON SOCIAL ENTREPRENEURSHIP 205, 225–26 (Alain Fayolle & Harry Matlay eds., 2010).

184. Sonia Gonzales, *Why We Changed Our Name*, CALIFORNIA CHANGELAWYERS <https://www.changelawyers.org/why-we-changed-our-name.html> [<https://perma.cc/4RBM-H76L>].

Preparing a new generation of changemaker lawyers requires transforming the professional paradigm of how we educate them. Lawyers, professional organizations like the ABA, and law schools (and their accreditors) must begin to demand lawyers with these skills to innovate to the same extent as they demand research, writing, and analytical abilities. Through greater emphasis on practical and clinical training, the legal academy has recognized this insight, and the ABA's recent publications and efforts to embrace innovation demonstrate an institutional commitment toward change.¹⁸⁵ Changemaker lawyers are the pioneers of this movement.

Changemaker lawyers may not represent a wholly new community. Yet, they are the product of a dynamic legal profession, and they demonstrate that attorneys too can innovate for social change. As the profession continues to grapple with what innovation might mean for them, changemaker lawyers can offer their example of how to challenge norms, create bold ideas, and promote powerful social change.

185. See, e.g., Andrew Cohen, *Who Says You Can't Teach Experience?*, TRANSCRIPT MAG. (2016), <https://www.law.berkeley.edu/news/transcript-magazine/says-cant-teach-experience/> [<https://perma.cc/UH56-CGAU>] (interviewing Professor Ty Alper, who leads Berkeley Law's Experiential Education Task Force, and who notes that "[t]o thrive in today's legal domain, new lawyers need to enter practice with a broader and nimbler skill set across a wider range of disciplines"); Trubek, *supra* note 127, at 467–72; Dangel & Madison, *supra* note 68, at 971–83; Burand et al., *supra* note 64.

APPENDIX. INTERVIEW SUBJECT INFORMATION

Pseudonym	Field of Work	Role in Organization	Type of Organization	Organizational Staff Size	Years in Practice
Alexis	Community economic development	Founder & Executive Director	Non-profit organization	<20	<10
Benjamin	Community economic development	Founder & attorney	Private law office	1	>20
Carmen	Juvenile justice; criminal defense	Founder & Executive Director	Non-profit organization	<20	>20
Donna	Social enterprise development	Partner	Private law firm	>100	>20
Erica	Free and low-cost legal services	Executive Director	Non-profit organization	<50	<20
Francis	Civil rights advocacy	Founder & Executive Director	Non-profit organization	<10	<10
Gary	Social enterprise development*	Staff attorney	Public agency	>100	<10
Helen	Civil rights advocacy	Legal Director	Non-profit agency	<10	<15
Iris	Social enterprise development*	Clinical Director	Private university	>100	>20
Jessica	Legal profession*	Coach & attorney	Private practice	1	>20

* *Note.* These attorneys no longer practice in these fields, but they have significant experience in the field and can speak as experts about them.