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Abstract

The Role of CED Lawyering in Promoting/Implementing a Strategic Model of Legal Aid in Ireland by Maria Antonieta Nestor

This thesis aims at determining what role, if any, Community Economic Development (CED) lawyering plays in Ireland in relation to the promotion/implementation of a strategic model of legal aid. The research starts by introducing the topic of CED as developed in the United States, followed by a discussion of some of its theoretical and practical aspects. Then a theory (founded on how the idea of community law centres developed outside the United States as well as on access to justice) is developed which discusses how CED lawyering may have made it across the Atlantic, resulting in the finding of a paradox or what I call "the CED paradox". This paradox shows that while CED developed in the United States in response to the demise of the neighbourhood law firms (NLFs) of the 1960s and early 1970s, it developed in other jurisdictions as part of the community law centre movement (which was based on the NLFs of the 1960s and early 1970s), thus explaining how and why CED lawyering became embedded in the idea of what community law centres do in Ireland and further substantiating the idea that CED lawyering is not just a phenomenon that takes place in the United States. Then, the topic of CED lawyering in Ireland is looked at in detail, including the analysis of two community law centres that act as case-studies which illustrate how CED lawyering has developed in Ireland and how it can help to promote/implement a strategic model of legal aid. Finally, the thesis offers a series of comparisons between CED lawyering in Ireland and the United States as well as suggesting ideas for best practice.

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The Role of CED Lawyering in Promoting/Implementing a Strategic Model of Legal Aid in Ireland

A thesis submitted to the University of Dublin

For the degree of Doctor of Philosophy

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Summary

The proposition this thesis aimed to test was whether CED lawyering takes place in Ireland or not and if so, whether it could influence the strategic method of legal aid in Ireland.

The question thus asked was a compound question:

Is CED lawyering solely a phenomenon taking place in the United States? If not, how does it take place in other jurisdictions, in particular, Ireland, and can it be of any benefit to their existing lawyering approaches/delivery method of legal aid?

In order to elucidate this question, this research uses comparative doctrinal research and empirical legal research, with a focus on socio-legal research via the use of case-studies. It also includes interdisciplinary research in other areas such as social policy, poverty studies, community development and geography.

The research starts by tracing the history and development of CED in the United States as well as some of the theoretical and practical aspects of CED lawyering before discussing how CED lawyering may have made it to Ireland. It argues that an embryonic concept of CED became embedded in the concept of the community law centre, creating a paradox of how CED developed in Ireland when compared to the United States or what I call "the CED paradox". Then, by illustrating how CED lawyering takes place in Ireland through two case studies and comparing it to the United States, the research shows that indeed, CED lawyering takes place in Ireland albeit it has never been known by that name and that it developed without later influences from the United States (due in part to the CED paradox). The research further shows that CED lawyering can strengthen the strategic approach to legal aid by its focus on poverty alleviation as it can achieve the objectives the strategic model of legal aid has not been able to accomplish.

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Carrying out research in a novel area of law, particularly when nothing is known about it in this jurisdiction, is not an easy task. The people I consulted and asked for advice are varied and come from an array of backgrounds and professions.

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List of Abbreviations

United States

ABA	American Bar Association
ACLU	American Civil Liberties Union
AFL-CIO	American Federation of Labour and Congress of Industrial Organisations
ALAGLA	Association of Latin American Gardeners of Los Angeles
CAAs	Community Action Agencies
CAP[1]	Community Action Programme
CBAs	Community Benefit Agreements
CDBFIA	Community Development Banking and Financial Institutions Act
CDBGs	Community Development Block Grants
CDCs	Community Development Corporations
CDFIs	Community Development Financial Institutions
CDU	Community Development Unit
CED	Community Economic Development
CHIRLA	Coalition for Humane Immigrant Rights of Los Angeles
CLEAN	Community - Labour - Environmental Action Network
CLRN	Community Legal Resource Network
CRA	Community Reinvestment Act

[1] Ireland also uses the acronym CAP to denote the same words, however both programmes are different and not related to each other.

CRLA	California Rural Legal Assistance
ECOA	Equal Credit Opportunity Act
ESOT	Employee Share Ownership Trust
EZs	Empowerment Zones
FHA	Federal Housing Administration
HOPE	Housing for People Everywhere
HUD	Department of Housing and Urban Development
IAFs	Industrial Areas Foundations
LAANE	Los Angeles Alliance for a New Economy
LECs	Limited Equity Cooperatives
LIHTCs	Low-Income Housing Tax Credits
LLC	Limited Liability Company
LSC	Legal Services Corporation
MALDEF	Mexican American Legal Defense Fund
MFY	Mobilization for Youth
MIWON	Multi-ethnic Immigrant Workers Organising Network
NDLON	National Day Labourer Organising Network
NLF	Neighbourhood Law Firm
NMTCs	New Markets Tax Credits
OEO	Office of Economic Opportunity
OTS	Office of Thrift Supervision

PERC	Park East Redevelopment Compact
SBA	Small Business Administration
SAJE	Strategic Actions for a Just Economy
SIP	Special Impact Programme
SLC	Statue of Liberty Centre
UFW	United Farm Workers

Ireland

BCLC	Ballymun Community Law Centre
BRL	Ballymun Regeneration Limited
CAP[2]	Community Action Programme
CCLC	Coolock Community Law Centre
CED	Community Economic Development
CLC	Community Law Centre
CLCs	Community Law Centres
CLO	Community Law Officer
CSP	Community Services Programme
DCC	Dublin City Council
DCU	Dublin City University
DDDA	Dublin Docklands Development Authority

[2] The United States also uses the acronym CAP to denote the same words, however both programmes are different and not related to each other.

ESRI	Economic and Social Research Institute
EVC	Education & Volunteer Coordinator
FÁS	Irish National Training and Employment Authority
FETAC	Further Education and Training Awards Council
FLAC	Free Legal Advice Centres
HSE	Health Services Executive
ICI	Immigrant Council of Ireland
IDA	Industrial Development Agency
IFSC	Irish Financial Services Centre
IRC	Irish Refugee Council
ITM	Irish Traveller Movement
LAB	Legal Aid Board
MABS	Money Advice and Budgeting Services
MLRC	Mercy Law Resource Centre
NAPS	National Anti-Poverty Strategy
NCLC	Northside Community Law Centre
NDP	National Development Plan
NGO	Non-Governmental Organisation
NUI	National University of Ireland
PILA	Public Interest Law Alliance
PO	Project Officer

PPPs	Public-Private Partnerships
RWS	Remedial Works Scheme
VAS	Volunteer Assistance Scheme

UK

CLSPs	Community Legal Services Partnerships
NCLG	National Critical Lawyer's Group

Australia

ALAO	Australian Legal Aid Office

International

BDP	Bureau for Development Policy
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CLEP	Committee on Legal Empowerment of the Poor
CSECR	International Covenant on Social, Economic and Cultural Rights
EU	European Union
EU SDS	European Union Sustainable Development Strategy
HEI	Human Empowerment Index
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILEP	Initiative on the Legal Empowerment of the Poor

ILO	International Labour Organisation
IMF	International Monetary Fund
MDGs	Millennium Development Goals
OECD	Organisation for Economic Co-operation and Development
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation

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Chapter One Introduction

"[F]or lawyers to be most effective in combating social exclusion, they need to look beyond litigation and the individual client; they need to be able to engage with the political process and to represent the needs of the group of which the individual client is a representative; in short, they need to embrace the approach encapsulated in what are referred to as "strategic" models of legal aid."[1]

In Ireland, the existing and scant literature pertaining to public interest law indicates that the strategic model of legal aid can help to combat social exclusion by the tackling of problems faced by communities through the use of an array of approaches, not just by offering access to the courts. This is in contrast to the traditional service model of legal aid, one in which the lawyer focuses on the needs of the individual client and seeks access to the courts as its main aim rather than focusing on the needs of community as a whole. Moreover, the strategic approach may require lawyers to engage in activities that are not generally pursued by traditional lawyers, in particular, educating individuals and communities about their rights and helping them to organise politically. Because of this, independent community law centres in Ireland[2] have been largely identified as facilitators of the strategic approach[3] (especially since 1975 onwards with the advent of Ireland's first independent community law centre).

When comparing the Irish approach to other jurisdictions, one finds that a similar approach exists towards the tackling of social exclusion in the United States, namely, community economic development (hereafter "CED"), an approach that, since the 1990s as a legal practice and as a lawyering strategy, has become part of the public interest law discourse.[4]

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[1] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (Institute of Public Administration 2002) 279.

[2] Independent Community Law Centres in Ireland sometimes are also referred to as the "NGO" legal sector, due to the fact that they are non-for-profit organisations. However, because some of them, such as NCLC and BCLC, receive government funding but are not controlled by the State, the wording used in this research to differentiate the NGO and State aid legal aid sector is "non-State"/"State" controlled legal aid sector.

[3] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 1) 302–339.

[4] Brian Glick and Matthew Rossman, 'Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice' (1997) 23 *N.Y.U. Rev. L. & Soc. Change* 105, 110.

Although CED in the United States developed amidst a market-based approach to the tackling of poverty, particularly because of the government policies of the 1980s and 1990s, which in turn offered public interest lawyers a further field of practice, the same is not true for Ireland. In Ireland, despite the establishment of development areas to attract investment and combat poverty (including social exclusion), such as the development of the Dublin Docklands[5] and the establishment of public-private partnerships, public interest lawyers do not appear to have participated in market-based approaches to the combating of poverty and social exclusion.[6] Moreover, in the United States, the changes in attitudes of

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[5] However some scholars have argued that in relation to the policy development of the Dublin Docklands, its development is one of the best examples of the links between politics, business, lands and property benefiting those involved in the process rather than local communities. *See* Peadar Kirby and Mary Murphy, *Towards a second republic - Irish politics after the Celtic tiger* (Pluto Press 2011) 94–116; 120–126.

[6] Anecdotal evidence suggests that when PPPs were taking place, the community did not have representation (public interest lawyers did also not appear in the equation). It is submitted that further research as to the role of public interest lawyers in Ireland is needed to test this assertion.

It is interesting to note also that Sarat and Scheingold when talking about cause lawyering have argued that the scope for legal activity and the role played by lawyers is much more broad in the United States that in the U.K. *See* Austin Sarat and Stuart A. Scheingold, 'Cause Lawyering and the Reproduction of Professional Authority: An Introduction' in *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press 1998) 6. It could be argued that the same can be applied to the Irish scene as the role of lawyers is much narrower in Ireland when compared to the United States. Also, in relation to cause lawyering around the world, Scheingold has further indicated that although it exists all over, it is not the same all over the world as it varies from place to place, from time to time, adjusting itself to political and professional circumstances. *See* Stuart A. Scheingold, 'Cause Lawyering and Democracy in Transnational Perspective: A Postcript' in *Cause Lawyering and the State in a Global Era* (Oxford University Press 2001) 382–383. This is also arguably true for Ireland.

In relation to the links between cause lawyering and public interest law, public interest law is part of cause lawyering. Menkel-Meadow suggests that the array of definitions of cause lawyering are vast and it has been called, *inter alia,* ""social justice" lawyering, "public interest" lawyering, "activist" lawyering, progressive lawyering, progressive lawyering, "transformative" lawyering, equal justice lawyering, "radical" lawyering, lawyering for social change, "critical lawyering", socially conscious lawyering, lawyering for the underrepresented, lawyering for the subordinated, "alternative" lawyering", political lawyering and "visionary" lawyering". For more information on this, *see* Carrie Menkel-Meadow, 'The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers' in *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press 1998) 33 (footnotes omitted). Note the author indicates these definitions are "generic" as they are different from "cause-specific" labels such as civil rights, poverty, legal aid and others.

In relation to cause lawyering and CED, Shamir and Ziv, in studying cause lawyering in Israel, make an interesting point about using cause lawyering. They indicate that cause lawyering can be used to "mobiliz[e] whole communities for economic development" and that it can be practiced under an individual or under a collective basis. Moreover, they add that because cause lawyers practice transactional legal work on behalf of neighborhoods or communities, CED is a good example of this. *See* Ronen Shamir and Neta Ziv, 'State-Oriented and Community-Oriented Lawyering for a Cause: A Tale of Two Strategies' in *Cause Lawyering and the State in a Global Era* (Oxford University Press 2001) 299.

poverty lawyers in the 1980s and early 1990s, which acknowledged the existence of client disempowerment - occasioned by how lawyers conducted their work and which resulted in the creation of client dependency and how lawyers responded to it- further stimulated the birth of CED as a lawyering approach, something that has not been present in Ireland.

In the United States, the seeds of CED can be found within the establishment of the Neighbourhood Law Centres of the War on Poverty of the 1960s and the influences of the civil rights movement. While the neighbourhood law centres in the United States, as originally envisaged, were short-lived, they influenced the development of the community law centre movement in other jurisdictions, including Ireland; creating a paradox as to how the development of CED, particularly as a lawyering strategy, would emerge outside its home country. Because of this, one finds that Ireland has developed its own version and use of CED as a lawyering strategy (also known as CED lawyering) albeit it is not known by that name and it is mostly found within the realm of access to justice and civil legal aid. However, given the impact of globalisation and the economy, both styles of CED lawyering have ended at the same cross-roads, one which seeks to create sustainable and healthy communities while keeping the welfare and empowerment[7] of the community at its heart.

Because CED can be studied and analysed from different angles, such as the social, political and economic aspects that are engendered and due to the difference in the substantive aspects of CED law[8] between jurisdictions, the main focus of this thesis is on CED lawyering.

CED lawyering, in short, is a strategy for redressing urban poverty. Under this strategy, the lawyer acts more like a facilitator and uses a variety of legal tools and approaches with the aim to improve the economic welfare of the community and its residents.[9]

The scope of this thesis, therefore, is to research CED as a lawyering strategy when addressing issues of access to civil justice and civil legal aid[10], particularly in establishing

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[7] Note that the concept of empowerment is not covered in this research, albeit it is mentioned at times. This is because "empowerment" is a very debated concept and would require an in-depth socio-legal research which, given time and funding restrictions, would not be feasible to do within the parameters of this research, as it would require to look not only looking at the United States but other jurisdictions such as the U.K

[8] Such as the differences in tax or commercial law.

[9] For a full definition, *see* chapter two at section 2.5.

[10] These issues may also include the measurement of outcomes in relation to access to justice. It is important

and assessing the role of CED lawyering (if any) in the implementation of a strategic model of legal aid. Hence, my main focus throughout will be on CED lawyering and although some reference will be given to CED law (particularly when discussing the situation in the United States), the research does not tend to concentrate on it.

It is also important to note that CED and public interest law in general have also been influenced by developments in the international arena[11] and while not central to this research, it is important to acknowledge its contribution, as both the United States and Ireland have also benefited from it, particularly when creating responses (either at the policy level or other) to the lack of investment and economic opportunities in disadvantaged areas, such as the use of microfinance or the establishment of worker-owned cooperatives.

The purpose of this introductory chapter therefore is to set the context for the research, especially when comparing the practice of CED as a lawyering strategy in the United States as applied to Ireland. It first starts by giving an overview of public interest law and CED in an international context, before proceeding with a current illustration of how CED law and CED lawyering work in the United States.[12] Then it discusses the parameters of the research, followed by a description of the research question, the methodology and the overall structure of this thesis. It is hoped that the research contributes to the public interest literature in Ireland but also (and as a corollary of this research) it highlights certain issues found within independent community law centres and offers suggestions as to how these issues can be remedied at a policy level.[13]

1. 1 Public Interest Law and CED in an International Context

to remember that the main goal of access to justice in Ireland is the combating of social exclusion and poverty through the law.

[11] For example, policies developed at a global level and implemented by international institutions such as the UNDP. *See* section 1.1 for more details on this.

[12] Before proceeding to describe the structure of the thesis together with its methodology and research question, it was deemed appropriate as a way of a background, to provide an illustration of how of the theory and practice of CED law and CED lawyering works.

[13] This is because the use of empirical legal research can add to evidence-based policy making as, for example, it can show how access to justice can be best promoted or how the justice system can work in a more efficient manner. For more examples and further discussion on the topic, *see* Martin Partington, 'Empirical Legal Research and Policy-Making' in *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 1002–1024. Note that Partington indicates that legal aid and legal services policy-making has been greatly influenced by empirical research, particularly when assessing unmet legal needs. ibid. 1007.

During the past few years, academics and legal scholars have carried out research relating to the internationalisation and globalisation of public interest law yet little is known about the global and international influences affecting CED as a lawyering strategy and as a law practice.[14] But what is public interest law and how does it fit when talking about CED in an international context?

In Ireland, the available definition of public interest law dates from the early 2000s[15]. It indicates that the term public interest law originated in the 1970s in the United States "to describe attempts to use the law and legal services on behalf of the poor"[16]. In short, it means,

> "[t]he *use of litigation and public advocacy* by and on behalf of the disadvantaged *to solve social and economic problems* arising out of a differential and unequal distribution of opportunities and entitlements in society."[17]

More recently, in the United States, Chen and Cummings have defined public interest lawyering as,

> "encompass[ing] *a broad range of advocacy techniques (not just litigation)* across *various practice sites* (not just nonprofit organizations) undertaken by *different types of lawyers with distinct goals*."[18]

It is clear that these definitions provide for the use of different techniques and not just litigation. Although the American definition does not indicate that public interest law is used to solve social and economic problems, it does acknowledge it is used by different types of lawyers with different goals, and as such, it could be argued that combatting social and economic problems can also be part of these goals.

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[14] Although CED in an international context could form the basis of a separate PhD dissertation, it was deemed important to highlight its relevance and open the stage for new ideas to be developed in the future.

[15] This definition is attributed to the work of Gerry Whyte in which he gives a detailed account of public interest law in Ireland and its development up until 2002. *See* Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 1). Note that his definition has also been influenced by the works of Cooper and Dhavan. *See* Jeremy Cooper and Rajeev Dhavan (eds), *Public Interest Law* (Basil Blackwell 1986).

[16] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 1) 1.

[17] Jeremy Cooper and Rajeev Dhavan, *Public Interest Law* (n 15) 5 (my italics).

[18] Alan K. Chen and Scott L Cummings, *Public Interest Lawyering: A Contemporary Perspective* (Aspen Publishers 2012) (my italics).

Given the greater linkages and exchanges among public interest lawyers and academics across the world[19], solutions to social and economic problems have also taken a global character. Thus, it can be argued that public interest law is no longer a matter that relates or can be studied only at a national level.[20]

For the past 30 years[21] there has been a move towards the internationalisation of public interest law.[22] Academics and researchers have also started to compare public interest law in a globalised context[23]: matters relating to the environment, workers' rights (including immigration) and economic development are just a few of the topics involved[24]. Synergies between national and international efforts are constantly been created, offering a platform for the further development and internationalisation of the different areas of public interest law. Cummings and Trubek have suggested that if we are to speak of public interest law in a global arena, the classical "court-centered and litigation-based" American model cannot be followed.[25] On the contrary, global public interest law should have an array of problem-solving practices adapted to the place and locality where it operates.[26]

In relation to CED itself, Cummings has indicated that, for example, when it comes to CED and how CED fits into the global discourse, the use of business models in the

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[19] A good example is PILnet, the global network for Public Interest Law <http://www.pilnet.org/> [Accessed last 18 October, 2012].

[20] Scott L Cummings, 'Global-Local Linkages in the Community Economic Development Field' in *Progressive Lawyering, Globalization and Markets: Rethinking Ideology and Strategy* (William S. Hein & Co. 2007). Paper available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=898281> [Accessed last 18 August, 2012].

[21] From the election of Reagan in the 1980 and as new investment from USA companies grew in the international sphere also the vindication of rights from people who saw the labour violations and soft environmental laws that affected workers as there were no regulatory regimes (transnational corporations). *See* Scott L Cummings, 'The Internationalization of Public Interest Law' (2007) Vol. 57 *Duke Law Journal*, 8. Also cited as: University of California, Los Angeles - School of Law Research Paper No. 06-41; New York Law School Clinical Research Institute Paper No. 06/07-5. Available at SSRN: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=944552> [Accessed last 18 August, 2012].

[22] ibid.

[23] Scott L Cummings and Louise G. Trubek, 'Globalizing Public Interest Law' (2009) Vol. 13 *UCLA Journal of International Law and Foreign Affairs*. Cited also as: S Cummings and L Trubek, 'Globalizing Public Interest Law'. Cited also as: UCLA School of Law Research Paper No. 09-05; NYLS Clinical Research Institute Paper No. 08/09 #12. Available at SSRN: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1338354> [Accessed last 18 August, 2012].

[24] Although they recognised that the concept of economic development and "pre-existing activist networks organized around human rights have transposed the American concept of public interest law to a global stage. *See*, Scott L Cummings, 'The Internationalization of Public Interest Law' (n 21).

[25] Scott L Cummings and Louise G. Trubek, 'Globalizing Public Interest Law' (n 23) 6.

[26] ibid. 7.

transnational arena has opened the door to new global ideas that can be used within a local context[27]. In the United States, for example, micro-enterprise development[28] and worker-owned cooperative development are ideas that have been imported from other countries,[29] thus altering the landscape of CED.

It could also be argued that the international sources that affect the development of CED are never-ending and continuous, depending on what governments and advocates may consider to be successful policies and programmes (either to tackle poverty, to create investment in disadvantaged communities and others) that can be replicated in their home countries.[30] A number of international treaties, protocols and bodies[31] can be studied and

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[27] Scott L Cummings, 'Global-Local Linkages in the Community Economic Development Field' (n 20) 2.

[28] The best well known example of microenterprise development is the Grameen Bank- a self-sustaining business model whose idea and policy aspects behind the enterprise have been disseminated around the world. In short, the way the Grameen Bank works is that people take loans without providing collateral for the amount borrowed, making it different to other banks. The collateral, however, is replaced by an enforcement mechanism created by the formation of "solidarity groups". The benefit of the solidarity groups is the incentive they offer. There is information and assurance that the project works, there is a share of information among the community, acting like a support group. The transaction costs are reduced as the group's composition are five people rather than one person. Furthermore, the loans are given to women mostly and thus it generates other benefits. Another factor differentiating the Grameen bank from others is that the sources for its capital are different. It is basically a "borrower's co-op" as the members own it. This is because in order to become a member, money has to be deposited in the bank and then those funds are the ones used to provide for the loan. Some money deposited goes into their savings accounts and some to an emergency fund. The loans given are short term and are incremental (initially, the member can borrow a small amount and once that loan is repaid, the member can borrow a bigger amount and so forth).

It started in the village of Jobra, Bangladesh, in 1976 and was formally set up in 1983 <http://www.grameen-info.org/index.php?option=com_content&task=view&id=26&Itemid=175> [Accessed last 18 August, 2012]. However, despite its popularity, the question of how transferable the Grameen model is to "developed nations" has always been an issue for debate. There are concerns about the difference of the social networks in which the Grameen bank operates; they are usually located in villages and not inner cities. The formality of the market in the "developed world" also brings specific problems associated with it such as welfare rules, formalising tax and zoning laws and the regulatory environment of banks.

Another good example is Acción Internacional which focused on Latin America and it also opened offices in the United States. Now it has offices in the Caribbean, Africa and Asia <http://www.accion.org/Page.aspx?pid=191> [Accessed last 18 August, 2012].

[29] Scott L Cummings, 'Global-Local Linkages in the Community Economic Development Field' (n 20).

[30] A good example of this is the way law centre movement developed in different jurisdictions and how CED became embedded within them. For further details on this, *see* chapter four.

[31] For example, there are a number of conventions related to human rights and migration as well as other international bodies and treaties that may be of relevance to CED. See for example : <http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf> [Accessed last 18 August, 2012], particularly Table F, at page 163 which mentions a number of Conventions and the dates when they were ratified by different countries, including Ireland. In relation to international bodies, it could be argued that organisations such as the United Nations Commission on the Private Sector & Development, the Organisation for Economic Co-operation and Development (OECD) the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the International Labour Organisation (ILO) and the World Bank all can have an influence on how CED develops, not just as a lawyering strategy or as part of the practice of law but as a whole, particularly

researched when it comes to CED[32], particularly as to their applicability (especially certain projects within the United Nations Development Programme[33] such as the Millennium

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due to the policies that may be created within countries and communities.

[32] For example, one could link the example of "Immigrants as Nuisance" as part of the Right to Work as a right common to the general public within the international arena.

For instance, Part III Article 6 of the International Covenant on Social, Economic and Cultural Rights (CSECR), which has been signed though not ratified by the United States, indicates that:

> "1. The States Parties to the present Covenant recognize *the right to work*, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
>
> 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, *policies and techniques to achieve steady economic, social and cultural development and full and productive employment* under conditions safeguarding fundamental political and economic freedoms to the individual.

That right belongs to everyone and purporting to curtail such does not promote one of its essential canons, that is, the right to (decent) work. Albeit linking the international covenant to the local issues is not an easy path, it is proposed that international standards can act as a pressure mechanism for the United States government to ratify the CSECR, once the same issue becomes more and more prevalent in the courts. (For example, in 2002, the AFL-CIO and the Confederation of Mexican Workers filed a complaint with the International Labor Organization because of the outcome of the decision of *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) (denial of award of back pay to illegal immigrant who was fired for his involvement in a union organizing attempt). The complaint filed with the ILO argued that "the decision impermissibly infringed on worker's rights to organize, to bargain collectively, and to freedom of association". However, despite" international condemnation of the U.S. Labor Policy in international tribunals [it has] produced little changes in the U.S." Laura J. Cooper, *Labor Law Stories* (Catherine L. Fisk (ed), Foundation Press 2005) 436–437. *See* also, National Immigration Law Center, <http://nelp.3cdn.net/2ae7e1a59a08132967_g7m6bnr82.pdf> [Accessed last 2 May, 2012]).

In this way, local governments cannot use nor enact ordinances that interfere with the right to work, specially, in the curtailment of lawful economic activities carried out mainly by immigrants. Assessing how realistic is this hope remains to be seen. For more information on the ILO convention, go to: <http://www.unhchr.ch/html/menu3/b/a_cescr.htm> [Accessed last March 30, 2010]. And for a brief information on the CSECR and the USA go to: <http://www.amnestyusa.org/escr/files/escr_qa.pdf> (at page 6) [Accessed last 2 May, 2012].

The issue could also be research under the International Labour Organization (ILO). For the ILO economic and social development is one of its main themes and within this, further sources of the right to work can be found. It is important to note that given the current economic crisis, the ILO is placing efforts on local economic development creating a symbiotic relationship between the local and international field - something CED. For the different themes of the ILO, go to <http://www.ilo.org/global/Themes/Ecosocdev/lang--en/index.htm> [Accessed last 2 May, 2012]. And for the relationship between the local and the international field, *see* "Start at home: promoting local economic development to stem the global economic crisis" April 29, 2009 found at: <http://www.ilo.org/global/about-the-ilo/press-and-media-centre/insight/lang--en/index.htm?lang=en/WCMS_105173> [Accessed last 2 May, 2012].

[33] The United Nations Development Programme (hereafter "UNDP") was established in 1965 by the United Nations General Assembly as a way of working on collaboration with governments on development programmes and projects (the General Assembly was established in 1945 under the Charter of the United Nations, meeting in sessions from September to December of each year (and other times if needed) and can make only "non-binding" recommendations on international issues (political, economic, humanitarian, social and legal).

Development Goals[34] and the Initiative on the Legal Empowerment of the Poor[35]).

The UNDP seeks to help people to build a better life by advocating for change and by connecting countries to knowledge, experience and resources through its four main areas of work, namely: Democratic Governance; Poverty Reduction and the Achievement of the Millennium Development Goals (hereafter "MDGs"); Crisis Prevention and Recovery, and Environment and Energy for Sustainable Development. For more information on the UNDP go to: <http://www.undp.org/faq/> [Accessed last 18 August, 2012] and for more information on the UN General Assembly go to: <http://www.un.org/ga/> [Accessed last 18 August, 2012]).

[34] In September 2000, the UN General Assembly adopted a Resolution (the UN Millennium Declaration) in which its member countries committed to work in partnership to reduce extreme poverty under a specific time frame (deadline is 2015). The goals contained within (once elaborated) became known as the MDGs. The MDGs thus have the aim to reduce extreme poverty thus improve the economic and social conditions of the world's poorest countries. They also seek to provide a framework for the international community in which to achieve the goals, tailored by each country to suit their own development needs. The MDGs have a specific time frame for their completion (2015) although challenging, there is hope they will be achieved. For the latest report, *see* United Nations, 'The Millennium Development Goals Report 2012' (United Nations 2012). Available at: <http://www.un.org/millenniumgoals/pdf/MDG%20Report%202012.pdf> [Accessed last 19 August, 2012].

Overall, there are eight development goals and each goal has a certain number of targets (total of 21). The goals are: 1- Eradicate extreme poverty and hunger; 2- Achieve universal primary education; 3-Promote gender equality and empower women; 4- Reduce child mortality; Goal 5- Improve maternal health; Goal 6- Combat HIV/AIDS, malaria and other diseases; Goal 7- Ensure environmental sustainability and 8- Develop a Global Partnership for Development.

It could be argued that within these goals, Goals seven (Ensure Environmental Sustainability) and eight (Develop a Global Partnership for Development) are more responsive to CED, but further research would be needed. For example, the 2012 Report indicates that under the target aimed at reducing biodiversity loss, overexploitation of fisheries is alarming (at page 51), and this is for example where CED law and policies can make a difference as they can facilitate community empowerment and aid towards the facilitation of locally managed community-based fisheries, thus aid to their sustainability. See for example, Niall Farrell, Benjamin Breen, Stephen Hynes, and Michael Cuddy, 'Addressing failures of the common fisheries policy: How principles of devolved community-based governance may improve the sustainability of Irish fisheries' (2012) Vol. 1 *The Irish Review of CED Law & Policy* 53–74.

For more information *see* <http://www.un.org/millenniumgoals/bkgd.shtml> [Accessed last 19 August, 2012]; UN General Assembly, 'United Nations Millennium Declaration', September 18, 2000 (A/RES/55/2) available at: <http://www.un.org/millennium/declaration/ares552e.pdf> [Accessed last 19 August, 2012] and also <http://www.undp.org/content/undp/en/home/mdgoverview/> [Accessed last 20 August, 2012].

[35] As part of its democratic governance work, the UNDP Initiative on Legal Empowerment of the Poor (ILEP) aims to "expand poor people's access to the legal and institutional mechanisms that can help them break the cycle of exclusion and poverty". It became operational in July 2008, albeit the original idea had already been formed by the Commission on Legal Empowerment of the Poor (CLEP), which was formed in 2005. (CLEP was composed of "a group of eminent academics, the former heads of state from North and South, Supreme Court Justices, representatives of Civil Society and Private Sector" (Statement made by Olav Kjorven: Talking points for the Regional Dialogue, Bangkok, March 2009 <http://www.undp.org/legalempowerment/library.shtml> [Accessed last 10 June, 2010]. *See* also <http://hiil.org/assets/857/Handout_HRoLN_Measuring_220410_GK.pdf> [Accessed last 10 June, 2010] [at page 9, Conference Handout, 26 – 27 April 2010, The Hague "Measuring Access to Justice and Legal Empowerment of the Poor"). In relation to the countries involved, they were a group of developing and industrialized countries including Canada, Denmark, Egypt, Finland, Guatemala, Iceland, India, Norway, Sweden, South Africa, Tanzania and the United Kingdom. CLEP ended its work in 2008 as indicated on its mandate but the UNDP continued the initiative (ILEP). *See*, <http://www.undp.org/legalempowerment/clep_archive/index.html> [Accessed last 12 June, 2010].)

ILEP now has core strength of six full-time professionals. Its core team draws on the expertise of concentric

In relation to Ireland, the influence of international practice on the development of public interest law[36] and CED is best exemplified by the advent of regeneration and the role

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circles of professionals in various UNDP Bureaus, regional centres and country offices. ILEP is also developing strong grassroots level engagement, through NGOs, civil society organisations and community based organisations, all of which support the legal empowerment of the poor, thus linking exclusion, poverty and law (*See* UN General Assembly, 'Legal empowerment of the poor and eradication of poverty: Report of the Secretary-General' (United Nations July 13, 2009) sec. III, 43 at p.12 (A/64/133). Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/402/07/PDF/N0940207.pdf?OpenElement> [Accessed last 20 August, 2012]).

ILEP has four main areas of work or four pillars, namely, (i) Property Rights and Tenure Security; (ii) Labour Rights; (iii) Rights to Livelihood and Entrepreneurship; and (iv) Rule of Law and Access to Justice, ensuring the needs of people and communities are addressed at a local level while at the same time ensuring they are empowered. Thus in essence and in practice, ILEP uses bottom-up and top-down approaches to development, shifting the views as to how development should be approached and ensuring that everyone benefits from legal protection and economic opportunity and not just some, an approach very similar and familiar to CED.

There have also been a number of resolutions passed and adopted by the UN General Assembly pertaining ILEP and a number of publications. *See* for example the first Resolution dating from 11 December 2008 (A/RES/63/142) which called for the United Nations Secretary General to submit a report (A/64/133) to the United Nations General Assembly on the legal empowerment of the poor. And the second resolution dates from 21 December 2009, which is a follow-up to the first Resolution A/RES/63/142 and the report of the Secretary-General (A/64/133).

To date, there have also been two main publications relating to ILEP, the first one entitled *Making the Law work for Everyone* and the second one *Envisioning Empowerment*. *Making the Law Work for Everyone* was published by the CLEP (ILEP's predecessor) and only launched in Europe in May 2009 at the Hague by Olav Kjørven, Director of the UNDP BDP (Bureau for Development Policy). The first report explains in detail each of the four pillars of legal empowerment and reforms. It indicates that when carrying out the reforms, the process should be guided by five rules, that is, they should be "bottom-up, affordable, realistic, liberating, and, risk aware" (at page 76). The second publication gives an overview of 50 projects that promote inclusion, opportunities and development around the world (including *pro-bono* and legal aid). This publication also includes some other initiatives carried out under a multi-country scale, including a global empowerment facility, a Human Empowerment Index (HEI) to measure and compare progress on empowerment of the poor and a micro-justice facilitator's toolbox for delivery of justice. *See* Commission on Legal Empowerment of the Poor and United Nations Development Programme, 'Making the Law Work for Everyone: Volume I - Report of the Commission on Legal Empowerment of the Poor', 2008 available at: <http://www.unrol.org/files/Making_the_Law_Work_for_Everyone.pdf> [Accessed last 21 August, 2012] and also UNDP, 'Envisioning Empowerment: a portfolio of Initiatives for Achieving Inclusion and Development' (UNDP 2009),
available at: <http://www.undp.ro/download/Envisioning%20Empowerment_full%202009.pdf> [Accessed last 21 August, 2012].

For more information on ILEP go to:
<http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas/focus_justice_law/how_we_work.html> [Accessed last 20 August, 2012] and also,
<http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas/focus_justice_law/legal_empowerment.html> [Accessed last 20 August, 2012].

It is also important to note that this is also an international project generating data set that can be used for empirical research. For more information, *see* Roderick A Macdonald, 'Access to Civil Justice' in *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 498.

[36] In Ireland, the Public Interest Law Alliance (hereafter "PILA") bulletin offers an international update as to what is happening in Ireland and abroad, helping towards the internationalisation of public interest law. Public interest law in Ireland, from the outset, has also received input from events taking place

sustainable development has had in its evolution – a topic that will be discussed in detail in the case study of the Ballymun Community Law Centre.

1.2 Illustration of the theory and practice of CED law and CED lawyering in the United States – The treatment of immigrants as nuisance

The law of nuisance[37] is generally seen as a helpful ally when trying to restrict the unwelcome use of private property. Similarly, public nuisance can also act as protection from:

> "[a]n *unreasonable interference* with *a right common to the general public*, such as *a condition dangerous to health*, offensive to community moral standards, or *unlawfully obstructing the public* in *the free use of public* property"[38]

However, the definition of public nuisance can also serve as a disguised tool for the marginalization of specific populations. Ordinances dictated by cities which control, for example, street gatherings or the noise level of equipment, are presented to its constituents as elements of improved living conditions, but many times the effect on a specific population is seldom mentioned.

According to the 2007 U.S. Census[39], 47.3% of the population living in the Los Angeles County is of Hispanic or Latino origin.[40] More often than not, immigrants find themselves in precarious living conditions. In California, immigrants are among the "most productive entrepreneurs"[41] and the economic activities that can easily be carried out are,

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internationally (best example is the law centre movement, which is discussed in Chapter 00 of this thesis). For access to the PILA Bulletin, go to <http://www.pila.ie/bulletin/> [Accessed last 21 August, 2012].

[37] Bryan A. Garner, *Black's Law Dictionary* (Second Pocket edn, WestGroup 2001) 488. Black's Law Dictionary defines nuisance as "a condition or situation (such as loud noise or foul odor) that interferes with the use or enjoyment of property.

[38] ibid. 489 (my italics).

[39] <http://quickfacts.census.gov/qfd/states/06/06037.html> [Accessed last 2 May, 2012].

[40] A similar figure for the year 2000 is also true for the City of Los Angeles at 46.5 % <http://quickfacts.census.gov/qfd/states/06/0644000.html> [Accessed last 2 May , 2012].

[41] California Immigrant Policy Center, "Looking Forward: Immigrant Contributions to the Golden State "*A Compilation of Recent Research Findings on Immigrants in California*", January 2008. For more information, go to: <www.caimmigrant.org> [Accessed last 2 May, 2012].

among others, day labouring, gardening or the selling of food. Yet, local city councils have made use of land use regulations[42], specifically the law of public nuisance, to restrict the economic activities of many immigrants.

As a way of elucidating this and of showing how the theory and practice of CED law and CED lawyering have helped these communities, three examples of economic activities that have been restricted by local governments because they considered them to be a nuisance (i.e. gardening, day-labouring and food vending trucks) are provided together with the responses elicited by the affected groups to such restrictions. In short, people affected have used the same laws to defend the right to engage in their economic activity.

1.2.1 Description of the land use regulations used and responses engendered

The definition of public nuisance mentions that "a right common to the general public" has been subject to "unreasonable interference".[43] One may ponder, however, if that *right* is *common to the general public* or if it belongs only to a selected few. The ordinances enacted by the local governments seem to have created a set of double standards in which rights common to the general public are not the same as the rights for immigrants who are also part of the general public. The definition of "public" used as a noun[44] or adjective[45] does not differ much but nevertheless, because of the immigrants' economic activities, they are excluded from the concept of the general public.

Immigrants' economic activities have also been considered as *conditions dangerous to health*, such as in the leaf-blowers ordinance[46] or as an *unlawful obstruction to the public* in the case of the day-labourers and the food vendors. What follows therefore is a summary of the ordinances enacted and the responses engendered by them. For the sake of simplicity, the name of each ordinance has been changed in order to reflect the people they affect.

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[42] For a quick look as to what constitutes land use regulations, please visit <http://www.answers.com/topic/land-use-control> [Accessed last 6 November, 2012].

[43] Bryan A. Garner, *Black's Law Dictionary* (n 37).

[44] "the people constituting a community, state, or nation" <http://dictionary.reference.com/search?q=public> [Accessed last 6 November, 2012].

[45] "of, pertaining to, or affecting a population or a community as a whole". ibid.

[46] *See* analysis at section 1.2.1 (1) below.

(1) The Gardeners' Ordinance[47]

In 1997, Los Angeles passed an ordinance[48] which prohibited the use of gas-powered leaf-blowers within 500 feet of a residence, which could have subjected gardeners to six months in jail and given them a fine of $1,000[49]. Los Angeles, however, was not the only city to have passed such ordinance. Cameron reports that by 1996, "more than forty California cities and towns had passed ordinances banning or restricting the use of leaf-blowers,"[50] many of them because of noise concerns. Nevertheless, there was very little mention that one of the important tools of the gardeners' trade was their leaf-blowers machinery and that such high fines could take almost 10% of the gardener's monthly wages.[51] Still, local Council Member Marvin Braude wanted an out-right ban on the use of this machinery and his measure won approval from the City Council.[52] In response, the gardeners united their efforts and *ALAGLA* was formed.

(a) The Association of Latin American Gardeners of Los Angeles (ALAGLA)[53]

Resistance to the Gardeners' Ordinance came in the form of ALAGLA, which shortly after its formation, had to face the publicity of "television stars"[54] involved in

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[47] To date very little can be found online about the gardeners' experience. Most of the information is from newspaper clippings and letters kept on file by Victor Narro, Project Director at the UCLA Downtown Labor Centre, who kindly allowed me to use the information for this research. Having said that, Alvaro Huerta, organizer director of ALAGLA recently completed his PhD thesis which he titled "Examining the Perils and Promises of an Informal Niche in a Global City: A Case Study of Mexican Immigrant Gardeners in Los Angeles". Note that the full dissertation was not found online. Information on Alvaro Huerta's dissertation was found at: <http://www.acsp.org/sites/default/files/Huerta_CV_03_27_2012.pdf> [Accessed last 29 August, 2012] and the abstract at: <https://sites.google.com/site/alvarohuertasite/dissertation> [Accessed last 29 August, 2012].

[48] The local ordinance was enacted under Chapter XI "Noise Regulation" of Los Angeles City Council. For further information, go to: <http://www.zapla.org/present/lalaw.html> [Accessed last 12 May, 2012].

[49] Approximately €800 euros.

[50] Christopher D. Ruiz Cameron, 'The Rakes of Wrath: Urban Agricultural Workers and the Struggle Against Los Angeles' Ban on Gas Powered Leaf Blowers' (2000) 33 *U. Calif. Davis L. Rev.*, 1092.

[51] ibid. 1089.

[52] His successor, City Council Member Cindy Miscikowski followed up on his cause (ibid. 1092–1093). Local political support can also be compared to Supervisor Molina and the city ordinance passed restricting the street vendors.

[53] ibid. 1093–1096.

[54] *See* 'If you want to Hear this Catwoman Hiss, Just Blow in her Ear', *The Wall Street Journal* (United States, 3 December, 1997).

supporting the ban.[55] Supporters of the ordinance argued that leaf-blowers were bad for the environment and for the gardeners' physical and spiritual health.[56] The president of ALAGLA, on the other hand, argued that "an outright ban was a smokescreen for discrimination against the Latino men who [did] physically demanding work of gardening" and that it was not a solution to "deprive people of a fundamental tool" in earning a living."[57]

ALAGLA mobilised and used a number of tactics to bring attention to their plight, including protests against the ban. They also carried out an eight-day hunger strike[58] and a barefoot march[59] in front of the City Hall, which did not go unnoticed and when the City Hall did not stop the ban, the organisation took the matter to the state capitol in Sacramento. Although ALAGLA was unsuccessful in repealing the ordinance, they did have some success. The charge of misdemeanour of the ordinance was reduced to an infraction and the fine reduced significantly, but most importantly, public awareness of the situation was raised.[60] Thus, by "[a]dopting a creative mixture of traditional and non-traditional political, legal and extralegal tactics, [ALAGLA] took their case before both the courts and the court of public opinion."[61]

Once the directors of ALAGLA felt that the organisation's life was ending, they voted for its dissolution in 2003 as they could create a limited liability company (hereafter

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[55] Christopher D. Ruiz Cameron, 'The Rakes of Wrath: Urban Agricultural Workers and the Struggle Against Los Angeles' Ban on Gas Powered Leaf Blowers' (n 50) 1094.

[56] ibid. 1094–1095.

[57] ibid. 1095.

[58] ibid. 1097.

[59] *See* Hector Tobar, 'The year 1998 in review', *Los Angeles Times* (Los Angeles, 30 December 1998).

[60] Christopher D. Ruiz Cameron, 'The Rakes of Wrath: Urban Agricultural Workers and the Struggle Against Los Angeles' Ban on Gas Powered Leaf Blowers' (n 50) 1097.

[61] ibid. 1097; 1096–1098. Some of the non-legal tactics used as indicated previously were "a barefoot march" from downtown Los Angeles to the City Hall to show how the law passed was causing them suffering and also "they circled the City Hall carrying brooms" and a hunger strike to ensure the Mayor and the Council "took action" in relation to their issues (some gardeners indicated they would not eat until some action took place, even if it meant them dying in the lawns of the City Hall). Once the Ordinance was enacted, the gardeners directed their efforts to the State Capitol and received support from a Senator who brought in a bill to pre-empt leaf-blower legislation in California but the bill was defeated.

In relation to the legal tactics, lawyers for example, represented gardeners in court who have been issued tickets due to non-compliance of the ban and also helped to delay the implementation of the ordinance for over a year by challenging the ordinance on equal protection principles. These tactics in turn brought together Latinos and workers whom otherwise would not have acted alone, empowering them in the process as they could see that to combat their "collective oppression" they needed to work together.

"LLC") in its place. Ex-AGLALA members were now shareholders of the LLC. LLC now operates by selling and offering mechanical repairs of gardening tools.[62]

(i) Empowering the Community

ALAGLA also led to the creation of an organisation called "the Statue of Liberty Center" (hereafter "SLC"), which received support and grants from the local Hispanic community[63] and other foundations. A year after ALAGLA was created, Alvaro Huerta, its organising director, created the SLC as a project within Community Partners[64], in order to build and service the immigrant community.

> "SLC provided access to medical health plans and offered occupational and development classes as well as health seminars to improve the gardeners' working conditions and minimise the risk of injuries. It also carried out leadership seminars focused on advocacy skills for community health issues; English classes and preparation for the State's landscaping Exam".[65]

(2) The Day Labourers' Ordinance[66]

In order to restrict solicitation of work in public areas and the gathering of day workers on street corners, local governments such as Baldwin Park[67], Glendale[68] and

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[62] Information of the LLC found on the "Notice of dissolution to ALAGLA members", dated January 30, 2004 (in file with author).

[63] For example, Hispanics in Philanthropy awarded seed money to SLC (in file with author). For further information go to: <http://www.hiponline.org/home/> [Accessed last 2 May, 2012].

[64] Community Partners offers, among other services, fiscal sponsorship to organizations that are just starting up and are not ready to associate/incorporate and/or lack the resources for such. For more information go to: <http://www.communitypartners.org/> [Accessed last 2 May, 2012].

[65] "Private Correspondence for Grants' nominations" (in file with author). Note that it is uncertain if SLC is still in operation as no further information could be found.

[66] The day laborers' experiences have been recorded by many. Hence, only minimum coverage is given in this paper. For further information, see for example: reports on the Los Angeles Times online news at: <www.latimes.com>; Abel Valenzuela Jr, 'A better day-labor market', August 13, 2008 <http://www.latimes.com/news/opinion/la-oew-valenzuela13-2008aug13,0,5937493.story> [Accessed last 2 May, 2012]; or NDLON's website <www.ndlon.org> [Accessed last 2 May, 2012]

[67] <http://www.baldwinpark.com/> [Accessed last 2 May, 2012].

[68] For Glendale's Anti-Solicitation Ordinances (albeit amended after it was tested in the Courts) go to: <http://www.ci.glendale.ca.us/gmc/9.17.asp> [Accessed last 2 May, 2012].

Redondo Beach[69] enacted anti-solicitation ordinances that made it almost impossible for workers to look for day-work. Redondo Beach made it

> "unlawful to stand on the sidewalk and solicit employment, business, or contributions from an occupant of any motor vehicle... [and] began aggressively enforcing its anti-solicitation ordinance in 2004 through a sting operation in which police officers posing as employers would pick up day labourers, arrest them, and transport them to jail."[70]

Once again, the workers organised and the day-labourers' campaign was born. It is important to note that other local governments have also tried enacting "day labourers' ordinances" in order to restrict the solicitation of work by day labourers but they have been unsuccessful.[71]

(a) Day Labourers and the creation of a movement within their struggle

The day labourers made extensive use of popular education in order to reflect what the workers wanted.[72] All of their efforts came together when an alliance of "community-based organisations and worker centres dedicated to improving the lives of day laborers in the United States"[73] was created. Their alliance was named the National Day Laborer Organising Network (NDLON).

Through public support from various legal organizations such as MALDEF,[74] CHIRLA[75] and the ACLU,[76] the day labourers were successful in their campaigns,

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[69] <http://www.redondo.org/default.asp> [Accessed last 2 May, 2012].

[70] <http://www.maldef.org/immigration/litigation/redondobeach_v_jornaleros/> [Accessed last 2 May, 2012].

[71] For example, the town of Cave Creek in Arizona enacted an ordinance that restricted the solicitation of work by day laborers but the federal court gave an injunction stopping the town from enforcing it. For further information, go to: <http://www.rollbackcampaign.org/press-center/article.197916-MALDEF_Obtains_Preliminary_Injunction_Against_Cave_Creek_Day_Laborer_Ordina> [Accessed last 2 May, 2012].

[72] Notes from a talk given by Chris Newman, Legal Programs Director at NDLON (in file with author) summer 2009.

[73] <http://www.ndlon.org/index.php?option=com_content&view=article&id=45&Itemid=73> [Accessed last 3 May, 2010].

[74] Mexican American Legal Defense Fund: <http://www.maldef.org> [Accessed last 2 May, 2012].

[75] Coalition for Humane Immigrant Rights of Los Angeles <http://www.chirla.org/> [Accessed last 2 May, 2012].

[76] American Civil Liberties Union <http://www.aclu.org/> [Accessed last 2 May, 2012].

including gaining the sympathy of local politicians and the further enactment of legislation, such as the Home Depot Ordinance introduced by Councilman Bernard Parks.[77]

As with the gardeners, the day labourers used both political and legal tactics in their campaign[78] such as protests and challenges to the law. Lawyers also acted as legal observers and helped to explain the law.

(3) The Loncheros' Ordinance

The California Vehicle Code 22455 which regulates vending from vehicles, states that "a local authority may, by ordinance or resolution, adopt additional requirements for the public safety regulating the type of vending and the time, place, and manner of vending from vehicles upon any street."[79]

As such, it was not difficult for Gloria Molina, one of the local members of the Los Angeles County Board of Supervisors, to introduce a local ordinance amending the Los Angeles County Code[80] as it relates to food vending trucks. The ordinance imposed requirements that would make it impossible for any person to continue their lawful economic activity. Basically, a food vending truck could not

> *"remain in any one location for the purpose of sale or display of such liquids or edibles for more than 30 minutes in a residential zone, or 60 minutes in a non-residential zone, during any three-hour period and shall not return to any location within one-half mile of each prior location where the person sold or displayed liquids or edibles within said three-hour period."*[81]

Because most of the food vending trucks are the taco-trucks (hereafter "loncheros"), there can be no denial that this economic activity performed mainly by immigrants was the specific target of an ordinance disguised in the ideal of protecting *a right common to the*

[77] The Home Depot Ordinance for example requires the Big-Box store to obtain conditional use permits which requires them to build day-labor centers with shelter, drinking water, bathroom and trash-cans. For a report of the news see <http://jornaleronews.ndlon.org/?p=115> [Accessed last 2 May, 2012].

[78] Notes from a talk given by Chris Newman, Legal Programs Director at NDLON (n 72).

[79] VC. Section 22455 (b) <http://www.dmv.ca.gov/pubs/vctop/d11/vc22455.htm> [Accessed last 2 May, 2012].

[80] Under section 7, Business Licenses.

[81] For a complete wording of the law "7.62.070 Peddlers of edible products from commercial vehicles–Moving location required when" go to: <http://library.municode.com/index.aspx?clientId=16274> [Accessed last 6 November, 2012].

general public. However, just as with the gardeners and the day labourers, the loncheros also fought to defend their economic activity, creating a collective organisation to represent their interests.

(a) Asociación de Loncheros La Familia Unida de California[82]

As in the previous two examples, loncheros became organised only after the law which required the taco-trucks to move was passed.[83]

One important factor that made organising easier was the involvement of the UCLA Downtown Labor Center. One of the taco-trucks' location was directly across from the UCLA Downtown Labor Center and as such, their struggle was familiar to Victor Narro, Project Director at the UCLA Downtown Labor Center.[84] In addition, one of the taco-trucks organisers, Erin Glenn, had taken one of the summer courses at the Labor Center, approaching Victor Narro to talk about the issues facing the taco-trucks almost at the same time.[85]

Initially, the loncheros created an informal association, signing up members and collecting monthly dues to fight the fines and citations imposed on the loncheros by the ordinance. They also hired a lawyer to help them with their defence.

Then, less than a year after the enactment of the ordinance, the loncheros incorporated into a non-profit mutual-benefit corporation called "Asociación de Loncheros L.A. Familia Unida de California"[86]. Calling on the wider community to assist in their plight has also proven to be very successful[87] as well as receiving support and inspiration

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[82] Association of Loncheros United Family of California (my translation).

[83] To see a comparison of the changes made to the ordinance, go to: <http://file.lacounty.gov/bos/supdocs/37714.pdf> [Accessed last 2 May, 2012].

[84] For more information on Victor Narro, go to: <http://www.labor.ucla.edu/contact/expertbios.html> [Accessed last 22 August, 2012].

[85] Conversation with Erin Glenn about the onset of the involvement of the UCLA Downtown Labor Center in their campaign (summer 2009).

[86] Articles of Incorporation were signed on April 17, 2009.

[87] For example, the Latino Congress has endorsed their fight; the UCLA School of Law has assisted them with their organizational structure together with Public Counsel and in the legal issues involved with the citations.

from a similar situation involving taco-trucks in Phoenix, Arizona. Three years on and the loncheros' organisation is still going strong.[88]

It is interesting to highlight that taco-trucks were affected by a similar ordinance in Phoenix, Arizona[89] a few years prior the enactment of the loncheros' ordinance in California. The taco-trucks from Phoenix, however, organised by creating a Limited Liability Company (hereafter "LLC") from the outset[90], in which each member had a share on the company. Their LLC also bought land and installed a commissary for the preparation of the food destined to be sold by the taco trucks. The loncheros in California thus partly based their efforts on the response of the taco-trucks in Phoenix and saw the outcome of the Phoenix loncheros' campaign as an inspiration for what they could achieve.

Similar to the other two groups, the loncheros also used different tactics such as press releases highlighting their plight, meeting with different council members and organising educational classes about the ordinance with its members. One of their members also pursued an administrative appeal due to the mounting fines he was receiving due to the ordinance[91], which attracted extra media attention to their cause.[92]

1.2.2 The Development of Alternative Structures

The legal issues faced by the gardeners, day-labourers and loncheros brought out the best in what people can accomplish when they unite. They all have developed alternative structures to the modern definition of how public interest law works[93] and also on how to use the alternative avenues of communications.

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[88] They have about three hundred members (including 40 core members) and supported city officials with the establishment of a rating system for taco-trucks in relation to health inspections, which is now fully operational. Ingrid V. Eagly, 'Criminal Clinics in the Pursuit of Immigrant Rights: Lessons from the Loncheros' (2012) 2 *UC Irvine Law Review* 91, 123. At present, they are in the process of recruiting a new CEO (text messages received from a member of the Board of Directors, May and July, 2012).

[89] For a newspaper report on what was happening in Arizona, *see* Mary Vandeveire, 'City Council Reconsiders Rules for Mobile Food Vendors', *AZ Daily Star* (19 October 2003) Available at: <http://www.highbeam.com/doc/1G1-119789569.html> [Accessed last 2 May, 2012].

[90] Information related by Christian Canas from Public Counsel from conversation he had with the taco-trucks organizer in Phoenix, Arizona (summer 2009).

[91] The litigations was carried out pro-bono under the auspices of the UCLA Criminal Defense Clinic. For more information on the work of the clinic in relation to the loncheros, *see* Ingrid V. Eagly, 'Criminal Clinics in the Pursuit of Immigrant Rights: Lessons from the Loncheros' (n 88).

[92] The administrative appeal was also used to challenge the validity of the ordinance. ibid. 91.

[93] The classical structures of how public interest law currently works is that following litigation people then organise to accomplish the enactment of legislation which in turn empowers people. However, the loncheros

The alternative structure lies in the concurrent use of litigation and the creation of internal governance structures within the movements[94] as well as engaging politically. These joint responses, as a result, empower the community. Furthermore, should their litigation bring legislative changes or not, members of these organisations and the organisation itself have transformed their communities. This is because these organisations through their experiences – starting from the realisation that individuals cannot be as strong as the collective (which is sparked by the laws that criminalise their economic activities such as the selling of food) to the recognition that their collective voices can only become stronger if they are recognised under the law through the use of proper governance structures– have provided their members and communities with the knowledge on how to motivate others should another issue affect their lives (this is despite the fact that the incorporated association or non-profit association may dissolve in the future because they have created an LLC or for other reasons, as depending on their organisation's mission, sometimes the best way to serve their members is to transform. ALAGLA for example was dissolved and an LLC was created, making its members the shareholders of their newly formed LLC, thus creating new economic benefits for them).

The use of alternative means of communication, that is, the use of internet and online forums such as Facebook[95] and YouTube,[96] has also added a further tool that brings the community together and is able to raise awareness among the larger community. The loncheros[97] and the day labourers[98] also built websites to further share information about their struggle and organisations.

1.2.3 How CED law and CED lawyering worked

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reacted to the enacted legislation by organizing and litigating so they could be empowered (litigation → organizing → legislation = empowerment / legislation→ organizing →litigation = empowerment) Notes from Public Interest Law Seminar (UCLA, 2009).

[94] Legislation → litigation + creation of internal governance structures = empowering the community.

[95] *See* the facebook link on their webpage <http://www.ndlon.org> [Accessed last 2 May, 2012].

[96] <http://www.loncheros.com/videos/videos.html> [Accessed last 2 May, 2012]. Note that a further website not associated with the Asociación de Loncheros, but who also support their cause is the organization called "Save our taco-trucks", found at: <http://saveourtacotrucks.org/> [Accessed last 2 May, 2012]. For Facebook see the link on their webpage.

[97] <http://www.loncheros.com/> [Accessed last 2 May, 2012].

[98] <http://www.ndlon.org/en/> [Accessed last 2 May, 2012].

By enabling the formation of LLCs, public interest lawyers used the transactional aspects of CED law such as company and tax laws to ensure these groups were incorporated so they could become legal persons. The lawyering approach used - CED as a lawyering strategy (CED lawyering) - enabled people to learn about their rights and responsibilities as directors and officers through community legal education, empowering their constituents and their voices in the process. So people learned about their right not just from lawyers but from the experiences shared among them. Lawyers also worked in a collaborative manner, working not on behalf of their clients but with them.

The use of different tools and legal approaches such as protests, strikes, social media, political pressure and litigation also highlight the use of a strategic approach.[99] For example, lawyers acted as legal observers in their campaigns, they helped to incorporate their organisations into legal persons[100], conducted research into the applicable law, provided educational material for their members or acted as interpreters or translator when needed.

Given the economic times, more and more people are forced to find alternative means of income away from what is considered "traditional" commercial activity. In the United States, immigrants are usually the most vulnerable part of the population when it comes to economic downturns and employment outside the traditional job markets becomes inevitable[101].

Alternative economic activities as extra sources of income are growing. In the street of Los Angeles, for example, invisible street vendors are flourishing; they vary from selling warm bread in the morning near bus stops to the selling of small items such as wallets and rings.

If local governments are to enact policies to stop the growth of a black-market or to regulate areas of work, then those laws should also empower people, enabling them to

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[99] The term 'strategic approach' is not really known in the public interest law circles consulted (law professors and lawyers). What we call the strategic approach is part of the normal way public interest law operates in the United States and as indicated earlier, CED lawyering can be compared to it (this is based on my experiences as an LLM student specialising in public interest law in the United States).

[100] This was done with the help of the Community Development Unit at Public Counsel Law Centre (the largest pro-bono law firm in the United States) and two students, which worked under the auspices of the UCLA CED legal clinic.

[101] *The Economist* The Economist, 'Global Migration and the Downturn', January 15, 2009. Accessible at: <http://www.economist.com/world/international/displaystory.cfm?story_id=12932296> [Accessed last 2 May, 2012].

provide for their families and find their way out of poverty. Individuals within local governments should not masquerade their agendas behind public nuisance laws in order to deter the economic activities of immigrants.[102] And this is where public interest lawyers by using a CED lawyering approach have made their mark.

1.3 The parameters of the research

The above experiences of immigrants was intended to provide an illustration of what is meant by CED lawyering and to a certain extent CED law as practiced in the United States. Given the law applies in different ways across jurisdictions and the fact that there is little research when it comes to public interest law in Ireland, finding a point of comparison for the Irish experience meant that looking as CED as lawyering strategy made the most sense (rather than looking at CED law).

In order to assess how CED lawyering was taking place and because independent community law centres are best placed to provide for a strategic model of legal aid, this research also studied some such centres in detail by means of case-studies. Not all the independent community law centres in Ireland are covered in this thesis, but rather only those found to offer some elements for comparison with CED lawyering, namely Ballymun Community Law Centre (hereafter "BCLC") and Northside Community Law Centre (hereafter "NCLC"). While the seeds of CED can be observed from the outset in the way the first community law centre developed in Ireland, it was not until the emergence of BCLC that the impact of CED lawyering could more easily be observed. NCLC emerged from the movement promoting access to justice while BCLC was part of a programme for sustainable development and regeneration. The two case-studies therefore show how CED lawyering has developed in Ireland.

The case studies took place between May 2011 to May 2012[103] in the case of NCLC and from February 2011[104] until July 2012 in relation to BCLC.[105]

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[102] It remains to be seen if under the Obama administration *the right to the general public* has been exercised by all. Now with his re-election as president of the United States perhaps it will. *See* for example, Peter Nicholas and Carol E. Lee, 'Obama Wins Second Term', *The Wall Street Journal* (United States, 7 November 2012) <http://online.wsj.com/article/SB10001424052970204349404578101520589031776.html?mod=ITP_pageone_0> [Accessed last 7 November, 2012].

[103] This is when I step down as editor of the Irish Review of CED Law & Policy, a journal I started and co-founded with the NCLC in order to learn and promote the practice of CED Law, CED lawyering and CED policy

In relation to the United States, this thesis relies heavily on sources from California and Los Angeles in particular, due to my experiences while living in Los Angeles. Having said that, a general view of the United States is given and reference to Los Angeles and California is provided when exemplifying policies and practices pertaining CED.

It is important to highlight that when referring to CED law and CED lawyering the public interest point of view is taken (so even though it could be argued that the practice of CED law exists in Ireland – if one were to look at the substantive areas of CED law (e.g.: transactional law) which is done by commercial law firms – from a public interest point of view, such firms do not practice CED law as they do not meet the characteristics of CED[106]).

What the thesis does not cover therefore is a detailed comparison of the substantive law pertaining to CED. It also does not offer an in-depth research of all of the independent community law centres in Ireland, although they were initially consulted to assess which community law centres would form part of the case-studies.[107] It also does not contain any analysis of case law or legislation given the absence of any relevant caselaw or legislation relating to this topic.

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in Ireland.

[104] This initial date was when I started to observe the Housing and Policy Class (2011) held in NUI Galway and transmitted via video link to Ballymun. I also visited BCLC that same month, once on my own and then with the students from the class. However, full archival research and spending time with the community started in January 2012.

[105] Although a paper was presented on this in April 2012 at an international housing conference, which is now the subject of a book chapter, I have continued to be involved with BCLC, developing other projects such as a pop-up law library.

[106] "For CED to take place, it is essential for practitioners to have contact with the local community, either by face-to face encounters or by being part of a geographical focus as well as by making the community the recipients of development. Moreover, local development has to be accountable to the community it serves."

See Maria Antonieta Nestor, 'The Research of CED Lawyering in Ireland: An Overview' (2011) 1 *The Irish Review of CED Law & Policy* 6, 8 (footnotes omitted).

[107] *See* Appendix I "Sample CLCs' Questionnaire" sent to all of the independent community law centres. Note that FLAC (Free Legal Advice Centres) was not included on the list as although it is considered an independent community law centre for the purposes of the Solicitors Acts, 1954-2002 (Independent Law Centres) Regulations 20006 [S.I. No. 103 of 2006 (as amended)], they see themselves as an independent human rights organisation aimed at attaining "equal access to justice for all" by campaigning on an array of legal issues. They also offer some free legal services to the public. For more information on FLAC, go to: <http://www.flac.ie/about/> [Accessed last 7 November, 2012].

1.4 Research Question

Keeping in mind the lack of research within the public interest law field in general, framing an appropriate research question that would advance our conception and understanding of Irish public interest law while at the same time push its boundaries meant the question had to be narrowed down to make effective use of time and resources. The question also had to ensure there was an appropriate person in Ireland to supervise my research, at least within the wider field of public interest law.

My initial thoughts were that CED lawyering took place in Ireland but I did not know how or if the United States had any influence on the matter. I was aware that lawyers and law students in the 1960s had looked at the United States for inspiration as to how the law could be used to help the disadvantaged but little else appeared to be on the books within the Irish situation. Somehow, when looking from the outside, I could see that a different approach to lawyering was taking place in Ireland but nobody had stopped to think about it or compare it with other jurisdictions.[108]

This thesis therefore asks:

Is CED lawyering solely a phenomenon taking place in the United States? If not, how does it take place in other jurisdictions, in particular, Ireland and can it be of any benefit to their existing lawyering approaches/delivery methods of legal aid?

By using Ireland as an example, this thesis seeks to argue that it does take place and that it can help to promote and implement the strategic approach to legal aid by strengthening its role in the combating of poverty and social exclusion. Hence the title of the thesis became:

The Role of CED lawyering in promoting/implementing a strategic model of legal aid in Ireland.

My initial hypothesis was that because public interest law had been influenced (and still is) by developments in the United States, the idea of CED may have made it over across the Atlantic, particularly when viewing the changes brought about by regeneration and the participation of lawyers in issues of poverty and social exclusion. Although I could not explain at the beginning how CED lawyering was taking place, somehow I could see

[108] Note that many of my findings and the formulation of my hypotheses are therefore novel (such as the hypothesis of how the community law centre developed outside the United States).

CED lawyering did exist in Ireland but it had not been studied by legal researchers.

1.5 Methodology[109]

The methodology used in the research includes comparative doctrinal research[110] and empirical legal research[111] (with a focus on socio-legal research[112]). In order to understand the context as to how CED lawyering developed, it also includes interdisciplinary research in non-law areas such as community development, social policy poverty and geography.

The significance of carrying out empirical legal research was that there was very

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[109] When talking about research methods and methodology under social science research, the methods and methodology used are not the same.

> "*Methods* are the techniques of research design, measurement, data collection, and data analysis. *Methodology* includes methods and more. Its emphasis is to understand the entire research process... methodology focuses more on the principles for conducting quality research and learning to make sound judgements about method... [it] includes an awareness of the social-political context within which social research is embedded" .

W. Laurence Neuman, *Social Research Methods: qualitative and quantitative approaches* (7th edn, Pearson Education 2011) at Preface. In other words, rather than "a research technician", the person becomes "a reflective social scientist".

[110] By this I mean the use of law books, internet and library research (i.e.: doctrinal research) as well as empirical research. Library research was conducted at the Library in Trinity College Dublin and also at the Library of the Institute for Advanced Legal Studies, School of Advanced Studies, University of London, England (particularly for the material used in chapter four).

[111] In relation to what is meant by empirical legal research, as understood is not just the use of statistical data or other qualitative method but rather one that uses "qualitative and quantitative social sciences methodologies". *See* Peter Cane and Herbert M. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 3. For the authors, they indicate that "empirical research" to them means "the systematic collection of information ("data") and its analysis according to some generally accepted method". The information can come from a variety of sources (at p.4) and also Herbert M. Kritzer, 'The (Nearly) Forgotten Early Empirical Research' in *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 883. Galligan has also indicated that empirical research "means collecting data and analyzing data about law. It is a method of research rather than an end in itself and may be conducted with different aims in mind: simply to know more about some aspect law, or to lay the groundwork for reform, or to build a set of generalizations about law." Dennis J. Galligan, 'Legal Theory and Empirical Research' in *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 979. The term "empirical research on law" has also been used to convey the same idea. Partington for example puts it on very simple terms "it seeks to understand and explain how law works in the real world" Martin Partington, 'Empirical Legal Research and Policy-Making' (n 13) 1003.

[112] Cane and Kritzer indicate that the field of Empirical Legal Studies (ELS) has at least three approaches: "socio-legal/law and society (an interdisciplinary movement with strong roots in sociology but including scholars from a wide range of traditional disciplines including law), empirically oriented law-and-economic and judicial behaviour/politics." However, not all those practicing within these fields see themselves as part of ELS as a movement (this movement is said to have emerged in early 2000). Peter Cane and Herbert M. Kritzer, *The Oxford Handbook of Empirical Legal Research* (n 111) 1.

little in the way of published material in Ireland to inform my thesis, thus much of the research work is pioneering in this field. For this, the research design was based around a case-study approach but it was kept flexible as I was aware I would need to adapt it depending on what I would find 'on the ground'.[113] The case-study approach was selected as it also allowed me to combine a different array of data[114] in my research.[115] The case-study approach was also best fitted to answer the questions of how and why[116] CED lawyering was taking place in Ireland.

In carrying out the empirical research, I took account of what Halliday and Schmidt have stated in relation to how to conduct socio-legal research[117].

"Just as early sociolegal scholars exposed the gap between law in the books

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[113] Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 932. Webley indicates that research design is very important when it comes to qualitative studies, but it may also need to be flexible in order to adapt to the circumstances appearing on the ground as the research moves along, indicating that the parameters, approach and methods of the research may need to be adapted. She also indicates there are five aspects of design geared towards answering the research question: the methodology to be used (e.g.: case study, surveys, ethnography, a combination of them, etc.); how to select the research subjects or documents and how many; how the data is analysed (e.g.: statistical analysis or other); are there any ethical issues to keep in mind; would the researcher work alone or as part of a group. In order to find out more about what it was happening "on the ground" I also published a small article directed to community development workers to see if I could obtain any further information from them. Unfortunately, there were no replies. *See* Maria Antonieta Nestor, 'Lawyers Now Helping Defend Ireland's Communities', *Changing Ireland,* Vol. 34, 17 (Winter 2011) and I also presented my research in a few international conferences to obtain further information.

[114] Interviews, documentary, etc., and it also permits to combine qualitative and quantitative data. Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' (n 113) 939. Moreover, by using different data sources and different research methods one can avoid misleading findings. "The process of using multiple data sources to reach well rounded conclusions is known as triangulation. This adds weight to any findings" ibid. 940. Note that "triangulation" does not necessarily mean three different research methodologies but it is based on the idea "that one can locate a point by viewing it from two locations, thus creating a triangle." *See* Laura Beth Nielsen, 'The Need for Multi-Method Approaches in Empirical Legal Research' in (Oxford University Press 2010) 953 at footnote 1.

[115] This means the case-study acts as an "umbrella strategy". Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' (n 113) 939.

[116] ibid. Webley indicates that case-studies are also well suited when one is looking to answer questions such as to how and why something takes places.

[117] Although Halliday and Schmidt indicate that formal training is not required 'for high-quality socio-legal research' they also indicate that some training would be beneficial in relation to developing the necessary vocabulary and how to conceptualise and communicate the research. I hope that I have a done good job yet I did not have formal training. Also, I hope, like everyone doing research does, to be cutting edge. As, "[f]or research to be at the cutting edge, the researcher needs to be discovering new areas of study, finding new communities or subjects of research, or testing new analytical frames." Simon Halliday and Patrick Schmidt, 'Introduction: Beyond Methods - Law and Society in Action' in *Conducting Law and Society Research: Reflections on Methods and Practices* (Oxford University Press 2009) 3–6. Also note that subsequent references to their work are mentioned as separate chapters rather than just referring to book pages. It was felt that in this way one could understand where they were coming from.

and law in action, so we might, as a scholarly community, consider the gap that inevitable exists between research methods and the realities of the research. Although they are normative important, we should not expect the prescriptions of research methods found in the textbooks to be perfectly mirrored in the research process".[118]

Although I explored the different research methods and techniques used in the social sciences[119] they did not show how the research would really work on the ground,[120] thus Halliday and Schmidt's work became an excellent source to understand the ups and downs of conducting research 'out there', not merely in the books but within society. Moreover, because there was nothing in the books about my topic of research, other than a few accounts of the works of NCLC and BCLC, Halliday and Schmidt's book presented me with the possibilities as to what I could expect and what to look for, so I let myself 'go with the flow' and allowed for a myriad of methods and observations to take place. Some perhaps took place in unconventional ways, such as joining a flower-arrangement course to get to know the local community without being invasive. I later discovered that this approach is called "participant observation"[121], meaning that one becomes a participant of the subject been observed.[122]

In relation to BCLC, I also used what Engel calls "community observers"[123] (these are people who live in the community and have an opportunity to observe what goes on the community, for example, a beautician, police officers and others). For me, going to the Drop in Well Centre (to the flower-arrangement course) meant I encountered a few community observers ready to share their experiences of life in the community and how

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[118] ibid. 2

[119] W. Laurence Neuman, *Social Research Methods: qualitative and quantitative approaches* (n 109).

[120] *The Oxford Handbook of Empirical Legal Research* was also presenting me with the theory of empirical legal research but no details examples as to how to go about it. *See* Peter Cane and Herbert M. Kritzer, *The Oxford Handbook of Empirical Legal Research* (n 111).

[121] Simon Halliday and Patrick Schmidt, 'Robert Kagan and Regulatory Justice' in *Conducting Law and Society Research: Reflections on Methods and Practices* (n 117) 26–38. *See* also Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' (n 113) 937–938. Webley indicates that the notes from the observation are aimed at capturing the details of what is been observed so reports written afterwards can take the reader into that scene.

[122] Halliday and Schmidt indicate that in Kagan's case he started to work at a regulatory agency while he was also researching regulation so he became and observer but also a participant.

[123] Simon Halliday and Patrick Schmidt, 'David Engel and 'The Oven Bird's Song"' in *Conducting Law and Society Research: Reflections on Methods and Practices* (n 117) 86.

they saw life. Although these community observers were not interviewed under a 'formal setting', it still gave me a certain insight into the community. I spoke to people in shops, at the Drop-in Well Center, workers from Dublin City Council who I happened to meet on the streets, participants on the BCLC's housing course, lawyers working at the Housing Department in Dublin City Council and anyone else who would cross my path. I also commuted to and from Ballymun by bus and many times I met the people whom I have already spoken to – the bus journey was also a 'listening experience' as a fly-in-the-wall – I learned a lot in relation to the issues taking place in the community by listening while on the bus, from Bingo nights to whom had passed away the day before. I also 'immersed myself in the community' through the flower-arranging course, by going to some seminars and talks organised by BCLC as part of their community legal education programme[124] and spending time, at least once a week at BCLC (although anthropologists live in communities for years, Engel indicates one could learn from the community by being in the community a few times a week[125] so this is why I tried to do).

In relation to NCLC, the community involved with NCLC was just too big and the environment was not receptive to the type of interaction found within Ballymun.[126] The most observing I could do in relation to the community serviced by NCLC was heading to the local shopping centre during lunch time, but it proved unsuccessful as people were not open to 'chatting' to a stranger. Nevertheless, working as a journal editor[127] at the NCLC also allowed me to learn how the NCLC operated on their day to day business and the people they served.

Thus, the use of participant observation and community observers helped me to understand the local community the law centres serviced and to assess if any other material

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[124] This also involved co-ordinating and offering student support for the Housing Law & Policy course that took place from January 11th to March 28th, 2012 (classes took place every Wednesday 6-8pm) *See* chapter six at section 6.3.4(4)(b)(i)1 for a description of this course.

[125] Simon Halliday and Patrick Schmidt, 'David Engel and 'The Oven Bird's Song"' (n 123) 89.

[126] The most observing I could do in relation to community serviced by NCLC was heading to the local shopping centre during lunch time, but it proved unsuccessful as people were not open to 'chatting' to a stranger. Nevertheless, working as a journal editor at the NCLC also allowed me to learn how the NCLC operated on their day to day business and the people they served.

[127] While doing archival research at NCLC, and thinking of different ways as to how I could find out more about CED in Ireland, I decided that starting a journal would prove beneficial, not just for me but also it would make people aware of the existence of CED. The managing solicitor of the NCLC at the time, Colin Daly, was receptive to the idea so in conjunction with the NCLC, we co-founded the *Irish Review of CED Law & Policy* and in December 2011 we launched its first issue. The journal can be accessed at: <http://www.nclc.ie/overview/default.asp> [Accessed last 19 October, 2012].

would help me with my research question (such as understanding issues about community development, social policy and poverty).

This meant that the empirical research became of a qualitative nature or what is commonly referred to as 'qualitative empirical research'[128] (mostly through fieldwork by way of interviews and talking to people). In other words, my qualitative work contained data that was collected from interviews but also data collected from observations.[129]

Quantitative research was also carried out through the use of a questionnaire, although the sample is very small due to the fact that there are very few independent community law centres in Ireland.[130] As indicated earlier, in order to select the case-studies, questionnaires were sent to the different community law centres. The questionnaire contained closed-questions (people had to select an answer) but it also contained an open-ended section at the end of the questionnaire.[131] This was because, as Dame Hazel Genn indicates, "[i]f you are trying to understand your quantitative results, then the color that you can get from listening to people and from reading their stories helps you to understand it better. It's all much more real."[132]

The methodology used also includes the use of narratives and 'open ended' interviews. Initially, I started with a tape recorder but after a few minutes I switched to taking notes, as the tape recorder felt unnatural, was getting on the way and some people felt intimidated by it, as they wanted to keep some statements 'off the record'. I also had a number of areas I wanted to explore but I did not want to confine the answers to something too specific, so the interviewee could talk more at ease, such as the interview that took

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[128] Although the definition of qualitative research is a contested issue, qualitative research is recommended when carrying out "explorative research" to assess if a situation exists. Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' (n 113) 927. Webley however, presents as general definition citing Kirk and Miller indicating the authors suggests that qualitative research "fundamentally depends on watching people in their own territory and interacting with them in their own language in their own terms." ibid. citing Kirk and Miller (1989:6). *Reliability and Validity in Qualitative Research* (Beverly Hills, Sage Publications).

[129] Herbert M. Kritzer, 'Conclusion: 'Research Is a Messy Business' - An Archaeology of the Craft of Sociolegal Research' in *Conducting Law and Society Research: Reflections on Methods and Practices* (Oxford University Press 2009) 272–273.

[130] There is also a lack of figures in relation to the community law centres and it is suggested it could be something that could be done in the future but figures tend to lend themselves to measuring legal needs (although the measuring of legal needs would benefit from qualitative research as well – this is mentioned in the case study about BCLC).

[131] *See* Appendix I "Sample CLCs' Questionnaire".

[132] Simon Halliday and Patrick Schmidt, 'Hazel Genn and Paths to Justice' in *Conducting Law and Society Research: Reflections on Methods and Practices* (n 117) 234.

place with Evelyn Hanlon.[133] In relation to the interviews and quotes from people, I confirmed with them they were first happy to be quoted and asked what material could be published in the thesis. The long interview I had with Evelyn Hanlon went through an editing process and she read the final version to ensure she was happy with my transcript. The shorter interviews with the staff and solicitors of BCLC and NCLC and other people (including replies via email to specific questions) also went through a similar process.

Archival research of the two community law centres was also performed. There was no particular question I was seeking to answer but I was trying to find out what was there, to see if anything would support my theory that CED was taking place in Ireland, at least in these two law centres. This was because, as Friedman indicated when talking about the roots of justice, "one just has to go there and see what one can find, which is very similar to what archeologist do, they do not know what they will find when they dig up."[134]

1.6 Structure

The structure of the thesis is divided into three parts containing seven chapters overall. The first part, "Part One" gives an overview of CED and CED lawyering in the United States in chapters two and three. Chapter two gives an overview of CED in the United States, tracing its history and development as to how it became part of public interest law. Chapter three analyses the CED lawyering model, providing a number of examples that can be of relevance when analysing the Irish experience.

The second part, "Part Two" and the most extensive, explains how CED may have made it across the Atlantic through the community law centre movement. It also includes an overview of CED in Ireland as well as the case-studies. In this second part, chapter four offers an overview of community law centres and their role in the development of CED in Ireland. By tracing the development of the law centre movement outside the United States and how it made it into Ireland, it will be shown that the CED concept became embedded into what law centres do, even though there has been no explicit awareness of it, creating a paradox as to how CED law and CED as a lawyering strategy developed in the United

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[133] Halliday and Schmidt describe their process of interview and the steps taken once completed. I found their approach of sending the interviewee the edited version of the interview useful, as the interviewee could approve and amend the text to ensure everything they had said was captured properly. *See* Simon Halliday and Patrick Schmidt, 'Introduction: Beyond Methods - Law and Society in Action' (n 117) 11–12.. For the full interview, *see* Appendix IV "Full Interview with Evelyn Hanlon".

[134] Patrick Schmidt and Simon Halliday, 'Lawrence Friedman and The Roots of Justice' in *Conducting Law and Society Research: Reflections on Methods and Practices* (n 117) 53.

States when compared to other common law jurisdictions. Some other jurisdictions will also be mentioned in passing to show how the law centre was perceived and how their goals also became the alleviation of poverty. Chapter five aims at placing CED in an Irish context, allowing for doctrinal interdisciplinary research to take place. It starts by summarising chapters two and three before proceeding to elaborate the context for CED in an Irish setting. Chapter six offers two in-depth case studies, namely the case studies pertaining to NCLC and BCLC. These are aimed at illustrating how CED lawyering takes place in Ireland. This is where most of the empirical research has been carried out.

Finally, "Part Three" is composed of a single chapter and provides for comparisons between jurisdictions, suggestions for best practices and an overall conclusion. In chapter seven, I conclude, firstly, that CED lawyering takes place in Ireland albeit it has never been known by that name and that it has developed without much reference to the changes taking place in the United States. I also conclude, secondly, that CED lawyering can strengthen the role of the strategic approach to legal aid given its emphasis on redressing urban poverty and the creation of sustainable and healthy communities. This chapter also provides for comparisons between the two jurisdictions and ideas for best practice, including alternatives as to how CED can help towards the implementation of a strategic model of legal aid and how the substantive areas of CED law can be developed in an Irish context. But most importantly, it further aims at informing Irish researchers, scholars and those interested in how to combat social exclusion and poverty about a new area of public interest law – an area that has remained 'undiscovered' until now.

PART ONE

THE UNITED STATES

Chapter 2 History and Evolution of CED in the United States

2.1 Introduction

Although there are various books and articles that describe the history and evolution of CED in the United States,[1] the purpose of presenting a chapter looking at the history and evolution of CED in the United States is to offer a platform for comparison with Ireland, as a way of introducing CED into the Irish context.

CED can be studied and analysed via the social, political and economic aspects that are engendered. Since the scope of this thesis is to research CED as a lawyering strategy when addressing issues of access to civil justice and civil legal aid[2], particularly in establishing/assessing the role of CED lawyering (if any) in the implementation of a strategic model of legal aid, my main focus when looking at CED in the United States will be on CED law and CED lawyering (CED as a lawyering strategy). Although a policy background will be offered to aid in the understanding of the overall picture of how CED developed in the United States, which is mostly done in this chapter, some policy areas will be mentioned but will not be discussed in detail.

The goal of this chapter, therefore, is to place CED in a historical and evolutionary context, and to provide an overview of how CED, CED law and CED lawyering appeared in the United States in order to offer a point of comparison when analysing the Irish situation.

Section one of this chapter starts by providing a description of what is meant by CED. Section two looks at the development of CED as a movement and how the use of certain policies and legislation, particularly in the area of housing (namely redevelopment and gentrification) further affected its evolution and the eventual emergence of CED law. Section three looks at the role the War on Poverty had in bringing legal services to the poor and how their development, including the use of CED law, occasioned the emergence of a different type of public interest lawyering, that is, CED lawyering. Section four defines

[1] *See* for example: Roger A. Clay Jr. and Susan R. Jones (eds), *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009); William H. Simon, *The Community Economic Development Movement: Law, Business, and the New Social Policy* (2nd edn, Duke University Press 2001).

[2] These issues may also include the measurement of outcomes in relation to access to justice.

this newly formed type of public interest law thus setting the stage for the chapters to follow.

2.2 Section One: what is CED?

CED is not the result of a single policy or a single law; rather it is the result of a conglomerate of factors embracing the various approaches taken by different sectors of society on how to tackle poverty.

When viewed from a law and social policy angle on how to end poverty, CED in the United States has been shaped by the history and the broadening of urban development, by the decline of entitlements among the poor, by issues of decentralisation from national to local level, by privatisation such as market outsourcing and by the use of public-private partnerships. These factors, together with the aim of bringing development and community action to the aid of low-income communities, made CED an actor in the process of development. The history of social movements has further contributed to its development as well as in the broadening of the opportunities created by the advancement of economic development.

The use of public interest law as a vehicle to help end poverty and ensure equitable development takes place has likewise influenced the development of CED, making CED lawyering a tantalising reality in the 1990s. By questioning the effectiveness of legal tools when building social change[3] and ensuring there is an empowerment process while at the same time learning to wear different hats when needed (for example, when should a lawyer act as a policy technician or campaign strategist)[4] CED lawyers added to the mixed-bag of factors that influenced and shaped CED as a whole.

The understanding of CED and its emergence in the United States, therefore, requires us, first of all, to settle on a definition of CED[5] as applied in the United States and

[3] For example, when to litigate and when to pursue other legal avenues.

[4] Note that the lawyer dimension to CED has increased in the past decade (1998-2010) as lawyers advice relating to legal options pertaining to community organisations and local groups has increased.

[5] This definition comprises three elements, namely, what is CED, CED law and CED lawyering. For a succinct version of them, *see:* Maria Antonieta Nestor, 'The Research of CED Lawyering in Ireland: An Overview' (2011) 1 *The Irish Review of CED Law & Policy* 6, 7–8. Note that these definitions, particularly CED lawyering, are also applicable to Ireland.

secondly, to trace the social movements and government policies created as a response to those social movements which gave birth to CED. Only then may discussions about the role of CED in closing the access to civil justice gap as a lawyering strategy ensue. These discussions can be centred around the lawyering process and how CED lawyers can contribute to promoting access to justice and by affording in-depth case studies of innovative approaches, of local-national CED projects, of good and bad projects and others.[6]

2.2.1 Defining CED

Although there is no exact definition for the meaning of CED, its core definition can be described as a composite, as a mixed-recipe of legal, social policy and community development tools all of which interact to address issues of poverty and disempowerment within communities. From a legal point of view, CED is said to include matters of corporate, real property, contract, tax and regulatory laws all of which act singly or in conjunction to support community projects. CED therefore embraces all those efforts aimed at developing "housing, jobs, or business opportunities for low income people … in which a leading role is played by non-profit, nongovernmental organizations … that are accountable to residentially defined communities."[7] CED also has an evolving nature and just as a recipe needs seasoning, CED also includes other initiatives such as those that provide services to fight homelessness, unemployment, drug abuse, violence and crime.[8] Therefore, there is no single theory that dominates the definition of CED.[9]

To say that there is no single dominant theory that defines CED does not mean that all economic development equates with CED. On the contrary, the array of elements that characterise CED means that not all community development falls under the auspices of CED. Simon has described CED has having three main "functional" characteristics - 1) CED has a "relational density and synergy" meaning people meet in different roles, linking CED to residency and political activity to residency; 2) CED has a "geographic focus"

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[6] Simon also says that CED can be divided under its economic, social and political components. William H. Simon, 'The Community Economic Development Movement' [2002] *Wis. L. Rev.* 377-436, 412.

[7] William H. Simon, *The Community Economic Development Movement: Law, Business, and the New Social Policy* (n 1) 3.

[8] Roger A. Clay Jr. and Susan R. Jones, 'What is Community Economic Development' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009) 3.

[9] William H. Simon, 'The Community Economic Development Movement' (n 6) 412.

which brings a new social policy and new urbanism to the area where CED is practiced and 3) CED has "face-to-face encounters".[10] Cummings has also succinctly described CED as "locally accountable development"[11] and it is the inclusion of this element of accountability which further supports the proposition that not all community development falls under the umbrella of CED.[12]

These common elements of functionality and accountability have developed through time, via the emergence of CED as a movement. Moreover, it is the evolution of CED as a movement that has provided lawyers with a variety of roles in which they have delivered an array of services such as creating corporations, acting as general counsel and working hand-in-hand with community organisers and advocates of CED,[13] all of which has ensured its progression into a new form of public interest law. It is important to understand at the outset that a CED advocate is not just the lawyer working for a specific community or on a designated cause, as it includes the people working in the promotion of economic justice tools for the betterment of low-income communities such as accountants and tax specialists working on income and asset accumulation, businesses working on sector employment intervention, social workers promoting living wages and others.[14]

2.3 Section Two: CED as a Movement

2.3.1 Origins

Although CED as a movement started in the 1960's, its roots and genesis can be traced back to the Pre-Civil Rights Era and the disinvestment of the American cities from the 1900s to the 1950s. The Pre-Civil Rights Era sought to aid the economic achievement and political power of the "newly emancipated African American slaves".[15] The views of community development espoused by Robert Owen and Charles Booth in the 19th

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[10] ibid. 411.

[11] CED clinical course notes, UCLA 2009.

[12] William H. Simon, *The Community Economic Development Movement: Law, Business, and the New Social Policy* (n 1) 67.

[13] Roger A. Clay Jr. and Susan R. Jones, 'What is Community Economic Development' (n 6) 5.

[14] ibid. 4.

[15] ibid. 5.

Century[16] coupled with the ideologies of Booker T. Washington and W.E.B. DuBois in the early 20th Century and the lack of investment in the inner-cities also had an input in cementing those roots. Booker T. Washington sought to create "black self-help and mutual assistance" developing and promoting black business ventures and economies[17] as he felt that people were not ready for integration.[18] W.E.B. DuBois, for his part, promoted the education to college level of black students as he saw education as the best way for advancing the development of African-Americans.[19]

The disinvestment of American cities from the 1900 to the 1950s was mainly an urban problem that was rooted in a combination of political, economic and historical causes. The industrialisation of the 19th and early 20th centuries acted as an engine attracting people to the cities as there were plenty of jobs available. Immigration from 1880 to 1920 brought millions from Europe and after 1920, a large number from Mexico.[20] Among this climate of new people, there was still much segregation. According to Massey and Denton,[21] segregation was never as severe as with African Americans. Their pattern of internal migration meant people from the southern cities went to the northern cities in search of work and people from rural areas travelled to urban areas also looking for work. This shift in population occasioned a fast increase in population and within 40 years (1910s -1950s), the social landscape had changed forever. By the 1950s, the number of net-flow migration from rural to urban had reached 1.5 million, and 1.4 million in the 1960s, further transforming the racial and class composition of American cities.[22]

These new arrivals to the cities settled where their predecessors lived which in turn gave rise to overcrowding, shortage of facilities and public services and an increment in the population size of the ghettos. Yet, despite the population growth during the 1950s and

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[16] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (Columbia University Press 1995) 128.

[17] Roger A. Clay Jr. and Susan R. Jones, 'What is Community Economic Development' (n 8) 5.

[18] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 128.

[19] Roger A. Clay Jr. and Susan R. Jones, 'What is Community Economic Development' (n 8) 5.

[20] Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Harvard University Press 1993) 18.

[21] ibid. 17–59.

[22] ibid. 45.

1960s, especially in northern cities,[23] housing segregation was maintained.[24] From 1950-1970s, the percentages of African Americans of these cities doubled.[25] By then, the black migrant population had increased to 4.5 million.[26]

The segregation problem was also aided by the use of racially restrictive covenants which restricted the amount of housing available for African Americans, making segregation in urban communities even higher. Many neighbourhood associations agreed not to sell to African Americans. By doing so, it was an effective mechanism to keep "people out" until the 1940's when the Supreme Court ruled that racially restrictive covenants were unconstitutional.[27] Violence and private contracts also played their part, which was also sanctioned by the police by not recruiting people of colour until after 1950s. Other mechanisms used to maintain and reinforce racial segregation within cities were also fostered, intentionally or unintentionally, by some of the policies of the Federal Government.[28]

Consequently, activists working in low-income communities in the 1960s wanted local residents to be part of the revitalisation of their own communities,[29] as it was the input from the local population that could best address the issues of segregation, lack of services, and disinvestment. Added to this, philanthropic responses to disinvestment such as those promoted by the Ford Foundation in the early 1960s, as well as the creation of different government programmes that sought the participation of local communities under the auspices of the War on Poverty and beyond, further encouraged this approach, marking the start of the CED movement – a movement aimed at benefiting those neighbourhoods that many times commercial development would not touch because of the social conflicts found within them.[30]

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[23] ibid. The main cities that saw large increases of the population were Chicago in the south and west areas, Cleveland in the east side, Philadelphia in north and west side, Newark, Detroit, Baltimore and Washington DC in their central areas.

[24] ibid. 46.

[25] ibid. 45.

[26] ibid. 46.

[27] *Shelley v Kraemer* 334 US 1 (1948).

[28] *See* sections 2.3.2 and 2.3.3 later on in this chapter for a description of some of these policies.

[29] Roger A. Clay Jr. and Susan R. Jones, 'What is Community Economic Development' (n 8) 4.

[30] ibid.

2.3.1.1 Philanthropic responses to disinvestment: The Gray Areas Programme and Mobilisation for Youth

In 1961, as a policy response to community disinvestment, the Ford Foundation funded two major neighbourhood based initiatives, the Gray Areas Programme (hereafter "Gray Areas") and Mobilization for Youth (hereafter "MFY").[31]

Gray Areas was a new institution which sought to leverage funds in the private sector to create projects in the public sector.[32] Gray Areas also brought to the fore a discussion in terms of policy. By looking at low-income and inner-city communities from the inside out, it was felt that these communities could be fixed from the inside out. Gray Areas were designed to coordinate local institutional actors and focus on the growth of local areas. However, Gray Areas failed as its policy was not receptive to community participation. The Gray Areas Programme did not emphasise the participation of the residents of the communities they were trying to fix[33] and ended up not doing what they said they would (i.e.: fix communities from the inside out). However, the Gray Areas Programme did not demolish or destroy the local communities it focused on. Instead, it informed policy to create the War on Poverty[34] by moving neighbourhood based initiatives from the philanthropic sector to the federal government, shaping in a certain way the way the War on Poverty would develop – this is because their "innovative educational, health, social and legal services" funded by the War on Poverty arose within the Gray Area Programme.[35]

The second initiative, MFY was aimed at tackling the gang problem of the inner-cities.[36] MFY encouraged residents to define their own agenda, expanding the idea of community work to that of becoming an organiser and, at the same time, organisers could

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[31] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 89.

[32] Gray Areas was different from redevelopment or urban renewal as it was a departure from these previous models. *See* section 2.3.2.1(1) for more information about redevelopment and urban renewal.

[33] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 92.

[34] The War on Poverty set in the Economic Opportunity Act 1964 had two main objectives: to prepare children, youths and "to some extent" adults to take advantage of the economic opportunities created and at the same time enhance those opportunities. ibid. 107.

[35] ibid. 100.

[36] ibid. 101.

receive a salary for their community work. MFY was much more militant, "more activist and confrontational"[37], than the Gray Areas Programme as it offered leadership development within the inner-cities areas, a type of leadership that would play a bigger role in the late 1960s.[38] MFY also influenced the institutional reforms required in schools, in welfare and housing departments and in community initiatives.[39]

2.3.1.2 Government programmes and participation of local communities

(1) The Community Action Programme and the Community Action Agencies

The Community Action Programme[40] (hereafter "CAP") was one of the programmes of the War on Poverty of the Kennedy and Johnson Administrations.[41] CAP was established under the Economic Opportunity Act 1964[42] with the goal to utilise and mobilise resources (either in rural or urban areas or both) aimed at providing social services, assistance or other activities (such as "developing employment opportunities, improving human performance, motivation, and productivity, or bettering the conditions under which people live, learn, and work"[43]) that would in turn tackle poverty (including its cause/causes). The administration and coordination of CAP was done under the Office of Economic Opportunity (hereafter "OEO"), an agency also established under the Act for this purpose.[44]

Under CAP, financial assistance for those programmes would be provided through public and non-profit agencies eligible for funding. These agencies therefore came to be called Community Action Agencies (hereafter "CAAs").[45] CAAs thus embodied "the federal government's assumptions, intentions and specific programs".[46] CAP, through the

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[37] ibid. 105.

[38] ibid.

[39] Ibid.

[40] Pub. L. 88-452, August 20, 1964, 78 Stat. 508. Title II, Part A, Sec. 202.

[41] 1961-1969.

[42] Pub. L. 88-452, August 20, 1964, 78 Stat. 508.

[43] Pub. L. 88-452, August 20, 1964, 78 Stat. 508. Title II, Part A, Sec. 202(a)2.

[44] Pub. L. 88-452, August 20, 1964, 78 Stat. 508. Title VI, Part A.

[45] Roger A. Clay Jr. and Susan R. Jones, 'What is Community Economic Development' (n 8) 7.

[46] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 107.

CAAs, had the fiscal duty of administering two different types of funding, one for local initiatives and one for national emphasis programmes. The former had a budget allocation of 40% while the later had 50%. Legal Aid projects (through the Legal Services Programme[47]) were to be funded by the national emphasis programmes while community economic development was under the umbrella of local initiatives.[48]

In order to qualify for funding, the projects had to include participation from the residents of the locality where the funding was sought. However, 90% of the projects funded went to the "direct services" such as health, education and housing.[49]

However, CAP via the CAAs was not successful as a two-fold problem was created: on the one hand, there was never enough local participation, and on the other, the CAAs' staff dominated the projects and/or the CAAs boards were sometimes unaccountable.[50] There were also further problems with the OEO[51] and as a result, the OEO was abolished in 1974.[52] The grant-making power was later given to the Office of Community Service within the Department of Housing and Urban Development (hereafter "HUD").

Thus CAA organisations that had received funding prior to all these changes, "reinvented themselves as economic developers"[53] and those who survived played a role in the strengthening of the CED movement. This is because the organisations that had sought funding from CAP paved the way for the creation and nurturing of different affiliations, organisations and peoples who would otherwise never have come together. They all could enter into dialogue as to how the community could be improved from different angles and

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[47] *See* section 2.4 below.

[48] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 108.

[49] ibid.; William H. Simon, 'The Community Economic Development Movement' (n 6) 386. It is interesting to note that Simon indicates that CAAs were meant to administer a variety of services, including "community economic development".

[50] William H. Simon, *The Community Economic Development Movement: Law, Business, and the New Social Policy* (n 1) 386.

[51] The OEO administered not only CAP but also the other programmes established under the Economic Opportunity Act.

[52] Peter Edelman, 'The War on Poverty and Subsequent Federal Programs: What Worked, What Didn't Work, and Why? Lessons for Future Programs' [2006] *Clearinghouse REVIEW Journal of Poverty Law and Policy* 7, 10.

[53] William H. Simon, 'The Community Economic Development Movement' (n 6) 387.

also gave poor people a voice as to some of the problems affecting their lives.[54] These dialogues could take place among "single-issue coalitions, tenants' organisations, legal services, public interest law firms [and] various rights organisations."[55] Furthermore, government never really grasped the type of "indigenous movement that was becoming the principal engine of development in inner-city communities", that is, the CED movement.[56]

From a policy perspective, CAP, through the CAAs, was different from the "Gray Areas" model of 1961 as it included, in its own way, community input, as the Federal Government was learning from the urban renewal mistakes of the past.[57] This meant that community input or "organising" was moved into federal policy. However, CAP also experienced problems as CAAs faced corruption and their boards many times worked for self-interest rather than for the benefit of the community. CAAs also experienced lack of resources and issues of control. There were also critiques about the CAAs' failure to properly implement the requirement of "maximum feasible participation"[58]. The concept of maximum feasible participation meant that local residents would take charge of their own "problems" by playing a significant role in "determining their priorities, resource priority and local activities of local "War on Poverty""[59] by participating in the Boards of CAAs - which meant that the whole community would work towards the same goal (however, board members were not always representative of the community[60]).

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[54] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 115–116.

[55] ibid. 115.

[56] ibid. 114. Halpern also says that the reasons for this, in the historical record, are not clear. However, Cummings indicates that in contrast to the neighbourhood based policy approach of the federal government, there was an "alternative antipoverty model" that emerged from the civil rights era which focused on advancing a "broad-based, redistributive economic agenda" thus stimulating political action at the grass-roots level. Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (2002) 54 *Stanford Law Review* 400, 417. It could be argued that this alternative antipoverty model also influenced this 'engine'.

[57] Although CAP was based on the Gray Areas model which incorporated its place-based approach, it modified some aspects as a response to what people thought the limits of the Gray Areas were.

[58] In 1966 the government amended the 1964 Act requiring that one-third of the board to be made up of 'representatives of the poor' but things did not change. Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 110–111.

[59] ibid. 108.

[60] ibid. 110.

Most importantly, however, members of Congress started to criticize CAAs as they noted that CAAs were becoming vehicles for mobilising communities in demanding reforms and local access to jobs, resources for schools, housing among others[61] and because of this, they argued, local government may eventually lose control.[62] Thus regional OEO administrators started to back-down from prior commitments as to what they would fund.[63]

CAAs therefore made the city governments very uncomfortable as they were essentially organising communities against their own cities through community action and participation. Although participation was viewed by the OEO as an end to the alienation of communities and thus strengthening democracy[64] in practice the reality was very different as participation was used as "a vehicle for political power".[65]

(2) The Model Cities Programme

The "Model Cities Program"[66] was a new federal measure against the threat of local mobilization created by the CAP.[67] The Model Cities Programme was the first federal programme of HUD[68] and the last government effort by President Lyndon B. Johnson[69] and the War on Poverty to bring an end to crime in urban areas among other reasons.

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[61] ibid. 110–114.

[62] ibid. 110.

[63] ibid. 116–117. Halpern cites an example of a local communities set their own priorities such as the setting up of a community school and a reading programme, they were told these "were not OEO priorities".

[64] The strengthening of democracy by way of participation of the individual within his/her community is also an important aspect of how CED lawyering developed in Ireland. See following chapters, particularly the case study of BCLC and the concept of social regeneration and citizenship.

[65] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 109.

[66] 42 U.S.C. §3301 *et seq.* Also can refer to article by CE Olken 'Economic Development in the Model Cities Program' (1971) 36 *Law & Contemp. Probs.* 205.

[67] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 118.

[68] The Department of Housing and Urban Development "HUD" was created as a government department by the Department of Housing and Urban Development, Act 1965 (Pub.L.89-174). For a time history of HUD, see also <http://portal.hud.gov/portal/page/portal/HUD/about/hud_history> [Accessed last 6 November, 2012].

[69] 1963-1969.

Funds for the Model Cities programme were channelled via the Demonstration Cities and Metropolitan Development Act 1966.[70]

The Model Cities Programme was meant to change inner-city neighbourhoods by the coordination of federal and local efforts pertaining to "professional planning, coordination of federal and local programs, concentration of resources and innovation" yet it lacked community input.[71] This lack of community input made the Model Cities Programme resemble the Gray Areas Programme's view of how to tackle poverty,[72] silencing the voice of the community once more.

Because of the social unrest of the 1960s, the few businesses that had planned to relocate to the ghettos no longer did and the original funding for the Model Cities Programme was reduced. The budget of $500 million in funding to cover 75 cities, within two years, became a budget of $300 million in funding to cover 150 cities.[73] Thus, the Model Cities Programme was ended in 1974.

2.3.2 The use of policy and legislation towards the advancement of CED and the emergence of CED law

It is important to highlight that the 1960s was also a period of social unrest. There was social unrest due to the "Ghetto riots"[74] which took place during the summers of the 1960s (1963-1968); there were further riots occasioned by the assassination of Dr. Martin Luther King Jr. in 1968. There was also the passage of the Civil Rights Act 1964[75] and the passage of the Fair Housing Act 1968[76], both of which were intended to put an end to discrimination. Moreover, there was an emergence of direct action strategies and a renewed interest in community development as residents were tired of the segregation, disinvestment, lack of interest and investment by the government and were inspired by

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[70] Pub. L. 89-754, Nov. 3, 1966, 80 Stat. 1255 (42 U.S.C. 3301 et seq.).

[71] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 118.

[72] ibid.

[73] ibid. 120–121.

[74] ibid. 119.

[75] Pub.L. 88-352, 78 Stat 241, enacted July 2, 1964.

[76] 42U.S.C.A. §§ 3601-3631.

the ideas of Saul Alinksy[77] - ideas that talked about those who have and those who do not.[78] By the end of the decade, people had seen the possibility of social change through community action and participation, which in turn had further influenced the viability of a number of government programmes,[79] adding to the growth of CED.

With the advent of the 1970s and 1980s, neighbourhood activism exploded as community groups were formed in order to "demand more and better services from city governments."[80] The government responded by the formulation of policies and by the updating and enactment of legislation that created institutions, enhanced community participation, involvement in land-use and environmental process and allowed for the challenging of infrastructure developments in court.[81] The evolution of these policies also created trends which sought the decentralisation of public administration on the one hand and the development of local markets along "socially desirable paths" on the other.[82] As a result the CED movement could direct these government efforts towards the tackling of poverty and the empowerment of communities.

What follows therefore, is an explanation of the most important policies, legislation and tools relevant to CED which in turn effected the emergence of CED law and CED lawyering[83], particularly those relating to redevelopment and access to capital, with the understanding that some of the policies, legislation and tools pre-date those enacted by the War on Poverty while others became highly technical or too complex to be understood by non-professionals in the field.[84]

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[77] Saul Alinsky was a community organiser and it is considered to be the father of the modern community organising movement. He also created the Industrial Areas Foundation (IAF) in the 1940s, a national community organising network.

[78] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 87.

[79] This meant that the social and political landscape was very different from that of the beginning of the 1960s.

[80] William H. Simon, 'The Community Economic Development Movement' (n 6) 388.

[81] ibid.

[82] ibid. 378.

[83] Their importance will become clearer in chapter three, particularly when describing the practical aspects of CED lawyering.

[84] Roger A. Clay Jr. and Susan R. Jones, *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (n 1); William B. Fulton, *A Guide to California Planning* (Solano Press Books 1999).

2.3.2.1 Policies and Legislation and Tools

(1) Redevelopment

In short, the primary function of redevelopment (which is also known as urban renewal) is the removal of blighted areas by bringing revenue to these areas while at the same time redirecting capital flow and enhancing accountability. But redevelopment may further represent two different functions or meanings. On the one hand redevelopment may be equated with the changing of the physical infrastructure in a localised area. However it may also refer to the legal process that brings about that change in the physical infrastructure.[85] For the purposes of this chapter, when referring to redevelopment, the latter meaning is preferred.

The redevelopment process from a legal point of view was created in the United States in 1949 under the auspices of the National Housing Act 1949[86] and the Housing Act of 1954,[87] which supported the local efforts to revitalise "blighted" areas. It created structured negotiations and produced binding contracts to ensure these renewal efforts could take place by providing federal funds to "acquire slum properties, assemble them into large parcels, clear them of existing structures and prepared them for 'redevelopment'".[88] Redevelopment, however, was criticised as it created a process of removal that did not benefit the people it was supposed to. It caused injustices by giving a series of tax incentives to local areas in order to carry out development, and it further subsidised "the private participants through sweetheart land deals, cheap financing, tax breaks, and publicly provided infrastructure tailor[ed] to their investments."[89]

Because of the negative impact the redevelopment process had created, the Federal Government ended some of the financial support allocated for redevelopment. Now, under the patronage of the Housing and Community Development Act 1974[90] (hereafter "1974

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[85] WH Simon refers to Redevelopment (with a capital R) as a "term of art" which refers to a special legal process. See William H. Simon, *The Community Economic Development Movement: Law, Business, and the New Social Policy* (n 1) 7.

[86] Title V of P.L. 81-171 (Title V of Public Law. Approved July 15, 1949).

[87] Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (n 20) 55.

[88] ibid.

[89] William H. Simon, 'The Community Economic Development Movement' (n 6) 381.

[90] Pub. L 93-383, as amended; 42 U.S.C.-5301 et seq.

Act") funding is granted in the form of Community Development Block Grants (hereafter "CDBG") instead.[91] Under this arrangement, each local government, rather than the federal government, could decide how to allocate the CDBG funds given.[92]

Statutory reform was also put in place to ensure there was community participation in the redevelopment process. Federal laws applicable to federal and locally-supported federal projects gave relocation rights to displaced tenants, home-owners and businesses. Some states, such as California, also enacted rights for projects that received State funding.[93]

However, the redevelopment process (pre-1974 Act) survived under the law of some States as the local tax revenue from properties was limited.[94] This meant that redevelopment could channel further income towards the purse of the local government via the tax revenues produced by redevelopment. In California this process became known as the "fiscalisation of land use" (the local government obtains income revenue from land use and development). The effects of this fiscalisation of land use triggered the redevelopment of areas even though these areas were not "blighted" but they were redeveloped nevertheless as local governments could collect the tax revenue.[95] As will be shown in chapter three, redevelopment would become an important element on the further advancement of CED law/lawyering.

(a) Redevelopment and its interaction with CED

To further understand redevelopment and how it interacted with CED, it is also important to highlight that redevelopment was also influenced and shaped by other types of government policies such as the Federal Housing Administration loan's programme, the

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[91] For a current view on the distribution of CDBG go to: <http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/entitlement> [Accessed last 12 July, 2012].

[92] William H. Simon, 'The Community Economic Development Movement' (n 6) 381–382.

[93] ibid. 382–383. This also means that there are some good examples of Redevelopment (such as City of East Palo Alto in California, Dudley Street Neighborhood Initiative (DSNI) in Boston – a non-profit corporation that organises locals around development planning and thanks to a Massachusetts Redevelopment Law, DSNI has been given various powers, including Eminent Domain.

[94] ibid. 382 at footnote 7, Simon mentions Proposition 13 as one example in California.

[95] This practice of using redevelopment to obtain income became very popular in the 1980s and 1990s.

urban renewal of 1949, the use of public housing, the auto industry and transportation and the allocation of tax breaks for home ownership, all of which are briefly described below.

(i) The Federal Housing Administration and its loan programme

The Federal Housing Administration (hereafter "FHA") was created in 1934[96] under the National Housing Act 1934[97] in order to stimulate the construction industry by promoting home ownership which had come to a halt after the Great Depression. However, in order to promote home ownership, the FHA also had to guarantee home loans. The effect produced by the FHA loan guarantee meant the banks were free to make more loans as the loans were low risk (because of the FHA guarantee). This process facilitated the purchase of homes in the suburbs, originating the "white flight" phenomenon. The "white-flight" was a move away from the over-crowded city dwellings to the idyllic suburban residence of single-family homes. One of the consequences of this subsidised move – which was originated by this government policy – was the creation of an exclusionary movement that did not provide finance for multi-family dwellings, leaving the poor in the overcrowded inner-city ghettos. In this way, the FHA loan programme added momentum to the development of CED.

(ii) The Urban Renewal of 1949

The urban renewal of 1949 helped in bringing infrastructure development to poor areas but also exacerbated the redevelopment problem. Firstly, there was an identification process which included condemnation[98] areas through the use of eminent domain. Secondly, private developers received Federal Government funding in the form of subsidies in order to redevelop those condemned areas. As a result, the development of luxury housing increased while at the same time housing for low-income people decreased. This method of urban renewal had the effect of displacing the poor without replacing the housing destroyed in the process. Note that urban renewal was supposed to improve the cities and benefit the poor not to displace them.

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[96] Peter Dreier, Todd Swanstrom, and John H. Mollenkopf, *Place Matters: Metropolitics for the Twenty-First Century* (University Press of Kansas 2001) 108.

[97] Pub. L, 84-345, Stat.847.

[98] Condemnation is the term used in the United States to indicate an area has been 'taken' by government for redevelopment, public use such as for the widening of a road or other purpose.

Again, the impact on CED was that it added momentum to the CED movement as urban renewal was decreasing the amount of available housing for those less well-off.

(iii) Public Housing

Although the idea of providing public housing for the poor had been around for decades, it was not until the 1930s that the idea of building public housing first emerged in poor neighbourhoods, as building housing could increase the creation of jobs in the construction sector during the Great Depression.[99] The first urban public housing was carried out by the Public Works Administration, together with unions and non-profit organisations.[100] The public housing model first tried was in 1934, under the National Housing Act of 1934 (the same Act that created the FHA), under which local housing authorities built and operated the housing units. Later, in 1937, a new National Housing Act[101] was passed[102], which set the path for the massive public housing construction of the 1950s as it created subsidies for housing construction[103] in the form of "low-cost loans to local and state governments".[104]

However, in the 1950s, the selection of sites in which to build public housing was done via municipal planning which in turn was dominated by private real estate and outside interests.[105] This meant that the construction of public housing was situated in low-income communities, most of which were located in areas adjacent to rivers and highways.[106] This oversight left the public housing residents with a lack of economic opportunity. The public housing areas had no economic base in which the residents could take part and, if they existed, the economic opportunities were very minimal, leaving the newly built public housing communities with no essential basis that could create viable

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[99] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 71.

[100] ibid. 72.

[101] Pub. L. 75-412, 50 Stat. 888.

[102] The 1937 Act is also known as the Wagner-Steagall Housing Act.

[103] Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (n 20) 52.

[104] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 72.

[105] ibid.

[106] The location of the public housing construction was due, in part, to a flawed design.

communities.[107] The only feasible economic ventures residents could aspire to were the creation of informal economies such as drug-trade.[108] At the time, one of the greatest housing projects built was "Pico Aliso"[109] located in the City of Los Angeles. Pico Aliso was said to be "socially optimum" but in time became a place that harboured criminals and criminality.[110]

Then, in the 1970s rather than having the local authorities managing and building public housing, a new public housing model was tested, which tried to expand tenant choice and the availability of public housing. This programme was called "Section 8" referring to the section of the Act in which it was found. Under Section 8 of the Housing and Community Development Act 1974, certificates are given to people who meet means-tested criteria in order to help them to pay the costs of rent. The rent charge can only be 30% of the household income, thus the certificate given is intended to cover the difference between the market-based rent and the maximum rent payable by the tenant.[111]

The way "Section 8" operated led to a change of approach by the first Bush and Clinton Administrations[112] in two ways: by the issuance of vouchers, commonly known as "voucherisation" and by the provision of programmes under the Department of Housing and Urban Development or "HUD programmes". Voucherisation means that a tenant receives a flat amount of money in the form of a voucher to help with the costs of rent and the amount is not related to the market-value of a rented property. The tenant therefore is free to negotiate for a rental price that could come as close as possible to the value of the voucher. However, this voucher approach does not incentivise the building of new housing or tenant participation which goes against the development of CED.

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[107] The issue of public housing would also be a factor in the regeneration of Ballymun, discussed in chapter six.

[108] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 77.

[109] Various Authors, *The Los Angeles Times* <http://articles.latimes.com/keyword/pico-aliso-housing-project> [Accessed last 9 May, 2012].

[110] Pico Aliso has now been demolished and replaced with more suitable housing focused on the "new urbanism" theory. Demolition started in 1997 and was completed in 1999. For more information see, 'Demolition of Pico-Aliso Housing Project Begins', August 8, 1997 <http://articles.latimes.com/1997/aug/08/local/me-20535> [Accessed last 9 May, 2012].

[111] William H. Simon, 'The Community Economic Development Movement' (n 6) 391–395.

[112] 1989-1993 and 1993-1997 respectively (Clinton was re-elected. His second term was from 1997-2001).

In contrast, the provision of HUD programmes does help in the development of CED as the programmes favour a "community building approach"[113] which encourages tenant participation. HUD programmes also promote home ownership by encouraging the buying of government housing by the tenants and by combining housing with financial assistance so the residents can achieve economic independence. One example of the HUD programmes is HOPE VI,[114] which is also a major participant in the building of public housing.[115]

(vi) Auto industry and transportation

The development of the auto industry and transportation at the federal level was similar to that of redevelopment. The federal highway programme under the Federal-Aid Highway Act 1956[116] displaced as many people as urban renewal (redevelopment) did.[117] Communities, particularly African American and Latinos, were displaced or broken apart in order to free land for the construction of motorways. In Los Angeles, for example, the main Mexican American neighbourhood, Boyle Heights, was fragmented by the construction of five highways running through the neighbourhood.[118] Ironically, the construction of motorways and destruction of neighbourhoods stopped when funding for defence issues became a priority during the Cold-War.

This meant that policies relating to transport together with the auto-industry were breaking up long-established communities and creating exclusion not to mention the lack of public transport facilities for those communities.

(v) Tax-Breaks for Home Ownership

Tax breaks for home ownership gave a tax subsidy to home owners not renters. This meant that there was a large Federal involvement in the process, facilitating the white-

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[113] William H. Simon, 'The Community Economic Development Movement' (n 6) 394.

[114] ibid. 395. HOPE stands for Housing Opportunities for People Everywhere.

[115] This is described more in detailed under the topic of Gentrification at the Federal level.

[116] Public Law 84-627. For a current view of the Federal Highway Administration, go to: <http://www.fhwa.dot.gov/index.html> [Accessed last 16 October, 2010].

[117] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 69.

[118] ibid. 70.

flight phenomenon and the impoverishment of inner-city areas while at the same time creating inequality.

(2) Access to Capital

Access to capital can be obtained in many different and imaginative ways, especially among low-income communities. The areas of banking and credit and the use of micro-credit and worker cooperatives are obvious sources. However, the main opportunities the CED movement, via community development corporations[119], has had to access capital has been through the use of tax credits.

(a) Banking and Credit at a glance

Access to credit and financing has always been an issue in low-income communities as low-income communities face three distinct problems: "Race discrimination"[120] (red-lining practices), "coordination"[121] and "information".[122]

To aid in the disparity of credit lending, the Federal Government throughout the years has passed a series of laws[123] in order to stop discrimination, aid lending and bring capital to low-income communities. For example, the Equal Credit Opportunity Act of 1974[124] (hereafter "ECOA") was passed as an anti-discrimination measure. The Community Reinvestment Act[125] (hereafter "CRA") enacted by Congress in 1977 also went to support lending for all. The Community Development Banking and Financial Institutions Act of 1994[126] (hereafter "CDBFIA") further provided for the legal concept of Community Development Financial Institutions[127] (hereafter "CDFIs") in order to provide

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[119] *See* section 2.3.3 for more information on this.

[120] William H. Simon, 'The Community Economic Development Movement' (n 6) 398.

[121] ibid.

[122] ibid.

[123] The financial sector has been subject to a number of legal reforms, for more information on those Acts see <http://www.thecre.com/fedlaw/legal3b/important.htm> [Last accessed May 1, 2012].

[124] 15 U.S.C. §1691 et seq.

[125] The Community Reinvestment Act of 1977 (CRA), 12 U.S.C.S. §§ 2901-05; Codified on Chapter 30, Title 12 Community Reinvestment.

[126] 108 Stat. 2163.

[127] The CDBFIA was established by the Reigle Community Development and Regulatory Improvement Act of 1994 (P.L. 103-325, 108 STAT. 2160).

for the establishment of financial institutions in areas that otherwise banks would not touch. With time, CDFIs would also play an important part in the development of public housing.

It is important to note that the Small Business Administration[128] (hereafter "SBA") also plays a part in providing credit and technical assistance to federal or federally-subsidised contracting[129] as the federal government infuses capital into communities via the CRA and CDFIs.

Under the CRA, there is an on-going affirmative obligation by the regulated banks and financial institutions "to help meet the credit needs of the local communities in which they are chartered."[130] The financial institution has to serve the whole geographical region in which it is based and cannot select only the communities most favourable to its needs. Compliance is evaluated by Comptrollers of each county and by the Federal Government under the Office of Thrift Supervision (hereafter "OTS").[131] Community organisations have also played a role in enforcing the CRA, strengthening the notion of community empowerment.[132]

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[128] The SBA was set up in 1953 as "an independent agency of the Federal government" to aid small businesses. See <http://www.sba.gov/aboutsba/index.html> [Last accessed 10 May, 2010].

[129] William H. Simon, 'The Community Economic Development Movement' (n 6) 404.

[130] TITLE VIII, Sec. 802 (a)(3); Codified on Chapter 30, Title 12 § 2901 (a)(3).

[131] The OTS is a Federal State Agency under the Department of the Treasury in charge of supervising "savings associations and their holding companies in order to maintain their safety and soundness and compliance with consumer laws, and to encourage a competitive industry that meets America's financial services' needs." <http://ots.gov/?p=MissionGoal> [Accessed last 10 May, 2010].

[132] If a bank wants to merge, open another branch or relocate its home office, it has to obtain a "good grading" and access to a depository insurance which in turns needs Federal approval. This type of mechanism allows for a participatory role by community organisations in enforcing banks to comply with the CRA. However, less than 1% of applications for depository insurance are denied. For example, if a bank is seeking to merge with another bank, the community organisation can go to testify to the Comptroller about the particular institution who is seeking Federal approval, and if the testimony shows the institution does not comply with CRA, the petition of merger by the bank can be denied. The community organisation may also decide to pressure and push for a change in the bank's practices towards the community by the use of a negative advertisement campaign strategy through the pressure of public relations. Campaign strategies of negative advertisement offer in turn a "framework" for negotiations between the community and the bank. At the same time, the community is empowered by the leverage that they have created. For example, the community organisation can act as an "adviser" to the bank (e.g., if the bank decides to open in x neighbourhood or give x number of loans).

Despite the role of the community organisations when it comes to financial institutions, the critique of the CRA is that it is a complicated mechanism. Banks cannot "make money" in low income neighbourhoods. The potential justification for this critique is that CRA forces banks to invest on information gathering. CRA also creates a regulatory triangle between the bank, the community and government. Perhaps because the

(b) Cooperatives and employees participation

(i) Workers Cooperatives

Workers cooperatives (hereafter "workers co-ops") are said to be the utopia for workers as they are based on an ownership model for business development, in which the worker is a part-owner of the business. Workers co-ops can be set up as different business entities; the most common structures are the simple cooperatives or employee stock ownership trusts. Although workers co-ops are not common in the United States, in 1982 the State of California enacted the Consumer Cooperative Corporation Law[133] (hereafter "co-op law"), setting out specific incorporation and operational requirements. There are about 300 workers co-ops employing about 3500 people in the United States.[134]

Workers co-ops are open to anyone who wants to join; there is democratic worker and membership control as well as economic participation; autonomy and independence are key; there is ancillary motivation and goals (e.g.: education); there is cooperation among co-ops and concern for the community. These principles are very hard to achieve, especially in the United States, as workers' co-ops are very different from other business models within the country.[135]

The main difference between a workers' co-op and the normal business model is that the conventional corporation gives the shareholder the right to vote and a right to economic benefit. The shareholder has shares on the corporation, allowing the shareholder

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government does not have the information needed to fully ensure there is no red-lining, empowering the local community groups to supply the information to the banks and to the government is the best system. Maybe it is not the best system but a second-best system as there are issues with the CRA grading system and community organisations need to be part of it in order to work. As it stands, community organisations have a powerful role. Yet, despite the provisions made in the CRA legislation, CRA faces the constant problem of "grade inflation" (the grading system was set as a response to red-lining). The evaluations by Comptrollers and the OTS give "easy grades" and there is no effort to evaluate effectiveness of loans in communities. This meant that concerns were raised as too many loans without evaluation made by banks together with CRA participation were feeding the housing bubble. For more information on how the community can affect the grading system go to <http://www.innercitypress.org/usingcra.html> [Accessed last 11 July, 2012].

[133] CAL. CORP. CODE § 12200: California Code - Section 12200. The law became effective 1 January, 1984.

[134] US Federation of Worker Cooperatives <http://www.usworker.coop/aboutworkercoops> [Accessed last 1 May, 2012].

[135] G. Mitu Gulati, T.M. Thomas Isaac, and William A. Klein, 'When a Workers' Cooperative Works: The Case of Kerala Dinesh Beedi' (2002) 49 *UCLA Law Review* 1417, 1421–1422. The authors indicate that because of the 'elagitarian and democratic' nature of workers' cooperative, they are very different to the traditional corporate firm under which a pyramid system works (the top makes all the decisions, the lower do not).

to elect the Board of Directors who in turn makes the decisions on how to run the corporation. The employees do not have control over the corporation. Ownership of the corporation is separate from the control and day-to-day labour operations. The right to vote and economic benefit is dependent on the financial amount shareholders made on the investment.[136] In contrast, under a workers' co-op model, the workers have the right to vote, each employee having one vote. In relation to ownership, there is a fee to pay for the membership (the by-laws state the criteria to join) which also gives entitlement to economic benefits, such as profits. However, there is a cap as to how much a member can make. There is also a "patronage" system of distribution, for example, more hours of work means more money. In relation to governance structure, control and ownership are focused on the worker.

The standards used if a worker wants to leave the co-op are also different from the main stream business model. If the worker decides to leave the co-op (because of retirement, expulsion, penalties or other), the co-op has to pay for the cost of that worker leaving. The standard used is that the worker gets to extract his or her money, affecting the "free entity" of the co-op. This differs from the standard used in a corporation, as if the shareholder wants out, she or he can offer his or her shares for sale and transfer them to a third party and not to the corporation. This dichotomy brings a criticism to the economic viability of co-ops, because of issues of accessibility and the "pay out" to a leaving member. A worker leaving the co-op lowers the amount of capital the co-op has *vis-à-vis* the corporation, which creates pressure between open participation in the one hand and capitalisation to stay in business on the other.

The legal technicalities of co-ops are many. There is labour primacy and democratic governance (one member one vote), there is a return on labour and not capital. Its governance structure is like a corporation but the ownership issue is different. Also, the central criticisms of co-ops are that workers do not make good bosses so some co-ops hire managers, which also creates issues.[137] Perhaps the many criticisms about workers co-ops have made them unsuccessful in the United States where workers tend to rely on trade unions rather than workers' co-ops, a factor that has helped the advancement of CED as a

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[136] *Pro-rata* calculation: 10% shares=10% ownership.

[137] As an example, the Mondragon co-op with base in Spain, is managed via a committee to address the critique of inefficacy of governance and its Board of Directors is elected from the workers <http://www.mondragon-corporation.com/language/en-US/ENG.aspx> [Accessed last 9 May, 2012].

lawyering strategy. This is because trade unions have much more of a political weight than co-ops do, so they can create difference alliances that can create structural reforms.[138]

(ii) Limited Equity Cooperatives

Limited Equity Cooperatives (hereafter "LECs") are a home ownership vehicle providing for subsidised housing through housing co-operatives. Under LEC there is tenant participation yet it is different from condominiums (hereafter "condos") as in condos each owner has the full right to sell his or her place but under the LEC, there is a governance structure.[139] Each LEC member buys a share in the LEC but he or she does not own the unit, as opposed to a condo. It is the LEC that owns a piece of the collective. In short, what the member really owns is a share that entitles him or her to a right to live there, a right to participate and to govern (one resident, one vote). For tax purposes the individual person is viewed under a *pro-rata* share of the mortgage, and that is the tax deductible he or she is entitled to.

This means there is ownership tenure under the LEC, and the LEC member can recoup the initial investment overtime. The LEC benefits are affordable ownership and empowerment. The lands are bought with a subsidy, usually using a foundation grant that reduces the monthly amount or even the down payment. There are also further criteria as to who can enter the LEC. These criteria are set under a maximum income cap; the member needs to be a resident; if the person is a low-income earner, he or she would be required to put more initial payment if needed although it varies depending on the target population. If an LEC member cannot pay the monthly amount, there is a pool of funds to cover the payment in case, otherwise in the event of no-payment the person would have to move out. The LEC member can also sell their share but only gets some money. It cannot be rented at a market rate either. The equity interest of each person is set usually after five years, creating wealth and affordability.

LECs are seen by community organisations as a tool for empowerment although there are a number of concerns about their sustainability in the long-term. For example, there are concerns about the retirement effects of their owners and about the incentives to

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[138] *See* chapter three and immigrant initiatives such as the "carwasheros" (car wash workers). Note also that by unionizing, the critiques of market-based CED approaches of preferring localism over broad-structural reforms can be overcome. For the critique of market-based CED *see* Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (n 56).

[139] Note that each LEC is incorporated under the appropriate State law.

stay in them. There are also concerns as to what happens to future owners who were not part of the initial LEC and about who captures the gain or what happens if there is a loss. The main question that remains unanswered is about the goals of the LEC. It is yet unclear if they are meant to distribute the gains to the initial people or to create overtime affordability.

(iii) Employee Share Ownership Trust

In the United States, Employee Share Ownership Trust (hereafter "ESOT") allows the employee to have more of a say in the business, but the business structure looks like a corporation. ESOT make the employee a shareholder, but in different forms. For example, many of the ESOTs in the United States are run like retirement programmes. Under the retirement programme, a Trust entity is formed and it is this entity that creates the ESOT. When the employee leaves, he or she can get their portion of the value of his or her shares. The employee does get to vote but the employee cannot get the on-going benefit as the benefit is accumulated over time.[140] The employee's say is also *pro-rata* and it is dependent on the amount of shares owned. The employee can also leverage opportunities if they exist. For example, Oregon Steel Mills employees obtained a loan from a bank which was used to purchase shares in the form of an ESOT, so the employees could have shares and have say when a takeover took place.[141] The corporation also gets to deduct the contributions to ESOT; therefore ESOT is less expensive for employees. The relevance of ESOTs when it comes to CED is that they can act as a further tool to use for business development within the community.

(c) Low-Income Housing Tax Credits

In the United States, tax credits are used in a variety of ways. This means there are billions of dollars in subsidies available to developers and others. One example of this is the Low-Income Housing Tax Credits[142] (hereafter "LIHTCs"). LIHTCs started in 1986

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[140] The structure of ESOT, in simple terms, is as follows: In order to buy the shares, the company obtains a loan. Only once the loan is re-paid the transfer of the shares to the particular employee takes place. This is why the benefits to the employee are in the long-term. *See* Peter Pitegoff, 'Worker Ownership in Enron's Wake – Revisiting a Community Economic Development Tactic' (2004) Vol. 8 *Journal of Small and Emerging Business Law* 239, 245–247.

[141] ibid. 242.

[142] For a detailed explanation by the HUD *see*, <http://www.hud.gov/offices/cpd/affordablehousing/training/web/lihtc/basics/> [Last accessed May 1, 2012]. To read the "Memorandum Of Understanding Among The Department Of The Treasury, The Department Of Housing And Urban Development, And The Department Of Justice" go to

during the Reagan Administration[143] under the Tax Reform Act of 1986.[144] LIHTCs sought to leverage investment by obtaining funding from the private market. LIHTCs were successful in building housing units, whose numbers were well over 1 million. However, how effective the LIHTCs have been is hard to tell.

The basic mechanics of how LIHTCs work is as follows: A tax credit programme is allocated to each State based on its population. For example, California awarded almost $83.7 million of LIHTCs in 2011 to 105 "proposed housing projects".[145] Next, the State starts a competitive bidding by which developers petition the State for a contract.

However, the further mechanics of the LIHTCs are complicated. For example, if a for-profit developer wants to build 10 two bedroom units and use tax credits, the amount of the tax credit can take several shapes and forms. The developer can get a certain amount of tax credits if the project is a "low income" project or if the developer builds the units from scratch. These costs may include the costs of lawyers, accountants, land, contractor, marketing fees, engineers, etc.

Added to the intricacies of the LIHTCs are the Syndication Funds.[146] They take place when tax credits are sold to private companies for capital investment. The tax credit gives $1 dollar reduction in the company's tax returns. So if the company owes $100 in tax, and they buy a tax credit worth $100 dollars, the deduction is a reduction on taxable income only. Thus, the LIHTCs model is geared towards harnessing the market and the investment company ends up getting the tax credit!

One of the problems with the LIHTCs is that if the market is in distress, there is no equity in the market, as even though the tax credits can be sold in the private market via the process of syndication, the developer still needs to get extra funds to complete the construction. The extra funds are usually found by way of loans and other private

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<http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/lihtcmou> [Accessed last 1 May, 2012].

[143] 1981-1989 <http://www.whitehouse.gov/about/presidents/ronaldreagan> [Accessed last 5 May, 2010].

[144] 100 Stat. 2085, 26 U.S.C.A. §§ 47, 1042.

[145] Bill Lockyer, Treasurer, State of California, 'Annual Report 2011: Report on the Allocation of Federal and State Low Income Housing Tax Credits in California' (California Tax Credit Allocation Committee April 2012) 1 <http://www.treasurer.ca.gov/ctcac/2011/annualreport.pdf> [Accessed last 11 July, 2012].

[146] <http://www.hud.gov/offices/cpd/affordablehousing/training/web/lihtc/basics/syndication.cfm> [Accessed last 1 May, 2012].

investment and donations. One proposal is to make the Federal Government an investor, but there are questions in relation to the viability of the proposal and there are also arguments on both sides of the equation to keep the current model of LIHTCs. The argument supporting the current LIHTCs model is that the private investor acts as a monitor. And the argument against the current model is that the LIHTC system is too complicated, there are too many transaction fees and it is not clear if the private investor really monitors the development or not.

The importance of LIHTCs to CED is that they have aided in the building of social housing as it permitted community development corporations to use it as a funding source for the construction of social housing,[147] adding the intricacies of this type of funding to the body of CED law.

2.3.3 Community Development Corporations as a vehicle for CED

Community Development Corporations (hereafter "CDCs") were born out of the desire to channel investment to low-income neighbourhoods and blighted areas. Initially, CDCs were "locally created, community-owned institutions".[148] Some were created to fight landlord and tenant issues or local planning issues, others in response to the riots and in response to the assassination of Dr. Martin Luther King Jr. but unlike other groups, their agendas were not reactive but rather "creative and positive" as they tried to find their own solutions to their problems.[149]

The OEO became involved with the CDCs by creating, in 1966, a programme under title I-D of the Economic Opportunity Act 1964, called Special Impact Programme (hereafter "SIP") which was to support investment in local infrastructure renewal as well as to encourage business development within inner cities areas.[150] And in 1972, Congress,

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[147] Community development corporations can be categorized as non-profit developers. See community development corporations on section 2.3.3 for detailed information.

[148] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 131.

[149] ibid. 132.

[150] ibid. Added to this, in 1969, the Federal Self-Determination Act was passed, which is said to have helped towards the fast creation of many CDCs. *See* also Dana A. Thompson, 'The Role of Nonprofits in CED' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009) 59; Robert J. Desiderio and Raymond G. Sanchez, 'The Community Development Corporation' (1969) 10 Boston College Industrial and Commercial Law Review 217, 235-254. Although Desiderio and Sanchez talk about the proposed Federal Self-Determination Bill and not the final Act, their analysis about the contents of the Bill as applicable to CDCs is interesting.

under Title VII of the Economic Opportunity Act created community economic development as part of a separate programme, in which CDCs became the "prime sponsors of various urban redevelopment programmes."[151]

Between 1960s and early 1970s about one hundred and fifty CDCs were created, most of them focusing their work on infrastructure development including housing, financing small retail (such as launderettes, food stores, janitorial services and community services businesses, health centres, dentists and child-care facilities), starting factories and job training programmes.[152] These CDCs were known as the "first generation CDCs".[153] In sum, they tried to address many of the economic problems and social issues facing their communities.[154]

Funding for the CDCs came in two ways: (a) to the city via development grants so the city could use the funds as needed, and (b) via Community Development Block Grants (hereafter "CDBGs") which were created in 1974, under the Housing and Community Development Act 1974[155] (after certain funds directed towards redevelopment were stopped because of the negative impact Redevelopment was creating).[156]

The first generation CDCs coupled with the effects of the CAP via the CAAs in communities helped to create that different dynamic characteristic of the CED movement, that is, a cooperative way to work with communities to develop programmes.

In order to qualify as a CDC, the CDC's legal structure[157] had to be in the form of a non-profit organisation and the number of people on their boards had to be two-thirds from

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[151] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 132.

[152] ibid. 133.

[153] Dana A. Thompson, 'The Role of Nonprofits in CED' (n 150) 60.

[154] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 134.

[155] Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633 (42 U.S.C. 5301 et seq.).

[156] William H. Simon, 'The Community Economic Development Movement' (n 6) 381–382.

[157] The legal structure of CDCs is based on each State's Corporate Law. For example, they could legally become an unincorporated association for speedy process or a charitable trust. Federal and State tax laws apply impacting their ability to collect money. They must also follow Federal Regulatory laws. It is also important to note that who the client is, as matters that must be covered are: private donations, personal liability, speed, flexibility. A CDC could invest or develop themselves: Affordable housing – rental and single family homes; job training and development programmes; health care clinics; local cafés; and do public policy advocacy such as affordable housing and living wages.

the community as it reinforced the community participation and community control ideas. Yet questions arose as to adequate accountability. Thus, the first generation CDCs did not work for housing projects and were less successful in commercial projects but created decent jobs. These results were also linked to the riots and depletion of inner cities and the high levels of neighbourhood deterioration.[158]

This meant that any first generation CDC that survived and those created at a later time (second generation) learned from their experiences and became smaller in their ambition, having a more business-like rather than militant approach.[159] By the late 1970s, CDCs had taken a principal role when attracting new investment into the communities as they could supply capital, loans and other types of business assistance.[160]

Thus, from the establishment of the "first generation CDCs" to the "second wave CDCs"[161] coupled with a lack of subsidies for the provision of housing in the 1980s, CDCs started to concentrate largely in the supply of housing[162] which meant there was an acceleration on affordable housing and a downturn in commercial development, as CDCs were not developers but did more coordination rather than business development.

2.3.3.1 The further role of CDCs and the emergence of CED law[163]

Because government funding for CAP, SIPs, CDCs and CDBGs varied through time, different situations emerged which, in turn, would shape the further advancement of CED. For example, the mixing of development and cooperation to work towards a common project forged new alliances; it created new circles and forums in which different ideas could take place. The 1980s also went from broad social policy to a place in which

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[158] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 136.

[159] Such as litigation or demonstrations.

[160] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 138–139.

[161] Randy Stoecker, 'The CED Model of Urban Redevelopment: A critique and an Alternative' [1997] 19 *J Urban Affairs* 1, 2. He also says that a second wave of CDCs were formed in 1970s, amounting to "between 500 to 1,000" and that by 1980s there were about 2000 CDCs.

[162] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 140.

[163] CED law is referred to the body of law pertaining to the practice of CED and although it is related to CED lawyering, CED lawyering has more to do with how the law is practiced rather than to the body of the law itself.

the market became a more important actor within CDCs and influenced the enactment of economic policy. Wolman, in writing about urban economic programmes in the United States, indicates that, in the 1980s, urban policy came mostly from local government and that the Reagan administration saw that the performance and condition of local economies was "an inappropriate concern for Federal government policy",[164] which arguably also added to the further role of CDCs in local development as well as the further use of market-based approaches to the combat of poverty.[165]

Thus, by the time the Clinton Administration arrived in the early 1990s[166], CDCs had therefore become more market driven, which meant that, during the 1990s, the use of market-based approaches to combating poverty such as the use of different tax arrangements[167] and the creation of designated areas for development such as Empowerment Zones[168] to attract development to low-income neighbourhoods or what is known as "market-based CED" shaped "social policy, community-based practice and legal advocacy"[169], changing neighbourhood dynamics and what community groups could do[170] particularly, CDCs and other community based organisations.

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[164] Harold Wolman, 'Cross-National Comparisons of Urban Economic Programmes: Is Policy Transfer Possible?' in *Community Economic Development* (The Macmillan Press 1993) 25.

[165] Wolman further indicates that in contrast, in the UK, the Thatcher administration saw the solving of local problems by action through the national level, which meant these were two very contrasting approaches. (ibid.). It could be argued that Ireland also falls within the Thatcher approach of tackling local problems through a national level. For more information on Ireland, *see* chapter five, particularly section 5.3.

[166] Administration started in 1993 <http://www.whitehouse.gov/about/presidents/williamjclinton> [Accessed last 9 May, 2010].

[167] Such as the New Markets Tax Credits.

[168] It is interesting to note that the idea of Empowerment Zones first appeared in the UK under the Thatcher administration in the early 1980s. EZs were created by Thatcher as a 'British enterprise zone experiment" and transposed to the United States, not by the federal government but by a large number of States. For more information on this, *see* Harold Wolman, 'Cross-National Comparisons of Urban Economic Programmes: Is Policy Transfer Possible?' (n 164) 34. Thus, when President Clinton came into office in 1993 he revived the idea of EZs. For a description of the first EZ created in 1981 by the Thatcher administration, *see* Ash Amin and John Tomaney, 'Turning the Tide? The Impact of Urban and Regional Regeneration Initiatives in North East England' in *Community Economic Development* (The Macmillan Press 1993) 78–79.

[169] Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (n 56) 402 (footnote omitted).

[170] ibid. 401–402.

Yet communities had not left behind the direct action and participation which had given birth to the CED movement and now were shaping it.[171] What follows in an account of those government policies that helped to further develop CDCs and to offer an understanding of how CED law came to be.

(1) Empowerment Zones as re-shapers of CDCs

The Clinton Administration sought to follow some of the themes of the "War on Poverty" of President Johnson and revert back to the Model Cities Programmes by creating Empowerment Zones (hereafter "EZs") The Clinton administration saw the Model Cities Programme as a way of empowering communities and as capable of "unleashing" the market. The EZs provided a number of federal benefits over a ten-year period.[172] Some of the benefits included in the EZs were an increase of grants for social services and economic development, the waiver of certain regulatory matters and tax benefits among others.[173] This shift in the market from the public to the private was seen as a solution in the War on Poverty, re-shaping the form of the CDCs. Now, CDCs looked to the markets, as there was a move towards collaboration with local governments making CDCs the primary actors in redevelopment (as they interacted with private and local governments).

This new eclectic mixture meant a different way of organising, bringing together two different strings of activism. Firstly, there was a rebirth of Saul Alinsky's Industrial Areas Foundations[174] (hereafter "IAFs") and secondly, Immigrant Workers Centres were formed as part of the community development of an area. By now, the use of CED as a market-based approach[175] directed towards the eradication of poverty among inner-cities and low-income areas had taken root.

(2) CDCs as Business Developers

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[171] For a critique of market-based CED *see* Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (n 16).

[172] William H. Simon, 'The Community Economic Development Movement' (n 6) 389.

[173] ibid.

[174] IAFs were about organising issues that emerged spontaneously from the community and institutions and connecting local people with local issues.

[175] Scott L Cummings, 'Mobilisation Lawyering: Community Economic Development in the Figueroa Corridor' in *Cause Lawyers and Social Movements* (Stanford University Press 2006).

The CDCs model of the 1970s and 1980s was as follows: A Foundation would give a grant to a CDC, which in turn would create a Limited Partnership with private investors and a commercial bank who would purchase and build a commercial development. That commercial development would obtain a loan and business tenants (in order to repay loan).[176] More often, however, the CDC would be set up as non-profit subsidiary of a non-profit corporation[177] to get protection and exert control.[178]

The policy argument for this type of structure was one of political pragmatism: private developers became involved in order to obtain tax credits. And, on the merits, it was to ensure compliance and expert management. Although it is a marginal practice to some extent, many non-profits run their own businesses knowing that income can be generated if the business is successful.[179]

(3) CDCs as Investment Brokers

In 2000, the Clinton Administration started the use of New Markets Tax Credits (hereafter "NMTCs") set under the Community Renewal Tax Relief Act of 2000[180] in order to stimulate business development. In short, the NMTCs were designed to give a jump-start to low income communities by encouraging investment.[181] Due to the downturn in the economy, NMTCs came to an end in 2011, after awarding a total of just over $33

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[176] This model is very hard to find nowadays, but good examples in grocery stores.

[177] 501(c)3.

[178] The non-profit usually has no members or members but the directors have to be careful however with issues pertaining to "piercing the veil".

[179] The legal standard for a CDC to operate its own business is that the business cannot overpower the non-profit. The business has to be proportional. There are many tax rules which decide if the business operation is substantially related or not. As a legal rule of thumb to not prejudice the non-exempt status of the non-profit, a subsidiary is created to carry out business aspects of money making endeavours.

[180] Pub. L. 106–554, §1(a)(7) [H.R. 5662], Dec. 21, 2000, 114 Stat. 2763, 2763A–587 , Short title, see 26 U.S.C. 1 <http://www.hud.gov/offices/cpd/economicdevelopment/lawsandregs/laws/actof2000.pdf> [Accessed last 9 May, 2012].

[181] Herbert F. Stevens, 'New Markets Tax Credits' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009) 161.

billion to 664 projects.[182] The mechanics of the NMTCs are complicated, suffice is to say, CDCs had to become familiar with complex tax and business arrangements.[183]

2.3.4 The emergence of CED law

It can be argued that the strengthening of CED as a movement through the years - from its origins as a response to the stagnant poverty faced by inner-cities and low-income communities and as way of addressing quality of life issues faced by the residents of these communities- allowed for a movement that went beyond the pure economic advancement of the locality where the economic progress was taking place as it also included community building and the improvement of community life, which made it much broader than pure economic development.[184] Moreover, the use of different policies and legislation aimed at the tackling of poverty and the empowerment of communities and the use of CDCs in the process of development has also allowed CED 'practitioners' to focus on products and services such as affordable housing and job creation.[185] These practitioners would eventually develop a distinctive area of law, that is, CED law.

Moreover, given the different types of legislation and funding mechanisms directed towards infrastructure development of low-income communities coupled with the failure to take into account the wishes of local communities, poverty lawyers in the early 1990s started to use transactional law as a way of responding to the community problems generated by redevelopment and gentrification. Now the poverty lawyer would start to use transactional law towards the betterment of disadvantaged communities ensuring the

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[182] Rapoza Associates, 'The New Markets Tax Credit: Progress Report 2012' (New Markets Tax Credit Coalition June 2012) 1, 5.

[183] At a glance, NMTCs work as follows: There must be a type of entity, a community development entity. This entity is a for-profit entity as the project needs to attract investors. The type of investment is called a Qualified Equity Investment (hereafter "QEI") as the investment has to meet certain criteria in which even a loan would suffice as a QEI. The investors also need an advisory board; they must be accountable and they must focus on serving the low-income community. The aim of the government is a physical establishment of the business but there is no formal requirement of local hiring. This makes the NMTCs a federal subsidy with the goal to funnel capital. One of the down-sides of the NMTCs is that there needs to be community control, which makes it very hard to get "hooks" for investors. But the key question that always remains is how tax credit programmes have facilitated the development if at all. For more information on NMTCs *see* Herbert F. Stevens, 'New Markets Tax Credits' (n 181); The New Markets Tax Credit Coalition <http://nmtccoalition.org/> [Accessed last 12 July 2012]; The Community Development Financial Institutions Fund <http://cdfifund.gov/what_we_do/programs_id.asp?programID=5> [Accessed last 12 July, 2012].

[184] Roger A. Clay Jr. and Susan R. Jones, 'What is Community Economic Development' (n 8) 3.

[185] ibid. 5.

empowerment and lifting of the communities took place but first, a change of how poverty lawyers practiced law had to occur - a shift that also had its origins in the War on Poverty and the establishment of the Legal Services Programme.

2.4 Section Three: Legal services to the poor and the links to CED

2.4.1 Origins

The idea that poverty could be tackled by providing legal services to the poor was embodied in the establishment of the Legal Services Programme, which dates back to the 1960s and the War on Poverty.[186] The Legal Services Programme was one of the programmes of the War on Poverty as it was envisaged that legal services should also form part of the infrastructure of the community.[187]

For a few years, the administration of the Legal Services Programme fell under the jurisdiction of the OEO[188] resulting in the creation of a link between CAP and the Legal Services Programme. This link provided support for the community when establishing and developing legal services programmes among low-income and inner-city communities.[189]

Yet, because the Legal Services Programme was administered under the umbrella of the OEO, it lacked independence. Local governors wanted to stop legal services professionals from bringing actions against governmental agencies,[190] and lay professionals wanted to take over the provision of legal services and tell the lawyers what to do or how to go about their cases.[191] Thus, in 1971, Congress re-enacted the Legal

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[186] Lauren Breen, Louise Howells, Susan R. Jones, and Deborah S. Kenn, 'An Annotated Bibliography of Affordable Housing and Community Economic Development Law' (2003) 13 *J. Affordable House. & Cmty. Dev. L.* 334, 335.

[187] Broklyn A, 'Brooklyn Legal Services Corporation A: Annual Report 2010', 2011 1.

[188] Recall the OEO was ended in 1975.

[189] John D. Robb, 'New Niche for National Legal Services" [1971] *A.B.A. J.* 557, 557.

[190] John D. Robb, 'Controversial Cases and the Legal Services Program' (1970) 56 *A.B.A. J.* 329.

[191] John D. Robb, 'New Niche for National Legal Services" (n 189). Internally, the OEO was also facing "power" issues.

Services Programme as "an independent non-profit corporation responsible only to itself and to the law it serve[d]".[192]

The Legal Services Programme was highly successful; it exposed lawyers to poverty law and to "reform-oriented work" which was also backed by the expertise created when addressing the needs of low-income people. Between 1967 and 1972 more than 200 cases were taken before the Supreme Court under the Legal Services Programme and most of them had been won on the merits, in areas such as "welfare, housing, education, tenant, consumer, and related issues."[193] But these victories for the poor created political opposition, as many politicians were unsure if the tax-payers money was supposed to finance both sides of the lawsuit.[194]

As a consequence, by 1974, the Legal Services Programme was transferred from the OEO to a newly created non-profit corporation who would distribute government funds for civil legal aid assistance.[195] This newly formed entity, the Legal Service Corporation (hereafter "LSC"),[196] restricted the type of legal work LSC funded lawyers and community law centres could offer to the community,[197] prompting the start of two parallel legal services – one funded by the LSC, the other by other means such as donations and private funding.

2.4.1.1 The start of two parallel legal services: the individual versus the collective and the integration of CED

Because the LSC focused on the individual needs of community residents rather than on the collective needs of the local community,[198] matters of law reform, social

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[192] Sen. James B. Pearson, 'To Protect the Rights of the Poor: The Legal Services Corporation Act of 1971' (1970) 19 *U. Kan. L. Rev.* 641, 641 (footnote omitted).

[193] Deborah L. Rhode, *Access to Justice* (Oxford University Press 2004) 63. Note that almost all of these areas are covered by independent community law centres in Ireland. The main reason been is that they were modelled on the Legal Services Programme of the War on Poverty. *See* chapter four and chapter six for more information on this.

[194] ibid.

[195] <http://www.lsc.gov/about/what-is-lsc/history> [Accessed last 12 July, 2012].

[196] Pub. L 93-355. See also <http://www.lsc.gov/laws/act.php> [Last accessed 26 October, 2010].

[197] The lawyers received LSC funding were not allowed to engage in "lobbying, political organisation, and representation in controversial areas such as school desegregation, abortion and military service." See Deborah L. Rhode, *Access to Justice* (n 193) 63.

[198] For a more detailed understanding of the different types of legal aid service delivery, *see* chapter five.

change and community participation - which had been actively encouraged by the Legal Services Programme - could no longer be pursued.

During the following years, the LSC participation in helping to tackle poverty was restricted even further, as there were less monetary resources allocated from the federal government and there was a limit in the type of cases LSC-funded community law centres and lawyers could serve. By the 1990s, LSC recipients could not "represent aliens, pursue cases involving homosexual rights, or initiate class actions".[199]

This restriction in the role of LSC funded centres meant that privately funded centres became increasingly important in relation to the development of CED law, as they were able to focus on the needs of the community as a whole.

One of the consequences of this two-tier provision of civil legal aid[200] the LSC-funded law centre in the one hand and the non-LSC funded in the other, was that the restricted version of civil legal aid provided by the LSC to civil legal assistance providers financed many law centres in the country, a type of law centre that, unfortunately, would also become the type of government-funded civil legal aid in other countries,[201] albeit their development was very different from that of the LSC.[202] However, the pre-LSC model of law centre, namely the Legal Services Programme of the War on Poverty (1960s-1974) also influenced the creation of the independent legal centres in other countries such as the

[199] Deborah L. Rhode, *Access to Justice* (n 193) 63–64 (footnote omitted).

[200] One tier was funded by the State, the other by private donors. This divergence and two-tier model would also influence the provision of civil legal aid in other countries as the community law centre movement would model their legal centres in the Legal Services Programme of the War on Poverty and seek funding from the government departments while at the same time incorporate themselves as charities or others. See chapter 4 for more detailed information on this.

[201] For example, the Legal Aid Board in Ireland has very restricted criteria as to the type of legal aid it can offer. *See* chapter five for more detail on this.

[202] *See* chapter four and chapter six for more information on this.

community law centres in England and Ireland[203] shaping how they could help tackle social exclusion and poverty.[204]

(1) The onset of CED lawyering: Linking Community Action to Law

With the curtailment of the provision of civil legal aid services by the LSC and the narrow type of legal services provided by funded-LSC law centres and lawyers, community action and law had to create their own progress and evolve into a 'marriage' freed from the constraints of government funding.

Because community action was the "conceptual framework"[205] within which to fight the "War on Poverty", different presidential and government programmes and policies made their mark in low-income and inner-city communities. While in the one hand federal CED policies emphasised neighbourhood based approaches and a market-based approach to combating poverty, the influences of the civil rights era, which emphasised grass-roots political action to achieve broad-based reforms, left an alternative antipoverty model from which community organisations could also learn.[206] Thus, the different periods of trial-and-error aimed at fighting poverty and bringing resources to the residents of these communities brought about a silent evolution within community-based organisations, guiding them towards more organised approaches with which to achieve their community goals, such as by the use of CDCs. Thus, by the 1990s, these community-based

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[203] Although England based their model on the Legal Services Programme, a decision was taken to focus on the more narrow view of what a law centre was meant to do and be apolitical, as they did not want the law centre to do too much "political" work but rather service individual legal needs and complement judicare. In Ireland, the community law centres are also based on the Legal Services Programme but under an English view approach. For more information on the development of community law centres, see Chapter Four.

[204] For example, FLAC pioneered the establishment of Ireland's first community law centre to service low-income communities. See chapter five and six for further information on this.

[205] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 107.

[206] Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (n 56) 417. Although this alternative approach was curtailed during the 1980s and 1990s (Reagan and Clinton administrations respectively), it resulted in a localized market-based approach to CED, with many "leftist intellectuals" to promote politics that were rooted in local action and empowerment. ibid. 421–422. For example, as far back as 1967 groups organized around welfare issues and others issues pertaining the poor, thus representing "the emergence of a distinct antipoverty approach that used grassroots political action to promote economic justice" such as for example, the creation of the Movement for Economic Justice and ACORN (focused on tax reforms, property taxes and others). ibid. 417–421. Although it is uncertain if this development was also influenced by the neighbourhood law centres of the War on Poverty and the subsequent changes in LSC's funding, is hard to say. However, the impact of the civil rights era and CAP had certainly had a say.

organisations had come together, emerging into a series of community and national organisations campaigning for a better urban economy.

The establishment of more organised approaches also meant that the community-based organisations had to consider the use of the law and lawyering strategies when working towards the achievement of their goals. This change of approach within community-based organisations also produced a shift[207] in their legal methods which went from a confrontational[208] to a collaborative model[209] expanding and pushing this lawyering model towards new grounds. The several government programmes and policies that were creating inequality such as redevelopment were helping to shape a different vision as to what the role of the lawyer was within the community. Issues of development and organising came together in the form of urban organisations and coalitions. [210]

With the help of lawyers, these organisations could use different tactics towards the achievement of their goals and projects such as the building of housing, the development of business, the creation of jobs and the access to capital. In this way, low-income communities could obtain self-sufficiency and control as well as making development accountable to their constituents.

This shift towards a collaborative model of lawyering also opened the door to the various ways CED law could make a difference within communities by offering an alternative route in which to access civil justice[211] as well as economic justice. CED law brought a non-litigious mode of lawyering to the bargaining table[212] in which lawyers

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[207] Note that this shift also came about due to the post-modern approach to poverty lawyering. See also Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (n 56) 432–435.

[208] That is, litigation based.

[209] This means, the lawyer and the client collaborate with each other in the process of whatever legal avenue is decided so the client is also empower as to the decisions taken.

[210] Organisations such as Strategic Actions for a Just Economy (hereafter "SAJE"), Los Angeles Alliance for a New Economy (hereafter "LAANE") flourished. For SAJE see <http://www.saje.net/site/c.hkLQJcMUKrH/b.2315777/k.BF4B/Home.htm> [Last accessed May 13, 2010]. And for LAANE see <http://www.laane.org/> [Last accessed May 13, 2010].

[211] Deborah L. Rhode, *Access to Justice* (n 193) 60. Rhode indicates that the inadequacies of the provision of legal services left a "void" in the Civil Legal Services for the poor and public interest lawyers sought to fill that void.

[212] This is in contrast to litigation tactics which were seeing by many U.S. scholars as not been able to produce significant reforms. For further discussion and bibliography on the topic, *see* Scott L Cummings

could use their experiences of transactional lawyering techniques in the fight against urban poverty and in support of the advancement of a better urban economy[213] as well as empowering individuals and communities in a way poverty lawyers had not done before.[214]

In California, for example, CED law started to be dominated by low-wage work within the low-income communities as more organisations started to work in this area of law, particularly because the LSC does not fund lawyers to represent undocumented immigrants, and most of the low-wage workers are undocumented or have immigration problems. Thus, the increased interaction between law and community organising made low-wage work advocacy evolve into a sub-set of CED lawyering[215] an area in which law and community organising also played a significant role.[216]

(2) The onset of CED lawyering: The Interaction between Law and Community Organising

The interaction between law and organising also became important in forging the links between legal services to the poor and CED because of the role CED plays in addressing issues of poverty[217] and because of the community involvement law and organising entailed.[218]

In the late 1980s and early 1990s scholars found that the connection between law and social change had been diminished as lawyers, by dominating the lawyer-client relationship, were weakening the client's ability to have a say in its own problems.[219]

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and Ingrid Eagly, 'A Critical Reflection on Law and Organizing' (2001) 48 *UCLA Law Review* 443, particularly footnote 38 at page 454.

[213] Nona Liegeois, Francisca Baxa, and Barbara Corkrey, 'Helping Low-Income People Get Decent Jobs: One Legal Services Program's Approach' (1999) 33 *Clearinghouse Rev.*

[214] Although in in Ireland, non-litigious legal strategies have been an accepted part of strategic approach to legal aid since the 1970s, the main difference is that CED enables community empowerment – taking the law away from the lawyers - a factor that is lacking within the current use of the strategic approach.

[215] Low-wage work advocacy is an important area when it comes to immigrant organising initiatives. For a further discussion of this, *see* chapter three at section 3.3.2.3.

[216] More research would be needed to ascertain if there are other sub-sets of CED lawyering within the United States.

[217] Scott L Cummings and Ingrid Eagly, 'A Critical Reflection on Law and Organizing' (n 212) 476.

[218] Cummings and Eagly refer to Gerald Lopez and Lucie White as "the most influential scholars" on addressing the issues of how lawyers could bring social change via community organising. Their work helped in shaping the practice of community organising. *See*, ibid. 457.

[219] ibid. Particularly refer to footnote 48 on the same page.

Scholars also saw that litigation had taken away the "power" of people in bringing social changes as individual legal claims had taken over the social conflicts.[220] Therefore, law and organising shifted the focus towards a "community-based political action" as an alternative way to litigation of bringing social change,[221] making community organising the main tool progressive lawyering used in order to empower communities.[222]

As a result, a new wave of lawyers sought a different approach on how they could use their legal skills in the fight for urban poverty and to benefit economic justice movements.[223] Helping communities via "grassroots organising campaigns" meant the community was no longer on the periphery but involved in solving its own problems.[224] This approach made the mixture of law and organising a feasible and reliable strategy for social change, making community development a "distinctive practice area"[225] within the law and organising field. According to Cummings and Eagly, there is a distinction between law and organising from a worker's rights point of view and from a CED point of view, as CED lawyers provide transactional legal assistance to community-based organisations engaged in organising work whereas workers' rights usually combine litigation with law and organising.[226]

Under the CED approach of law and organising, the community directed or had a say in what type of changes it wanted, and the lawyer remained in the background offering

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[220] ibid. 455.

[221] ibid.

[222] ibid. 466 (footnote omitted). The authors indicate to see the work of Ruth Buchanan and Louise G. Trubek, 'Resistances and Possibilities: A Critical and Practical Look at Public Interest Lawyering' (1992) 19 *N.Y.U. Rev. L. & Soc. Change* 687, 691 (describing one of the central tenets of the new poverty law scholarship as "encourag[ing] organization and collective efforts by clients").

[223] Scott L Cummings and Ingrid Eagly, 'A Critical Reflection on Law and Organizing' (n 212) 478–479.

[224] ibid. 447.

[225] ibid. 469. The authors say that within the law and organising movement there are three distinct areas that have emerged, thanks to the input of poverty law lawyers. These areas are "worker's rights; environmental law and community development" practice.

[226] ibid. 476–477, at footnote 154. They stress that "while workers' rights advocates typically seek to protect vulnerable workers from unlawful termination or substandard working conditions, the goal of CED lawyering is to increase the number of stable, living wage jobs in low-income communities and to establish adequate job training and social service programs to allow low-wage workers to access new opportunities. Thus, although CED and workers' rights lawyers often advocate on behalf of the same constituencies, they use different legal techniques, work with different types of clients, and pursue different, albeit complementary, goals."

its help when needed,[227] thus facilitating community mobilisation.[228] The lawyer also imparted community education, sometimes linking legal aid to organising groups and becoming directly involved in organising campaigns.[229]

This interaction between law and organising therefore resulted in "a new community-based approach to progressive lawyering that combines legal advocacy and grassroots action."[230] For example, CED lawyers have helped community organisations to draft and pass "living wage ordinances" which established a base from which workers could lift themselves out of poverty by obtaining a proper salary for their work (and not be the working poor).[231]

Although law and organising had (and still has) a big potential by allowing the interaction between CED lawyers on the one hand and the community-based organisations together with their grassroots political actions on the other,[232] law and organising also had (and still has) its limitations.[233] The potential of law and organising therefore rests in the successful creation of a link between its "community-based action" to a broader "large-scale reform" which influence changes within the "political and economic" fields.[234]

Because organisations vary in sizes and models,[235] organising can mean any of the many organising approaches and techniques used among community-based organisations

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[227] Local organising takes a centre stage and the lawyer remains in the background, offering its help when needed. ibid. 484.

[228] ibid. 447. Note that although this was also the idea behind the neighbourhood law centre approach of the War on Poverty, lawyering attitudes had not progressed, as lawyers still dominated client attitudes, as observed in the change of lawyering attitudes in the 1980s.

[229] ibid. 448. Note that this type of work was also done in Ireland by Dave Ellis at the Northside Community Law Centre. *See* chapter six "Case Studies" for further details on this.

[230] ibid. 443.

[231] ibid. 478.

[232] ibid. 478–489.

[233] ibid. 479, 490-502. Its limitations emanate from the tension between law versus organising, between lawyers as organisers and between law as a vehicle for organising, including the practical difficulties that exist within them as well as the ethics of law and organising.

[234] ibid. 487.

[235] Organisations could have a membership based model (usually small), a coalition based model (bigger formed by different organisations) or an institutionally based model (usually affiliated with religious institutions). See, Scott L Cummings and Ingrid Eagly, 'A Critical Reflection on Law and Organizing' (n 212), citing Gary Delgado one of the founders of ACORN. See also footnote 173 at page 483 of same article

such as "organization building, mobilization, education, consciousness rising, and legislative advocacy."[236] This means that different legal advice and tactics were and are needed for each type of organising.[237] Thus, when it comes to law and organising, CED lawyers (and any other public interest lawyer) create the framework in which the strategy campaign can take place, but the lawyer should not start the campaign itself as this role belongs to the organisers.[238] It is also important to ensure that organising is not seen as a "client-empowering form of practice".[239] Cummings and Eagly have stressed the fact that lawyers,

> "must also guard against reifying the concept of organizing and using it to advance a social change agenda that does not reflect the needs and desires of client communities. Indeed, it is necessary for thoughtful practitioners to develop mechanisms to ensure that community members participate in organizing campaigns out of a commitment to collective action rather than a feeling of coercion."[240]

At the turn of the 21st century, law and organising was "at its early stages".[241] The question that remains is whether law and organising is still emerging. However, what is important is that law and organising must be viewed as a complementary tool within the poverty law and CED practice rather than a model to bring social change.[242] Law and organising has facilitated grass-root mobilisation and as such, lawyers do have a role to play in furthering social change.[243]

The interactions between law and organising have also pushed public interest lawyers and CED lawyers to use the law in creative ways, in which thinking outside the

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[236] ibid. 481 (footnote omitted).

[237] ibid.

[238] Organisers are the pawns of the chest-board and public interest lawyers are the ones behind them (queen, king, rooks, bishops and knights. No particular order of importance), Lecture given by Victor Narro, Project Director, UCLA Downtown Labour Centre (15 April, 2009).

[239] Scott L Cummings and Ingrid Eagly, 'A Critical Reflection on Law and Organizing' (n 212) 497.

[240] ibid. 497–498.

[241] ibid. 516.

[242] ibid.

[243] Scott L Cummings and Ingrid Eagly, 'A Critical Reflection on Law and Organizing' (n 212).

box becomes part and parcel of any public interest law strategy, pushing the limits of CED as a lawyering strategy even further.[244]

2.5 Section Four: What is Community Economic Development Lawyering?

CED lawyering can be described as a strategy for redressing urban poverty in which economic justice initiatives can receive input from lawyers, where points of legal intervention can be addressed and where issues of accountability can come to the fore. CED lawyering therefore acts as a facilitator, building and empowering communities by the use of different legal tools and approaches, all of which are directed towards the improvement of the socio-economic infrastructure and development of those communities.

The nature of CED lawyering can be found in the changing attitudes of poverty lawyers in the United States during the 1980s and early 1990s. Poverty lawyers realised they were part of the problem of client disempowerment rather than the solution, as their use of impact-litigation in order to address institutional reforms and effect social change was marginalising and subordinating clients rather than empowering them.[245]

The changing attitudes and practices of poverty lawyers arose from a post-modern approach to lawyering, in which legal scholars started to learn that "the nature of the lawyer-client relationship" was also a factor that needed to be taken into account if there was to be a stop to the "potential for lawyer domination".[246] Furthermore, within poverty-law practice, the traditional lawyer-client relationships were creating dependency and reinforcing the passivity and isolation of clients,[247] trumping even further the opportunities for client and community empowerment. This dependency and reinforcement of passivity and isolation were also a factor that was replicated when applied to local grass-roots

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[244] Susan R. Jones and Dorcas Gilmore, 'Community Lawyering' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009) 244. The authors indicate that new areas of CED lawyering are always emerging, calling it "CED community lawyering". This is particularly true when it comes to immigrant organising initiatives.

[245] Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (n 56) 432–435; Daniel S Shah, 'Lawyering for Empowerment: Community Development and Social Change' [1999] 6 *Clinical L. Rev.* 217, 231.

[246] Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (n 56) 445–446.

[247] Daniel S Shah, 'Lawyering for Empowerment: Community Development and Social Change' (n 245) 231.

organisations. No matter what type of the legal assistance was needed, they all required lawyers who could understand their backgrounds and respect their decisions[248] and not take their autonomy away.

Respecting a client's decision as well as their background meant CED lawyers needed to understand that for CED law to flourish, different lawyering techniques and approaches would have to be used and perhaps pioneered, allowing this understanding of how to approach the law, as it applied to the CED movement, to develop over time. If the CED concept meant development beyond the pure economic, then CED law also had to go beyond the lawyer's traditional approach to lawyering.[249] Thus, by the late 1980s, legal commentary exemplified CED as a "new process-based rather than outcome-based approach to lawyer-client counselling."[250]

A further element that contributed to the shape and nature of CED lawyering was the establishment of the LSC (as discussed before)[251] and its stance towards the provision of civil legal aid services. As soon as the LSC was established, people could no longer use LSC funding to sue the government in controversial areas such as school desegregation cases[252] and eventually, not even the draconian working conditions of undocumented workers qualified for LSC-funded legal services because of the workers' immigration status,[253] albeit the restrictions have now been relaxed to some extent.[254] This narrowness of legal aid services made LSC-funded community law centres weak as it lowered their chances of making a significant difference in eliminating the causes of poverty.

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[248] Brian Glick and Matthew Rossman, 'Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice' (1997) 23 *N.Y.U. Rev. L. & Soc. Change* 105, 110. The legal help could cover a broad range of issues such as "corporate, tax, contract, real estate, licensing and other business, commercial and regulatory matters".

[249] The traditional approach to lawyering is that in which the lawyer tells the client what to do and how to proceed without taking into account the client's view as to how to solve his or her legal dilemma.

[250] Daniel S Shah, 'Lawyering for Empowerment: Community Development and Social Change' (n 245) 232.

[251] The LSC is the current provider of federal grants towards civil legal assistance providers in the United States. For further information, visit <http://www.lsc.gov/about/lsc.php> [Accessed last 12 July, 2012].

[252] Deborah L. Rhode, *Access to Justice* (n 193) 63.

[253] For more information on the restrictions of the LSC, see: <www.lsc.gov> [Accessed last 6 October, 2012].

[254] For example, a law centre who deals in immigration matters can use LSC funding as long as it does not mix the funding, gives an account of the areas, etc. For the complete rules, see:

The development of CED lawyering as a strategy for redressing urban poverty, therefore, comprised non-traditional approaches to lawyering and the use of alternative models of community legal services[255] all of which have been influenced, separately and in conjunction, by three factors. Firstly, the evolution of the LSC via the Legal Services Programme and the birth of the law centre created a two-tier approach in the provision of civil legal aid services. Secondly, the links between community action and law created a more organised approach towards the provision of legal services, bringing a non-litigation model (known in Ireland as the strategic approach) to the fore when addressing the legal needs of the community. And thirdly, the interactions between law and community organising meant social change could take place from the bottom-up, fostering grass-root mobilisation and the establishment of more progressive legal practices.[256]

2.6 Conclusion

Poverty is not a foreign word in our vocabulary particularly when we are reminded every day in the media, on the streets or among our neighbourhoods. Just as in the 1960s when the War on Poverty was conceived, poverty was also seen as a cause of disempowerment, as poverty presents itself as a lack of solution on how to face the social and personal problems triggered by it.

The ideas originated by the War on Poverty have survived the pressures of a changing society, of different political views and of government priorities. From government participation in the 1960s, to the retrenchment of federal government in local development in the 1980s to a more market-based approach to ending poverty in the 1990s espoused different concepts that have taken the shape of policy reform, of government programmes, of non-governmental and entrepreneurial ideas as well as giving shape to the CED movement.

Through its evolution, the CED movement understood that no matter how successful a programme wanted to be, without input from that community, eradication of the sources and causes of poverty would not make much progress. Likewise, in

[255] Because of this, the question arises if CED lawyering has a role in implementing/promoting the strategic approach to legal aid in Ireland - the main question of this thesis.

[256] For a detailed explanation of how grass-roots mobilisation is facilitated by CED, see Scott L Cummings and Ingrid Eagly, 'A Critical Reflection on Law and Organizing' (n 212).

offering legal services to the poor, lawyers had to understand that community participation and empowerment was vital if they were to try and find alternative ways in how law and the legal process could help in solving issues of poverty. Although the debate about lawyers and client/community empowerment is not exclusive to CED, the use of CED as a lawyering strategy has acted as response to the difficulty associated when bringing about community empowerment as envisaged by the proponents of the War on Poverty.

For example, the lack of investment and guidance in preparing the residents of the communities on matters of "decision making and governance roles"[257] as necessitated by different community programmes among others had left a void in the CED movement. One way lawyers have addressed this issue is by forming responses in the form of CED lawyering, becoming actors in the process of development and not mere bystanders.

The understanding that lawyers had a role to play in the process of development made CED as a legal practice and as a lawyering strategy, since the 1990s, a *"significant new area of public interest law"* (emphasis added),[258] contributing significantly to the narrowing of the gap in accessing civil justice and civil legal aid.

[257] Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (n 16) 113.

[258] Brian Glick and Matthew Rossman, 'Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice' (n 248) 110.

Chapter Three Analysis of the CED Lawyering Model: Theoretical and Practical Aspects from the United States

3.1 Introduction

CED law and CED lawyering, as part of the ever-evolving public interest law field, has been the subject of many papers and case-studies[1] which have identified the rich diversity in the different types of law and lawyering techniques and styles found within CED.[2] These different lawyering techniques and approaches may be said to form the "theoretical" aspects of CED, whilst the examples from the ground can be categorised as

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[1] For example, the American Bar Association Forum on Affordable Housing and Community Development Law published in 1998 and in 2004 annotated bibliographies of CED containing an array of books and journals. See, Susan R. Jones and Deborah S. Kenn, 'An Annotated Bibliography of Affordable Housing and Community Economic Development Law' (1997-1998) 7 *J. Affordable Hous. & Cmty. Dev. L.* 340 and Lauren Breen, Louise Howells, Susan R. Jones, and Deborah S. Kenn, 'An Annotated Bibliography of Affordable Housing and Community Economic Development Law' (2003-2004) 13 *J. Affordable House. & Cmty. Dev. L.* 334 respectively. Lately, the American Bar Association further published a book on CED addressed to advocates, lawyers and policy makers. *See*, Roger A. Clay Jr. and Susan R. Jones (eds), *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009), particularly chapter fourteen at pages 239-244 which mentions examples from the field on three different CED areas: "drug nuisance abatement and property redevelopment, municipal underbounding, and youth microenterprise development". The term "underbounding" is when minority communities are located on the boundaries of mostly white towns or cities, which many times lack services (at page 242). Recently, Susan D. Bennett together with other academics also published a book on CED law dedicated to the teaching of the subject. For more information s*ee* Susan Bennett, Brenda Bratton Blom, Louise Howells, and Deborah Kenn (eds), *Community Economic Development Law: A Text For Engaged Learning* (Carolina Academic Press 2012).

[2] The body of literature on the public interest law field is vast. Some examples from academics and practitioners on the field that can be applied to CED lawyering are: Stephen Ellmann, 'Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups' 78 *VA. L. REV.* (1992); Joel Handler, *Lawyers and the Pursuit of Legal Rights* (Academic Press 1978), Poverty Policy Analysis Series; Austin Sarat and Stuart A. Scheingold (eds), *Cause Lawyers and Social Movements* (Stanford University Press 2006); Austin Sarat and Stuart A. Scheingold, *Something to Believe In: Politics, Professionalism, and Cause Lawyering* (Stanford Law and Politics 2004); Stuart A. Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (2nd edn, University of Michigan Press 2004); Derrick A. Bell Jr, 'Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation' (1976) Vol. 85 *Yale Law Journal* 470–516; David A. Binder, Paul Bergman, Susan C. Price, and Paul R. Tremblay, *Lawyers as Counselors: A Client-Centered Approach* (2nd edn, West 2004); Gerald P. López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (Westview Press 1992); Orly Lobel, 'The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics' 120 *Harv. L. Rev.* 937 (2007); Michael McCann, 'Law and Social Movements,' in *The Blackwell Companion to Law and Society* (Wiley-Blackwell 2004).

the "practical aspects" of CED lawyering[3]. It is important to highlight that because this thesis focuses on CED as a lawyering strategy (or what is referred to as CED lawyering) and not on the different areas of substantive law contained within CED, CED law will not be discussed, although it might be mentioned throughout.[4]

This chapter, therefore, has been structured in a similar form to reflect the division between the theory and practice of CED lawyering in order to offer a platform for considering how these can be applied and/or are applied in Ireland. Firstly, an account of the theoretical view of CED lawyering will be discussed, namely, the different ways CED lawyering is practiced such as facilitative lawyering[5], integrative lawyering,[6] CED lawyering as applied to multi-organisational environments including issues relating to legal ethics and representation[7] and the role of the CED lawyer as a tool for community empowerment and community legal education. It is hoped that by exploring the "theoretical view" a better understanding of how CED lawyering works on the ground can be facilitated. Secondly, the "practical aspects" of CED lawyering will be considered. While some of the examples are mentioned in passing, a selection of them will be discussed in detail, based on the evolution of CED as a movement and as a lawyering strategy.[8] The aim of covering some of these examples in detail rather than others is to enlighten our understanding of how CED lawyering can be studied in a comparative context.

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[3] Jones and Gilmore describe the CED lawyering approach from a theoretical perspective, while the examples are the practice of CED law. *See*, Susan R. Jones and Dorcas Gilmore, 'Community Lawyering' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (n 1) 236–238.

[4] For example, the law of non-profits or revenue law may be mentioned but not discussed.

[5] Richard Marisco, 'Working for Social Change and Preserving Client Autonomy: Is There a Role for 'Facilitative' Lawyering?' (1995) 1 *Clinical L. Rev.* 639, 658.

[6] Sheila Foster and Brian Glick, 'Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment' (2007) 95 Cal. L. Rev. 1999–2072.

[7] ABA Model Rules of Professional Conduct. *Client-Lawyer Relationship*. Rule 1.13 Organisation as Client <http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_13_organization_as_client.html> [Accessed last 24 July, 2012].

[8] As explained on the previous chapter, this covers the legal services to the poor, community action and law and law and organising.

3.2 Section One: Theoretical Aspects of CED Lawyering - Some Different Approaches

The different approaches taken by CED lawyers derive from the post-modern view of the role played by poverty lawyers,[9] which is seen as somehow removed from that of the traditional lawyer, a role in which the client's input is not really taken into account as the traditional lawyer "believes the client has little of value to contribute to the resolution of his legal problem."[10] The responsibility of solving the problems falls solely on the lawyer and no one else as the lawyer is the one who takes care of things,[11] turning the client into a passive actor, with no responsibility in the decision making-process of his or her own problems. Furthermore, the client contributes to this passivity due to his or her perception of "effective professional services", a view in which the success of the legal problem is equated with the ability to pay and in which the solutions are outside the grasp of the common folk.[12]

To combat these views, CED lawyering has evolved into a multi-faceted lawyering approach in which different types of lawyering are formulated, conceived, pioneered and used, leaving to one side the traditional lawyering approach in solving the issues faced by the respective clients.[13] This is because the CED lawyer as a "community lawyer"[14] must

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[9] For more information on this, *see* chapter two at section 2.5 "What is Community Economic Development Lawyering?"

[10] Robert D. Dinerstein, 'Client-Centered Counselling: Reappraisal and Refinement' in *Lawyers' Ethics and the Pursuit of Social Justice* (New York University Press 2005) 151.

[11] ibid.

[12] ibid.

[13] *See f*or example, Gerald P. López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (n 2); Gary Bellow, 'Steady Work: A Practitioner's Reflection on Political Lawyering' (1996) 31 Harv. C.R.-C.L. L. Rev. 297; Lucie E. White, 'Collaborative Lawyering in the Field? On Mapping the Paths From Rhetoric to Practice' (1994) 1 *Clinical L. Rev.* 157 157; Ann Southworth, 'Representing Agents of Community Economic Development: A Comment on Recent Trends' (2004) 8 *J. Small & Emerging Bus. L.* 261, 268–269; Susan Bennett, Brenda Bratton Blom, Louise Howells, and Deborah Kenn, *Community Economic Development Law: A Text For Engaged Learning* (n 1). Note that this list is by no means exhaustive but it is a starting point.

[14] Derek Denckla and Matthew Diller, *Community Lawyering: Theory and Practice - Materials for So Goes a Nation: Lawyers and Communities* (Fordham University School of Law and New York Lawyers for the Public Interest 2000). Community Lawyering is described by the authors as that in which lawyers focus on the "project" rather than on a particular "case" of the individual (at page 6). There is a huge overlap between community lawyering and CED lawyering particularly when it comes to their lawyering approaches or techniques. The authors place "community development lawyering" among the wide spectrum of community lawyering (at page 20) but to avoid any confusion, CED lawyering and community lawyering will

understand the issues facing the community as well as "the goals and aspirations of its residents"[15] in order to best represent their interests.[16]

The different lawyering approaches also derive from the issues and questions that lawyers have had to face when CED lawyering is put into action, that is, when working on the ground.[17] In theory, the lawyer working for the community needs to know which principles he or she will abide by as some of the community goals may go completely against the lawyer's set of principles, informing the lawyer in his or her decision as to the type of clients, projects and cases he or she will accept.[18] It is important to note that more often than not, CED lawyering in the United States is geared towards the representation of community groups rather than individuals, but this does not mean that individual representation is excluded.[19]

Victor Narro, project director at the UCLA Downtown Labor Center[20] and a lawyer with first-hand experience in working with community groups, explains that issues

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be kept as separate terms, although the CED lawyer can also identify his or her work as community lawyering. *See* also Susan R. Jones and Dorcas Gilmore, 'Community Lawyering' (n 3) for views of community lawyering. They describe CED lawyering as CED community lawyering as they inform the reader that "doctrinally, community lawyering covers a wide range of practice areas - community economic development, environmental, immigration, public benefit, and even intellectual property law". Thus the array of community lawyers covers "administrative practice, litigation, mediation, dispute resolution, community education, legislative advocacy, and transactional work." They note that this array is also shared when it comes to CED (at page 237). For further information about community lawyering *see* also Karen Tokarz, Nancy L. Cook, Susan Brooks, and Brenda Bratton Blom, 'Conversations on 'Community Lawyering': The Newest (Oldest) Wave in Clinical Legal Education' (2008) 28 *Wash. U. J. L. & Pol'y* 359.

[15] Michael Diamond, 'Community Lawyering: Revisiting the Old Neighborhood'' (2000) 32 *Col. Hum. Rts. L. Rev.* 67, 115–116 '(footnote omitted)'.

[16] ibid. Diamond suggests that The CED lawyer should "get out of the office", go to the community meetings, talk to and get to know the people and the groups involved.

[17] For example, we have all experienced at some point in our lives the group dynamics when more than two people come together as a group. The questions and issues that arise become endless depending on the circumstances and interactions of each group of people.

[18] Michael Diamond, 'Community Lawyering: Revisiting the Old Neighborhood'' (n 15) 114.

[19] For example, CED also focuses on individual empowerment. *See* Carmen Huertas-Noble, 'Promoting working-owned cooperatives as a CED empowerment strategy: A case study of *Colors* and lawyering in support of participatory decision making and meaningful social change' (2010) 17 *Clinical L. Rev.* 255–284, 257-261 and also, the Legal Aid Foundation of Los Angeles to see the type of CED services they provide <http://www.lafla.org/service.php?sect=ced&sub=main> [Accessed last 24 July, 2012].

[20] The UCLA Downtown Labor Center is a centre which seeks to bridge the gap between the university and the community and support joint projects between unions, worker centres, and the community. For more information go to: <http://www.labor.ucla.edu/downtown/index.html> [Accessed last 24 July, 2012].

such as who speaks for the group or how does the lawyer manage inter-conflict are very common.[21] Moreover, there is always an element of uncertainty as to who is best equipped to define the problems and solutions faced by the community group: is it the organiser, the lawyer or other person? The question always remains[22] but one which fortunately has been aided by the different types of lawyering techniques, such as facilitative lawyering, integrative lawyering and community legal education, all of which are discussed below.[23]

3.2.1 Facilitative Lawyering

Marisco has proposed a different role for lawyers, a role that can be described as lawyer-facilitator which helps in preserving client autonomy in which the lawyer becomes "more the oiler of the social change machine than its motor".[24] He explains that the assistance given to the client should not create "client dependency"[25] but should provide the specific technical legal assistance that the client wants and nothing else as under a facilitative role, the lawyer is akin to "a corporate counsel, performing important, supportive tasks, but leaving the client intact."[26] This facilitative approach does not mean the lawyer does not care; rather the tasks performed can be supportive but not directly involved in the work the client is doing. For example, if the client (as a member of a community group for example) wants to change government policy, he/she might decide to

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[21] Lecture given by Victor Narro, Project Director, UCLA Downtown Labour Centre (15 April 2009).

[22] Ibid.

[23] Although these lawyering techniques are not the only ones, it was deemed appropriate to mention the main ones. *See* for example John Kilwein, 'Still Trying: Cause Lawyering for the Poor and Disadvantaged in Pittsburgh, Pennsylvania' in *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press 1998) 183–186. Here the author carried out research among poverty lawyers in Pennsylvania (the research was carried out under the context of cause lawyering). He classified the lawyering styles as part of a continuum (individual client lawyering (lawyer focus on legal needs and interest of the only), impact lawyering (use of impact litigation in order to remove the), mobilization lawyering (lawyer works with community groups and issue of empowerment outside the ills that affect the poor as a class – it involves traditional legal setting but it also mobilizes client politically) and client voice lawyering (akin mobilization lawyering but client is also made aware of his/her voice and how their stories affect their own lives and those of others)) concluding all of these styles were practiced by the lawyers he interviewed.

[24] Richard Marisco, 'Working for Social Change and Preserving Client Autonomy: Is There a Role for 'Facilitative' Lawyering?' (n 5) 658 (footnote omitted). Marisco refers the quotation to Steve Bachmann, 'Lawyers, Law and Social Change' (1984) 13 *NYU Rev. L. & Soc. Change* 1–50.

[25] Richard Marisco, 'Working for Social Change and Preserving Client Autonomy: Is There a Role for 'Facilitative' Lawyering?' (n 5) 658.

[26] ibid. 659.

organise a protest/march or other. Depending on what the client decides, the lawyer's role might be bailing the client out of jail if charged with civil disobedience, interpreting regulations or organising other type of the legal work needed. The lawyer can also act as a mediator if disputes arise among the group itself.[27] Therefore, as the name suggests, facilitative lawyering empowers the community group to reach its goal by providing whatever legal assistance may be needed.

3.2.2 Integrative Lawyering

To be an effective CED lawyer in an environment in which there is a "shift from reacting to contemporary development dynamics to proactively reshaping them (the dynamics),"[28] the lawyer has to integrate his or her work in two interrelated ways.[29] The lawyer has to ensure there is firstly "role integration"[30] and secondly "organizational integration"[31]. Role integration is when the lawyer uses his or her skills, for example, as "an advisor, researcher, drafter, [or] counselor".[32] Role integration is widely used and advocated by CED lawyers, as the only way of getting to know the client and the community is being on the ground working with the community groups[33] performing whatever role the lawyer is asked to perform.[34]

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[27] ibid. (footnotes omitted).

[28] Sheila Foster and Brian Glick, 'Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment' (n 6) 2055.

[29] ibid.

[30] ibid.

[31] ibid.

[32] ibid. 2057 (footnote omitted).

[33] ibid.

[34] It is interesting to note that in a study carried out by Michael McCann and Helena Silverstein about social movement lawyers in the United States, they found that they could be divided into four different types, depending on their organisational role. They could be staff technicians (the conventional type of lawyer serving the client without been involved in the as a movement leader or organizer), the staff activist lawyer (they do the usual work as a typical lawyer but also acts as movement leader or organizer), the hired guns (they are hired for specific cases or campaigns, some may work as staff technicians others as staff activist lawyer or the non-practising lawyer (they play a role, contributing to the movement but the study did not focus on them). The authors indicate also that the classification is not "absolute" as for example staff technicians may become more like the staff activist lawyer. For more information *see* Michael McCann and Helena Silverstein, 'Rethinking Law's 'Allurements' A Relational Analysis of Social Movement Lawyers in the United States' in *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press 1998) 279.

Organisational integration does not mean the lawyer has to be part of the organisation/community group or be asked for his or her opinion when needed but rather it means integrating him or her to the every-day "programmes and processes"[35] of the work the organisation does. In other words, these roles are interconnected, as role integration means that the different roles, skills and practice areas within an organization have to act in unison and organisational integration means that the lawyer's work has to be fully integrated into the overall strategy of the organisation.[36]

Organisational integration is a topic usually missing from literature reviews,[37] but extremely important when organisations become involved in working on urban development "on behalf and in support of low-income communities".[38]

Organisational integration not only requires physical integration but also functional integration[39] and both of these aspects are necessary to ensure the legal capacity of a community is strong.[40] Some organisations provide for physical integration under a house-counsel model, a model that hires the lawyer out of necessity rather than efficiency,[41] leaving the lawyer as an outsider. In contrast, functional integration makes the lawyer part of the organisation which allows for the community organising goals to take precedence over any legal goals or victories. Hence, the question for the CED lawyer does not become what is legal or what can be won in court, but rather what does the organisation need and how may the CED lawyer help to accomplish it.[42] For example, the lawyers in United Farm Workers[43] (hereafter "UFW") who were fully integrated in the organisation, would litigate losing lawsuits if it exposed "the growers' malfeasance, influence public opinion,

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[35] Sheila Foster and Brian Glick, 'Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment' (n 6) 2059.

[36] ibid. 2056.

[37] ibid. 2055.

[38] ibid. 2056.

[39] ibid. 2059.

[40] ibid. 2060.

[41] ibid. The lawyer is not seen as a way of enhancing productivity or other but rather because there is a legal need the lawyer must attend to within the organization.

[42] ibid. 2064.

[43] <http://www.ufw.org/> [Accessed last 2 May, 2012].

obtain helpful data, pressure regulatory agencies, or provide farm workers with an empowering stage on which to tell their stories."[44] Moreover, sometimes illegal measures were not challenged at all if another approach could be used in helping to expand the union and attract "farm worker power". [45] Thus, the decisions made by the UFW "emerged from dialogue and discussion in which the lawyers were fully engaged"[46] meaning the lawyer was integrated in the process rather than telling the group what to do.

This is why functional integration is important, so lawyers do not dominate the process or the community goals; the decisions are made collectively and the lawyer has an input but not the final say. Organisations using a myriad of staff, such as environmental justice groups, are encouraged to form teams of different experts, and the legal team becomes just one of the groups who can also work towards the organisation's goals. In this way, the legal strategies become "the part and parcel of larger-community driven campaigns that are broadly participatory and transformative of the very legal, political, social and economic dynamics that have given rise to the community's vulnerability."[47] However, the lawyer still carries on with the "in house-counsel" tasks he or she would normally perform.[48]

3.2.3 CED lawyering in multi-organisational environments

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[44] Sheila Foster and Brian Glick, 'Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment' (n 6) 2064.

[45] ibid.

[46] ibid.

[47] ibid. 2067.

[48] ibid. 2068. Note that Foster and Glick give examples of the type of data that could be collected to survey integrative lawyering and evolution. They suggest that, the data that could fruitfully be gathered and analysed include not only the gains, limits and problems encountered (and how they are dealt with) but also the impact on the quality of the experience for the groups and lawyers of such factors as: whether organisational integration was physical, functional or both, whether the group was founded and is led by lawyers or non-lawyers, their ratio and positions in the group, the extent to which the group functions as a community organization or a resource for community groups, the size of the group and scale of its operations (staff, budget, etc.), the roles assumed by the staff attorneys, the background, training and political orientation they bring, their race, class and gender in comparison to those of the group's staff and constituents, and the legal back-up and community available to the staff lawyers. It is submitted that this would be a good start when analysing how CED lawyering is conducted in Ireland. Although this is touched upon in the concluding chapter of this thesis, further research would be needed.

CED lawyering is said to facilitate, to build and to empower communities by using different approaches.[49] The issues that commonly arise when working in multi-organisational environments are, (i) which organisation among the coalition does the CED lawyer follow, and (ii) how does the lawyer deal with dominant personalities among the group? However, the main question for a CED lawyer is how he/she can turn his/her clients' big ideas into manageable chunks, so these ideas can be translated into policy goals which in turn can become projects under a multi-step and multi-organisational approach. Because the CED lawyering spectrum goes from the technical, such as writing ordinances, to the shaping of policy, this matter becomes open-ended.[50]

The CED lawyer also has to embrace and accept the dichotomy of legal and non-legal issues his or her clients may face. The key to resolving this dichotomy is that the CED lawyer has to know his or her client well. To be effective, therefore, the CED lawyer has to understand the structure of the industry in which the client is working and the facts of the situation at a legal, sociological, economic and perhaps at a political level: the lawyer has to gather information and knowledge inside as well as outside the office and then apply this newly acquired knowledge to the legal representation. This aspect is true when acting for coalition as well as single community groups.

3.2.4 Legal Ethics[51] under a multi-organisational environment

In the United States, legal ethics indicate that the CED lawyer has to stay within the rules governing lawyer conduct when he or she has an organisation as a client (the lawyer represents the organisation only and not the individual members[52]). At the same time, the CED lawyer must maintain his or her professional independence[53] and not be influenced

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[49] For example, under the integrative approach lawyers may advice on policy goals and campaign strategies.

[50] Field trip to LAANE offices in 2009, description given by Madeline Janis-Aparicio, the co-founder and Executive Director of LAANE.

[51] Legal Ethics could cover a whole chapter or a big chunk of it as they also play an important part in CED lawyering, especially when there is an organisation or organisations as a client. See for example: Gary Bellow and Jeanne Kettleson, 'From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Preactice' (1978) 58 *B.U. L. Rev.* 337 337–390.

[52] ABA Model Rules of Professional Conduct. *Client-Lawyer Relationship*. Rule 1.13 Organisation as Client <http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_13_organization_as_client.html> [Accessed last 24 July, 2012].

[53] ABA Model Rules of Professional Conduct. *Law Firms and Associations*, Rule 5.4 Professional Independence of a Lawyer, available at:

by a third party. Thus, he or she has to be clear as to who speaks for the group and how the decisions are made. For example, when determining the lawyering strategy, the CED lawyer has to ascertain if the views and legal approach represent only a small part of the community, community group or coalition. If they do, then the CED lawyer has to ensure the views of the group as a whole are represented and not just of a few. As explained earlier, however, these are issues that always remain.[54]

3.2.5 The CED Lawyer as a tool for community empowerment and community legal education

The evolution of the interaction between law, community action and organising (as described on the previous chapter) brought a new approach to CED lawyering, an approach in which the lawyer became a tool for community empowerment and a tool for community legal education. This new approach fostered CED lawyering as it provided for lawyers "to step back"[55] and allow their clients "to combat poverty on their own terms".[56] This approach to community empowerment was in contrast to the well-known class action suit favoured by public interest lawyers which, although it was successful in organising groups to effect social change,[57] lacked the important element of "community". The class action representatives "were single individuals, isolated from one another throughout the legal process and only brought together through legal documentation."[58] It is important to highlight that although public interest litigation played an important role in advancing CED in the 1960s and 1970s,[59] public interest litigation is nowadays usually used only as

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<http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_4_professional_independence_of_a_lawyer.html> [Accessed last 24 July, 2012].

[54] Sometimes the best way to deal with these issues is to have an agreement as to how to deal with decision-making questions beforehand. Therefore, when working with coalitions and in order to respect legal ethics, the CED lawyer must think who the client is in order to be more effective.

[55] Daniel S Shah, 'Lawyering for Empowerment: Community Development and Social Change' [1999] 6 *Clinical L. Rev.* 217, 232.

[56] ibid.

[57] ibid.

[58] ibid. 231.

[59] Susan R. Jones and Dorcas Gilmore, 'Community Lawyering' (n 3) 235. Recall that "between 1967 and 1972 more than 200 cases were taken before the Supreme Court under the Legal Services Programme and most of them had been won on the merits" in areas such as welfare and housing. *See* chapter two, section 2.3.1 for more information on this. It is important to highlight that in relation to litigation, the situation in

a last resort. This is because apart from the high costs arising from litigation and the social and economic efforts required in enforcing and implementing judgments, litigation takes grassroots initiatives "off the street and out of the hands of grassroots groups" and as such, the control returns to "the offices of lawyers and consultants – the same kinds of trappings public officials have always use to hide their behaviour and exclude everyday people from the process of development."[60]

However, legal commentary also recognised that there was a danger when the links "between government, business and community organizations" fail to "meaningfully include low-income, urban community residents"[61] as no empowerment and social change can be attained. The lawyer becomes a go-between the different entities and does not really serve their client.[62] Thus,

> "lawyers who had been attracted to community development as a paradigm of empowerment and collaborative lawyering found themselves mediating between legal academic rhetoric of process-based empowerment and the practice of results-oriented development strategies."[63]

Shah has suggested that lawyers, when trying to turn the practice of the typical urban community development into that of empowerment, can play "two important roles", one as educators (particularly at the initial stages), the other as facilitator/communicator

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Ireland was different (particularly because class-actions are not permitted). In Ireland, there were a number of strategies pursued by independent community law centres (NGO legal aid services) such as campaigning, educating, facilitating and organising clients (although this last strategy has not been greatly used). Recent cases in Ireland are *Caroline McCann v Judge of Monaghan District Court and Others* [2010] 1 I.L.R.M. 17 (taken by NCLC in relation to debt); *Foy v. An t-Ard Chlaraitheoir & Others* [2002] IEHC 116; and *Foy v. An t-Ard Chlaraitheoir & Others* (No. 2) [2007] IEHC 470 (taken by FLAC in relation to transgender issues. For more information on this case, *see* FLAC, 'The Lydia Foy Case Briefing Note on background to the case and Transgender cases generally', June 21, 2010 5–10 available at: <http://www.flac.ie/download/pdf/2010_06_17_foy_case_briefing_document.pdf> [Accessed last 2 August, 2012]). For more information about the community law centres, *see* chapters four and six.

[60] Greg LeRoy, 'Making Economic Development Accountable'' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009) 231.

[61] Daniel S. Shah, 'Lawyering for Empowerment: Community Development and Social Change' (n 55) 234.

[62] ibid.

[63] ibid.

binding the different client/client groups which in turn helps to strengthen communities. This is because lawyers,

> "have proven to be important educators, helping disadvantaged people identify ways to address their problems; turning resistance into mobilization through lay lawyering. … [L]awyers have worked with existing, organized groups that strengthen social alliances within communities without relying on federal programs, or restrictions on community participation, technical sophistication, professionalism, professionals and city governments that subordinate the voices of the disempowered."[64]

Thus, the ends of community development cannot be just "material improvements"[65] and the means cannot be just "subordination of the communities"[66] as "[c]ommunity empowerment is a long-term process rather than a measurable event"[67] and lawyers should be there to help in the process.

Therefore, in order for CED lawyering to work, "lay lawyering and collaborative corporate counsel"[68] are needed. Lay lawyering means demystifying the law and self-help activities, with the most obvious route based in education.[69] This is where community legal education pays a part and thus becomes a "collaborative strategy"[70] which provides "a wide spectrum of empowering training."[71] Thus, the community itself can find solutions to their own problems by understanding and becoming aware of their own abilities.

Shah, in writing about community empowerment, also makes reference to Paulo Freire and the pitfall lawyers should avoid when helping to empower communities: lawyers should not think that because of their background they "must be the executors of

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[64] ibid. 250–251.

[65] ibid. 250.

[66] ibid.

[67] ibid.

[68] ibid. 251.

[69] ibid.

[70] ibid.

[71] ibid. 252.

the transformation", but rather lawyers should trust "the capacity of low-income people"[72] to help themselves.

This means that when talking about the theory of CED lawyering, one if not all of the different lawyering techniques are needed, depending on the situation.

3. 3 Section Two: Practical Aspects of CED Lawyering

The "theoretical aspects" of CED lawyering as described on the previous section have been used by an array of programmes, projects and organisations. Their experiences have transformed access to civil justice and the empowerment of communities.[73] To illustrate this and in order to have a full picture of CED lawyering as part of public interest law and how it relates to past and present causes and movements, examples[74] from two main jurisdictions will be addressed, New York and California, and when applicable, examples from other States will also be discussed.

New York is home to a community law centre inspired by "the original vision"[75] of the Legal Services Programme,[76] and New York also hosts a new form of legal services to the poor called "the incubator for justice" which offers a different approach to CED, as a

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[72] ibid. 254 '(footnote omitted)'.

[73] Yet universal access to civil justice by all in the United States, a "civil Gideon" is still developing. The number of articles in law journals is extensive. *See* for example Robert J. Derocher, 'Access to Justice Is Civil Gideon a Piece of the Puzzle' (2007) 32 *Bar Leader* 11–15 (article provides a summary of the ABA efforts taken in different States). The ABA Journal website also offers a number of articles on the matter. For access go to: <http://www.abajournal.com/search/results/75269912c6c12f91b36adacf4c86f5cd/> [Accessed last 31 July, 2008]. The website shows eight articles ranging from 2008-2011. And for an account as to the origins of the case, *see* Anthony V. Alfieri, 'Gideon in White/Gideon in Black: Race and Identity in Lawyering' (2004) 114 *Yale L.J. 1459*, 1464–1466 (note the article focuses on race and lawyering).

[74] Sources for the examples of CED lawyering derive from secondary literature review, from email correspondence with practitioners and academics and from the practical experiences gained while working as a legal intern at the UCLA Downtown Labor Center (summer 2009), as a volunteer at Public Counsel (2008-2009) and as a student at the Community Economic Development Law Clinic as an LLM student at UCLA (2009).

[75] That is, community empowerment, helping communities to help themselves.

[76] <http://www.bka.org/about/index.php> [Accessed last 2 May, 2012]. Brooklyn Legal Services Corporation A.

way of building access to justice on a low-bono[77] basis thus facilitating the creation of community economic development by servicing and empowering individuals.[78] The examples from New York therefore have been selected in a way that, when it comes to the provision of legal services to the poor such as neighbourhood legal services, some of their experiences could possibly apply to Ireland.[79]

California was selected as it illustrates the links between redevelopment/gentrification[80], public interest law and CED, showing how grassroots community action groups have used the law to bring economic justice to the fore under a new type of arrangement called Community Benefits Agreements.[81]

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[77] The term low-bono means the lawyer does charge for his/her legal services but at a reduced cost. This means the work done is no free (pro-bono) but normally the fee would be charge according to a sliding-scale depending on how much the client can afford to pay.

[78] If a person can finance some of the costs of his or her legal needs, low bono is not seen as charity, creating a sense of accomplishment by the individuals serviced by the low-bono lawyers.

[79] Note however that these examples are by no means exhaustive. There are many examples of community legal services that have CED units as part of their services throughout the United States and although many receive funding from the Legal Services Corporation, their CED work is funded by other means (such as private, fund-raising, etc.). For example, in Los Angeles, there are two well-known organisations that could also illustrate CED work, namely, the Legal Aid Foundation of Los Angeles and Public Counsel Law Center.

The Legal Aid Foundation of Los Angeles is an organisation providing civil legal aid services to low income people in the Los Angeles area, receives funding from the Legal Services Corporation, yet it has a CED unit within its practice. They provide CED services to community organisations and individuals who want to become actively engaged in the revilatisation of their communities such as non-profit businesses, development of housing, job creation, incorporation, etc. This organisation can also act as an example for community law centres and how they can include CED lawyering among their area of practice although further research on-site would be needed. For more information go to: <http://www.lafla.org/service.php?sect=ced&sub=main> [Accessed last 22 July, 2012].

Public Counsel Law Center is the largest pro-bono firm in the United States. It uses a mixed-model of in-house legal services provided by salaried staff, but it also uses a large amount of pro-bono lawyers to help with their clients. Within the firm, there is a community development unit as well and it has proven very successful in providing transactional legal advice and services to local groups and NGOs. For more information go to: <http://www.publiccounsel.org/home> [Accessed last 22 July, 2012].

There are also organizations working at a national level in relation to CED. *See* for example, Insight Center for Community Economic Development <http://www.insightcced.org/programs/legal-services.html> [Accessed last 24 July, 2012].

[80] In Ireland, regeneration and public interest law have also provided community gains. *See* chapter six at section 6.3.

[81] When applied to an Irish context, redevelopment in Ireland (via regeneration) did not create community benefit agreements, but brought about the establishment of a community law centre. *See* chapter six for more details on this.

Also, because of the large number of immigrants found within California, particularly in Los Angeles, the practice of CED has also become a pioneering engine when it comes to low-wage work advocacy. By combining organising, community action and law, immigrants' initiatives and campaigns have taken the lead in using the law in creative ways in order to advance community empowerment. These campaigns are the "Forever 21" and Living Wage Campaigns, The Day-Labourers' Campaign and the CLEAN Car-Wash Campaign.[82] Although the immigrant initiatives are not directly applicable to Ireland, they can also provide food for thought as to how CED can help different communities to achieve their vision of empowerment and development.

These examples, therefore, highlight the innovation and advancement of CED lawyering they effected, including their approach to law and organising as well as how the provision of CED community legal services and access to justice works in practice. In other words, they were selected as a way of demonstrating how CED promotes community empowerment and as a way of showing how, when applied to an Irish context, how CED can help in the promotion of a strategic approach to legal aid.

3.3.1 Examples from New York

3.3.1.1 Brooklyn A: An example of corporate counsel to community organisations

The Brooklyn Legal Services Corporation A (hereafter "Brooklyn A") is based in East Brooklyn, New York and services the East and North Brooklyn communities[83] and it was established in 1967, under the "original vision"[84] of the Legal Services Programme.[85] Brooklyn A is a legal firm which not only provides legal assistance to low-income individuals[86] but it also provides corporate counsel to community organisations, assisting

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[82] Three other examples are discussed in the introduction of this thesis at section 1.2 and although it also talks about the Day-Labourers, section 1.2 focuses on the ordinance rather than the campaign itself.

[83] <http://www.bka.org/index.php> [Accessed last May 2, 2012].

[84] The original vision is referred to as the initial idea of how legal services would work within communities as part of the War on Poverty.

[85] <http://www.bka.org/about/index.php> [Accessed last July 24, 2012].

[86] Their website indicates that legal assistance to them means "community development, education, and mobilization, as well as traditional representation. To that end we partner with and provide legal services to effective local grassroots organizations that have a demonstrated commitment to our common goal of social and economic justice." *See* <http://www.bka.org/about/index.php> [Accessed last 24 July, 2012].

them to achieve "economic justice".[87] Its lawyers have been helping low-income community organisations since the mid-1970s, and as such, Brooklyn A has been the subject of a number of case-studies.[88] Brooklyn A departed from "the traditional emphases in individual representation and impact litigation,"[89] as it followed the traditional idea behind the legal services programme of the War on Poverty,[90] that is,

> "[p]roviding services in the low-income neighborhoods where our clients live; Developing programs and staff that are part of those communities; [and] Working to advance social and economic justice in the communities we serve."[91]

Moreover, since 1986, Brooklyn A has a dedicated and separate "Community Development Unit" (hereafter "CDU") representing community groups with the same type of services expected from corporate counsel, making the CDU model a good example of CED legal assistance.[92] Also, their CDU has recently started to focus on the practice of "green CED lawyering"[93] by assisting "the grass-roots efforts of non-profits organisations" to combat community issues such as high rates of asthma, shortages of decent and truly

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[87] Brian Glick and Matthew Rossman, 'Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice' (1997) 23 *N.Y.U. Rev. L. & Soc. Change* 105, 106.

[88] See for example: Janine Sisak, 'If the Shoe Doesn't Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation' (1997) 25 *Fordham Urb. L.J.* 873; Jessica Rose, Nicole Prenoveau, and Daniel S. Hafetz, 'Community Economic Development Lawyers Assist Nonprofit Organizations in Creating Holistic Green Communities' (2010) 44 *Clearinghouse Review Journal of Poverty Law and Policy*.

[89] Brian Glick and Matthew Rossman, 'Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice' (n 87) 111.

[90] Note that Brooklyn A does not receive LSC funding but relies on private donations, fund-rising and income from its fee-generating projects.

[91] <http://www.bka.org/about/index.php> [Accessed last May 2, 2012].

[92] Brian Glick and Matthew Rossman, 'Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice' (n 87) 111–112.

[93] Jessica Rose, Nicole Prenoveau, and Daniel S. Hafetz, 'Community Economic Development Lawyers Assist Nonprofit Organizations in Creating Holistic Green Communities' (n 88); *See* also: Juliet Ellis and Elizabeth Tan, 'Economic Development and Environmental Justice' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (n 1) 443–464 and Phaedra Ellis-Lamkins and Louise Auherhan, 'What does Green mean to CED?' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (n 1) 465–486.

affordable housing, and energy consumption" arisen by the redevelopment of "toxic and blighted land"[94] usually found in low-income areas.

In short, the CDU has three official functions, covering the full scope of legal representation[95] as well as the "informal and tactical services"[96] created by the collaborative relationship with the client. [97] These official functions are:

(i) representing community-based organizations [in the area]...

(ii) helping to structure and coordinate major development projects... and

(iii) representing grass-roots efforts to change public and private practices that harm low-income residents...[98]

The main contribution of Brooklyn A has been the provision of adequate legal service that go toward the support of community programmes which often have to stop because there is no adequate legal advice at hand.[99] This is why it is important to have CED legal practices within communities and why the CDU of Brooklyn A has made a difference.

3.3.1.2 The Incubator for Justice and the Low-Bono Approach

Access to civil justice is, and always has been, a priority for CED. However, there is an ever-present and recurring issue about the sustainability of access to civil justice in the long term and the dependency of legal services organisations on government grants and

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[94] Jessica Rose, Nicole Prenoveau, and Daniel S. Hafetz, 'Community Economic Development Lawyers Assist Nonprofit Organizations in Creating Holistic Green Communities' (n 88).

[95] Brian Glick and Matthew Rossman, 'Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice' (n 87) 119–120. The full scope covers areas such as "[b]asic corporate and organizational matters, ...[t]ax, ...[c]ontract, ...[r]eal estate matters, ...[a]dministrative, regulatory and licensing matters, ...[e]mployment law, (and)...[l]itigation matters other than evictions."

[96] ibid. 120–121. The informal relationship varies from acting as a facilitator, counsellor and strategist in an array of community-based projects ("[p]re-development consultation, ... [f]ormation of project teams, ... [p]roject coordination and troubleshooting, ...[f]unding, ...[i]nterfacing, ...[p]roviding a resource base, (and) ...[n]etworking".

[97] ibid. 119.

[98] ibid. 117.

[99] ibid. 133.

to some extent pro-bono[100] work. If there is no funding, access to legal services is decreased, put on hold or simply ended. Therefore, the priority for CED seems to be on how to provide access to civil justice via legal services which can be sustained in the long term and at the same time ensuring that lawyers are able to make a living while offering affordable legal services (also called low-bono work).[101]

For New Yorkers, the most recent and innovative example of CED is the use of a new type of affordable legal services, called Incubator for Justice (hereafter "the Incubator"). The Incubator aims to offer access to legal services in low-income communities or to people who fall in the gaps of having too much income to qualify for legal aid but too little to afford their own lawyers[102] by offering affordable legal services to all, including small businesses. Thus, CED can further contribute to the legal empowerment of the poor while at the same time increasing access to civil justice by narrowing the access to civil justice gap.

The Incubator is the brain-child of Fred Rooney, Director of the Community Legal Resource Network (hereafter "CLRN")[103], and was set up as a pilot programme in 2007, as the nation's first "business incubator" for lawyers.

(1) How the Incubator operates

The first pilot group created had seven participants who were trained for an eighteen months period on how to create a viable "solo" practice. The participants also learnt how to represent low-income people in housing court which, according to Rooney, is a very important aspect of public interest law. The business skills taught while in training also helped them prepare for the time when they could run their own legal practices,

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[100] The need of pro-bono legal services has always been a constant in CED lawyering. This is because the legal centres cannot cover the vast numbers of people and groups seeking legal help. *See*, Susan R. Jones and Dorcas Gilmore, 'Community Lawyering' (n 3) 236. For pro-bono work, *see* Public Counsel Law Centre, the largest pro-bono law firm in the United States <www.publiccounsel.org> [Accessed last 2 May, 2012]. And, on how students can participate in pro-bono projects (in the United States) *see* ME Wojcik, 'No pay. No class credit. Just helping someone who needs help', *ABA Student Lawyer* Vol. 38 Issue 9 (May 2010), 21-25.

[101] <http://www.lowbono.org/> [Accessed last May 2, 2012]. The term low-bono work is also use to describe affordable legal services.

[102] Private email correspondence with Fred Rooney (various correspondence June 2010-July 2012) on file with author.

[103] CLRN is based in the City University of New York School of Law.

enhancing and adding to the skills learnt while in Law School. The legal training covers areas such as immigration, housing and criminal defence. The first Incubator participants finished their training in April 2009 and have gone into establishing practices in low income communities.[104]

Rooney has indicated that the "tragic crisis in access to civil justice" for New Yorkers could be traced back as far as 1992, when a study showed that 70 per-cent of the population in New York could not afford a private lawyer. Since then, the numbers have increased dramatically, making the crisis to access to justice even worse. Also, in 2005, the Legal Services Corporation published the *Justice Gap Report*[105], which found that "while there [was] one private attorney for every 525 people in the United States, there [was] only one Legal Aid attorney for every 6,800 low-income Americans"[106].

Moreover, new available data published in the updated 2009 *Justice Gap Report*[107] indicates that the numbers of unrepresented litigants, especially in family and housing courts (which are state courts) has increased, raising the concerns about equal access to justice, not to mention the increased number of people in poverty as a direct consequence

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[104] Their services range from:

> "... a successful not-for-profit serving the never-ending needs of homeowners on the verge of foreclosure; ... a solo practice in Brooklyn that primarily serves seniors and struggling homeowners;... a tenants' rights practice in the Bronx; ... a small office in Jamaica, Queens that serves immigrants and tenants; ... a growing criminal defense practice in Queens; ... and a not-for-profit organization to advocate for rights of patients claiming their health care benefits from health insurance companies determined to thwart even legitimate claims."

This text was edited and taken from: Fred Rooney, "Request for Funding of The Community Legal Resource Network's Incubator for Justice', c2006 2007 5. Private email correspondence with Fred Rooney (July 2010) On file with author.

[105] Legal Services Corporation, 'Documenting the Justice Gap in America: the Current Unmet Civil Legal Needs of Low-Income Americans' (Legal Services Corporation September 2005) <http://www.lsc.gov/justicegap.pdf> [Accessed last 2 May, 2012]. In September 2009 an updated version became available. *See* Legal Services Corporation, 'Documenting the Justice Gap in America: the Current Unmet Civil Legal Needs of Low-Income Americans (An updated report of the Legal Services Corporation)' (Legal Services Corporation September 2009). It can be downloaded from <http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf> [Accessed last 2 May, 2012].

[106] Fred Rooney, "Request for Funding of The Community Legal Resource Network's Incubator for Justice' (n 104) 2.

[107] Legal Services Corporation, 'Documenting the Justice Gap in America: the Current Unmet Civil Legal Needs of Low-Income Americans (An updated report of the Legal Services Corporation)' (n 105).

of the recession and high unemployment.[108] Although the justice gap numbers are now slightly lower (one legal-aid attorney for 6,415 low-income people and one private attorney for every 429 persons), there is growing concern for the number of unrepresented litigants, which had not been measured in the previous *2005 Report.*[109]

The crises of access to civil justice emphasised in the 2005 and 2009 *Reports*, offers even more weight to Rooney's argument for the attainment of affordable legal services. The aim of the Incubator, therefore, is to:

> "develop successful small firm practices with defined social justice missions ... provide legal services to small businesses that need legal intervention and counseling to become successful ... [and] meet the needs of underserved communities."[110]

In 2010, Rooney envisioned that new Incubators would open in a number of locations within New York, namely, downtown Jamaica, Queens[111] and the Bronx and there was also the possibility of the Incubator model being replicated in California[112] (although it has been difficult due to funding issues[113]), Missouri, Utah and India. To date,

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[108] ibid. At Preface.

[109] ibid. 1.

[110] Fred Rooney, "Request for Funding of The Community Legal Resource Network's Incubator for Justice' (n 104) 2-3. The Incubator also has "a twin goal of helping lawyers learn how to run a successful business while helping them become lawyers in low-income communities that often lack access to outstanding, low-cost legal representation".

[111] ibid. 4. Rooney indicates that the Incubator in Queen, which will involve the next 18-month cycle of operation, will aim to:

> "connect the incubator to community organizations in Queens, N.Y.; train ten lawyers committed to public interest legal work in underserved communities to develop skills and best practices in accounting, information technology, office organization, language translation, negotiation, business incorporation, marketing, networking and long-term planning; enable these lawyers to begin building their own successful practices in underserved communities of Queens and other New York City neighborhoods; build a tight working relationships among the ten lawyers that will lead to networking opportunities to build a future client base; Provide legal services through pro bono and "low bono" activities including community legal education in a number of venues throughout the city."

[112] The Incubator pilot taken from the New York model is also trying to be implemented by Luz Herrera, in Compton, California. According to Rooney, Compton is one of the most legally underserved communities in California. Private email correspondence with Fred Rooney (June 2010). In file with author.

[113] Various private email correspondences with Luz Herrera, (June-July 2010). In file with author.

the number of incubators is growing around the country as more universities are starting to establish incubators within their Law Schools.[114]

3.3.2 Examples from California

3.3.2.1 Gentrification, public interest law and CED

The features of gentrification are usually the adaptation of physical infrastructures: there is a change in housing; new businesses enter an area at a disproportionate rate and more retail stores open. There is more public investment, new public infrastructure and extra financing from the private sector. There is also policing of low-income communities and a rise of landlord harassment towards the tenants. Thus, gentrification is a controversial issue for low-income communities as on the one hand it improves neighbourhoods but on the other it also causes displacement. Gentrification is a force of private action and of public policy in which the public dimension also plays an important role as to how is conducted.

(1) Causes and Consequences of Gentrification

The causes and consequences of gentrification are the two sides of the currency of redevelopment. There is a government angle and a private angle, two different points of views that many times work in unison creating a ripple effect of causes and consequences. From a government point of view, gentrification plays an important part in the redevelopment process as it increases tax revenues by the issuance of the different licensing and permits involved in the process. Eminent Domain[115] also plays a role as the land subject to the gentrification and redevelopment plans may need to be purchased. As a consequence, the more an area is gentrified, the higher the revenues for the local government.

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[114] *See* Karen Sloan, 'Incubators Give Birth to Flocks of Solo Practitioners', *The National Law Journal* (7 September 2011). The most recent incubator opened in San Diego, California at the California Western School of Law, calling it the "Access to Law Initiative" under which attorneys are placed in their own practices. In exchange, they have to do at least 100 hours of pro-bono work, use a sliding-scale of fees and do some public service. For more information *see* 'New Program Helps San Diegans Get More Access To Legal Services' (KPBS July 24, 2012) available at <http://www.kpbs.org/news/2012/jul/24/san-diegans-getting-more-access-legal-services/#.UA9xaqXnGr4.facebook> [Accessed last 25 July, 2012] and also <http://www.kintera.org/site/c.5oJHLWPvFdJUG/b.8190453/k.47F9/California_Western_Launches_Program_to_Serve_Community_Support_New_Attorneys.htm> [Accessed last 25 July, 2012].

[115] In Ireland, its equivalent is the Compulsory Purchase Order.

From a private point of view, gentrification means there are new business opportunities in which investors and speculators have a say. The earlier move from the city to the suburbs under the "white-flight" phenomenon becomes a flight from the suburbs into the city, as people want to live near work, enjoy the life style it offers and the ease of convenience of living within the city, not to mention the cultural amenities that exist within the city and its life-style. This "flight back" therefore is the ripple effect of further causes and consequences that feeds gentrification.[116]

But the obvious yet forgotten consequences of gentrification are the socio-economic changes it brings to the inhabitants of the gentrified areas. Many times, studies carry out statistical comparisons which conclude that there are no differences in the rate of exit of population from gentrified areas (i.e.: the population level of people leaving the area and moving into the area remains the same), yet the studies do not mention the reasons why people leave or migrate a gentrified area. Sometimes the empirical evidence[117] does not show the true picture about displacement issues. For example, the statistical story could be accurate but displacement is still occurring as the dynamics of the neighbourhood become different not the rate of people coming and leaving.[118] Overtime, there is a reduction of affordable housing as the housing stock goes down, the displacement of small businesses by bigger chain-type businesses takes place, and there is a further impact on the homelessness population as they are told to move out of the area as well.

(2) Gentrification at the Federal Level: HOPE VI

The appearance of public housing[119] in most of the United States was, for many years, the physical style high-rise "suburb in the sky". Most people living in these suburbs were low-income people who also faced segregation as most of the public housing was located in central city areas and in low-income neighbourhoods. Poverty became

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[116] *See* Section 2.3.2.1 (1) "Redevelopment" on the previous chapter for more information about the white-flight phenomenon.

[117] It is uncertain if there is a problem with the dataset of the studies conducted in certain gentrified areas.

[118] More often than not, the homeless population is told to move out without offering alternatives to their homelessness. It is a "not in my backyard" attitude that gets rid of the poorest of the poor.

[119] Refer to the public housing section described in Chapter Two at Section 2.3.2.1 (1)(a)(iii) "Public Housing" for more information.

encapsulated between tower-blocks leaving little employment prospects for its residents. This concentration of poverty fostered crime, especially in these types of suburbs in the sky.

Because of the poverty and crime situation, two different proposals were translated in policies that resulted in the Housing for People Everywhere (hereafter "HOPE")[120] programme. Firstly, there was a de-concentration in housing in the 1960s in Chicago which led to a lengthy litigation with its effects lasting around 40 years.[121] Although it was a long fight, it formed a consensus that de-concentration was needed at the national level. And secondly, in the 1980s-1990s the presidential commissions[122] focused on getting rid of public housing by demolishing it. This, combined to the need of de-concentration of housing at a national level, led to HOPE VI.

HOPE VI was designed in 1992 as a way of revitalising housing programmes moving public housing into a new phase which resulted in a slowdown of the gentrification process. The housing model now was moved from high-density to low density and dispersed among mix-income population. The physical structures built were also different as they predicated the theory of "New Urbanism".[123] For the first few years, HOPE VI was implemented via housing proposals, and in 1998, there was the housing-law reform which started to codify HOPE VI.

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[120] <http://portal.hud.gov/portal/page/portal/HUD/programdescription/hope1> [Accessed last 8 November, 2012]. Please note this website link is to HOPE I, but it is offered to refer to the meaning of the acronym HOPE not HOPE VI itself.

[121] In 1966, the ACLU (American Civil Liberties Union) initiated a class-action law suit against the Chicago Housing Authority, indicating the policy of the housing authority to build social housing only in areas with high-levels of poor people (including a high number of minorities), meant there was a contravention of the 1964 Civil Rights Act (racial segregation). The aim was to have social housing built in white-neighbourhood areas. The case eventually ended up in the Supreme Court in 1976 *Hills v. Gautreaux (*425 U.S. 284) by which the Chicago Housing Authority was ordered to build housing in different areas.

[122] President Reagan under the Commission on Housing 1982 which was later endorsed by President George H. W. Bush.

[123] New Urbanism is an urban design movement that 'focuses on building walkable, mixed used neighborhoods with a strong sense of place as an alternative to sprawling low-density, single-use, automobile dependent development". Brian W. Ohm and Robert J. Sitkowski, 'Integrating New Urbanism and Affordable Housing Tools' (2004) 36 *The Urban Lawyer* 857, 857. For an interesting account of its development, *see* Jerry Frug, 'The Geography of Community' (1995) 48 *Stanford Law Review* 1047, particularly at pp.1089–1094. For more information, including a *Charter* for new urbanism, go to the Congress for the New Urbanism's website (they are the main promoters of new urbanism in the United States) <http://www.cnu.org/> [Accessed last 26 September, 2012].

Viewed from a public policy angle, in theory, HOPE VI creates an emphasis on the participation by the private sector in the Government gentrification process as financing can be made available to the private developer which in turn can be direct financing towards building public housing in areas that have been gentrified.[124] But in reality, this structure moves low-income residents away from their communities and replaces their homes with private housing. It is a double-act that responds to gentrification and in turn facilitates gentrification. So, as a policy matter, HOPE VI favours projects which have private funding, posing the question whether the mixed financing model is a good model for public housing or not, as one of the concerns is that the private market displaces low income housing.[125]

(3) Redevelopment in California: Gentrification at the Local Level

Although the Federal government ended some of the support for redevelopment in 1974, redevelopment survived in the form of State law, as States could obtain revenue from the proceeds of land use and development. This fiscalisation of land use in California, for example, gave rise to a number of legislative instruments, including the California Community Redevelopment Law[126] and the creation of the California Redevelopment Association,[127] an organisation that provides a number of services to the community such as legislative advocacy, professional development and public education among others.[128]

For example, in Los Angeles, to-date, there are 32 redevelopment areas.[129] In 1999, the publication of a study[130] evaluating the "commercial redevelopment activities in the

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[124] Refer to the LIHTCs in chapter two (Section 2.3.2.1(2)(c)) for the mechanisms and involvement of private developers within government housing.

[125] The consequences of HOPE VI are varied, depending on the location and the State in which HOPE VI is used. A tracking study was done in 2000s. For example, there was little displacement in Washington DC, and it was also found that there is not a lot targeted for the residents who are displaced, which was about 78 %.

[126] California Health & Safety Code Sections 33000, et seq. <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=hsc&codebody=&hits=20> [Accessed last 24 July, 2012].

[127] <http://www.calredevelop.org/CRA> [Accessed last 24 July, 2012].

[128] Ibid.

[129] There are also an extra two proposed redevelopment areas to date <http://www.crala.net/internet-site/Projects/index.cfm> [Accessed last May 10, 2012].

[130] The study was carried out by the UCLA Center for Labor Research and Education and School of Public Policy and Social Research of UCLA together with LAANE.

1990s"[131] of the Community Redevelopment Agency of the city of Los Angeles, "the oldest and best-known economic development agency in the city"[132] concluded that there was a "substantial amount of development activity in many low income areas ... (but) the 'return' of that investment ... was mixed."[133] Thus the city needed to focus firstly on developing an "economic development strategy"[134] as it lacked one and secondly, on the quality of the jobs available and offered in these areas as a result of the development.[135] This meant that poverty lawyers had to expand their portfolios thus using transactional law to alleviate poverty as well as allowing new economic justice groups to emerge, adding to the development of CED as a whole.

Added to this, the internal critique of CED posed by Cummings[136], which argued that market-based CED was not helping communities to alleviate poverty[137] together with changes in neighbourhood dynamics in the 1990s and 2000s (brought about by the real estate market) altered the structure of what community based organisations could do.[138] Now communities could have a say in the development of their own communities which is best exemplified through Community Benefit Agreements.

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[131] UCLA & LAANE, 'Who Benefits from Redevelopment in Los Angeles? An Evaluation of Commercial Redevelopment Activities in the 1990s', (Los Angeles, 1999). To access the executive summary online, go to: <http://laane.org/downloads/WhoBenefitsStudy.pdf> [Accessed last 24 July, 2012].

[132] ibid. Executive Summary.

[133] ibid.

[134] ibid.

[135] ibid.

[136] Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (2002) 54 *Stanford Law Review* 400–493; *See* also Scott L Cummings, 'Mobilisation Lawyering: Community Economic Development in the Figueroa Corridor' in *Cause Lawyers and Social Movements* (Stanford University Press 2006) reprinted in *The Irish Review of Community Economic Development* Vol.1 (1) pp.11-33 <http://www.nclc.ie/NCLC-E-Journal-Issue-1-Volume-1.pdf> [Accessed last 26 September, 2012].

[137] Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (n 136). Cummings argued that market based CED was rather privileging localism which impeded the promotion of broad-based economic reform through "cross-neighborhood coalitions" that integrated legal advocacy and community organising.

[138] Scott L Cummings and Benjamin S. Beach, 'Further Consideration: Community Benefits Agreements' in *Community Economic Development Law: A Text For Engaged Learning* (Carolina Academic Press 2012) 322–323.

3.3.2.2 An example of Gentrification, public interest law and CED: Community Benefit Agreements and the empowerment of communities

The "hot real estate market" which characterized the mid-1990s until the late 2000s, meant changes for neighbourhood dynamics as well as changes in the structure of what community based organisations could do, as disadvantaged areas were now the subject of local development programmes that promoted city redevelopment rather than urban sprawl. Together with this, the internal critiques of CED meant some community groups sought for development to be accountable, thus ensuring that government subsidies received by developers to revitalise low-income communities truly benefited the community.[139]

City redevelopment meant poor communities were now in the plans of developers, private re-investment and speculators - all of which contributed to the rise in value of real estate, gentrification and displacement of low-income residents, which also affected changes in the structure of what community organisations could do.[140] Faced with this dilemma, community groups and residents had to decide how to best participate in local development decision and ensure affordable housing and living wage jobs benefited the residents (thus making local development accountable) which came in the form of Community Benefit Agreements.[141]

Community Benefit Agreements (hereafter "CBAs") are basically a contract between the community or different organisations representing the community, the local authority and the developer which imposes a number of positive obligations on each party. For example, the developer agrees to provide public amenities while the community agrees not to disrupt the development and the local authority's role is to ensure this takes place.[142]

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[139] ibid. 322–325. For a full internal critique of CED *see* also Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (n 136).

[140] Scott L Cummings and Benjamin S. Beach, 'Further Consideration: Community Benefits Agreements' (n 138) 322–323; Scott L Cummings, 'Mobilisation Lawyering: Community Economic Development in the Figueroa Corridor' (n 136).

[141] Scott L Cummings and Benjamin S. Beach, 'Further Consideration: Community Benefits Agreements' (n 138) 325–326.

[142] ibid. 326–328. In Ireland, the equivalent may be some of the planning obligations under the Planning and Development Act 2000 (or Section 106 of the English Town and Country Planning Act 1990). However, more research in Ireland would be needed to ensure this assertion is correct.

CBAs emerged in Los Angeles around the late 1990s due to the many issues that had arisen because of gentrification.[143] Different community groups wanted to change the conditions of the local population by challenging outside investment and bringing benefits to the community often forgotten by the gentrification process. As a movement, CED had an interest in having an impact on job creation and ensuring there were quality jobs in the gentrified areas. In the 1990s, there was no CED strategy to combat the issues of gentrification for the Los Angeles area, therefore, when the development of the "Staples Center" in the down-town area of Los Angeles threatened the displacement of many of its low-income residents and existing communities, the creation of CBAs was an attractive model to pursue by the community groups and CED lawyers.[144]

Twenty-nine organisations came together forming a coalition that focused on the development of the "Staples Center". Among the groups there were those who opposed the agreement, those who supported the agreement conditionally and those who supported it fully.[145]

(1) The CBA Structure and Mechanisms

The parties to the CBA were the Coalition, the City and the private developer. They formed a triangle in which the coalition spoke to the city and private developer. The city gave tax subsidies to the private developer and the coalition formed a co-operation agreement in order not to disrupt the developer. The coalition otherwise would have threatened disruption. There were also different ways to threaten disruption such as law suits, strikes, the divestment of funding from political funds[146] (no monetary support to

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[143] At the time, Richard Riordan, a Republican, was the Los Angeles City Mayor (1993-2001) and under his policy, it was very easy to do business as there was no focus on job quality and the industries that supported the city Mayor had low wage jobs policies.

[144] Note that the precursor of the Staples Center CBA was the Hollywood & Highland Complex. Los Angeles Alliance for a New Economy (LAANE) had agreed with the Los Angeles City and the developer to an agreement that would benefit the local residents.

[145] Strategic Actions for a Just Economy (SAJE) and Los Angeles Alliance for a New Economy (LAANE) were the main players within the coalition. LAANE had a bigger agenda as its work relates to the Labour Movement in Los Angeles. Also by this time, LAANE had grown in size and it had started to work on the improvement of business sectors under a "sector to sector" approach. This meant that by the late 1990s, it was working in the shaping of the creation of "good jobs".

[146] In Los Angeles, organised labour and its influence is very powerful, especially when it comes to politics.

politicians), etc., which enabled participants to use the CBA as leverage.[147] This leverage, rather than just litigation, was used and is constantly used within CBAs.[148]

Although there were also other types of leverage available for community groups such as the use of: publicity (could harm the project and repeat players such as developers need good publicity), housing element, the Mello Act[149], Civil Rights Law, door-to-door organising (e.g.: sending letters) and the influence of council members, the use of the CBA was the main leverage of all of them. Thus, in 2001 a CBA agreement was negotiated, which also became known as the "Staples CBA" and formed the basis for the creation of other CBAs around the country.

(2) CBAs' mechanisms in general: lessons learned for the future

The development agreement for the Staple Center, which contained the CBA, was subsequently changed, resulting in a modification to the inclusionary housing requirement. This issue raised the question about the enforceability of the CBA as once the CBA was agreed and contained within the development agreement the coalition could not challenge it. Thus, because of the lessons learned, subsequent CBAs have taken different forms, for example, by making the coalition a third-party beneficiary of the development agreement or by placing the CBA under Statute.[150] Recently, scholarly research has also suggested

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[147] For example, on the environmental review process which the Staple Center had forgotten to carry out (or overlooked), the coalition could only push for delay of the project until the environmental review process had taken place but not stopped it. As the administration of the City was changing from Republican to Democrats and all of the approvals were at a specific stage (development agreement, subsidies, land) the developers had to give in to the requests of the approvals would not have occurred before the political change had taken place.

[148] B Beach has also written about the CBA experience in Los Angeles. *See* Benjamin Beach, 'Strategies and Lessons from the Los Angeles Community Benefits Experience' (2007) 17 *Journal of Affordable Housing* 77–112.

[149] The Mello Act of 1982, is California State law "which seeks to preserve housing for persons and families with low and moderate incomes in California's Coastal Zone". For more information see: Los Angeles Housing Department and its explanation of the Mello Act Procedures <http://lahd.lacity.org/lahdinternet/Portals/0/Occupancy/LandUse/MelloProcedures.pdf> [Accessed last 2 May, 2012].

[150] In 2005, the city of Milwaukee was the first city within the United States to enact a CBA under legislation. The CBA, also known as the Milwaukee Park East Redevelopment Compact (PERC), is mentioned here because it applied the CBA concept as created but it modified to suit its own situation, something that Ireland could also do. However, further research in this area would be needed to assess if CBAs could be accommodated within the Irish landscape. It is submitted that community groups, partnership bodies and other would also have to be consulted. For more information in relation to PERC, go to: <http://www.communitybenefits.org/article.php?id=1494> [Accessed last 24 July, 2012].

that CBAs are seen not as a good idea in the long term because of "their potential for misuse".[151]

For example, CBAs in New York, unfortunately, have been the victims of the "heavy-handed involvement of public officials"[152] which have used CBAs as a disguise in order to involve a single private entity among a community[153], to receive public subsidies[154] and to organise a "one-sided" three-member coalition which "reportedly had no independent legal representation in the negotiations".[155] This is why CED lawyers should ensure there is firstly, plenty of communication among all the coalition members, secondly, that there is a consensus on the non-negotiable points and thirdly, that as part of the strategy, disruption is to be kept as part of a leverage point rather than to be used for something else.

To date, a good number of CBAs have taken shape across the United States.[156] Some other examples of successful CBAs are: "FRESC: for Good Jobs and Stronger Communities" in Denver, Colorado; "Georgia Stand up in Atlanta" and "The Connecticut Center for a New Economy in New Haven".[157] In 2009, the Community Benefits Law Centre was also opened in San Francisco,[158] a project of the Partnership for Working Families.[159]

As such, CBAs effected innovation and the advancement of CED lawyering, widening the perception of how access to justice could take place. The use of law,

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[151] Julian Gross, 'Community Benefit Agreements' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009) 189.

[152] ibid. 198.

[153] ibid.

[154] ibid.

[155] ibid.

[156] A Glover Blackwell indicates that CBAs have taken place in "dozens of communities". *See* Angela Glover Blackwell, 'Equitable Development' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009) 184.

[157] Greg LeRoy, 'Making Economic Development Accountable'' (n 60) 228.

[158] <http://www.communitybenefits.org/article.php?list=type&type=132> [Accessed last May 2, 2012].

[159] <http://www.communitybenefits.org/index.php> [Accessed last May 2, 2012].

community action and organising also played an important role and as such, they also offer an attractive option for the development of CED in Ireland.[160]

Yet, as it will be discussed in chapter six, the links between regeneration and public interest law in Ireland, albeit they are also linked via CED took place in a different manner, underpinned by the concept of sustainable development and the auspices of regeneration.[161]

3.3.2.3 Some Other CED Initiatives: Immigrant Organising

Community organising is one of the key elements for "effective community lawyering".[162] This is particularly true when it comes to immigrant organising initiatives, in which community organising and thinking outside the box becomes part and parcel of any public interest law strategy, including CED lawyering. Organising initiatives also help to reflect the struggles faced by communities which sometimes have had to use litigation as part of the bigger campaign and as a last resort effort in order to strengthen their movement. Therefore, their experiences can be applied to any community, not just immigrants.

Since the 1970s, there has been an outsourcing of jobs from the United States to Mexico and China mainly. This economic restructuring meant that the number of service and subcontracting industries increased while manufacturing within the country decreased. For the past 20 years, the leisure and hospitality industry has also experienced growth. The reform of the welfare system in the late 1980s' also contributed to the development of low-paying jobs.[163] This meant that there were fewer unions as the service industry tended to be non-unionised.

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[160] This offers further food-for-thought when comparing the redevelopment process of Ireland vis-à-vis the United States and how CED law and CED lawyering can further benefit community. However, due to the scope of this research, it is only mentioned in passing.

[161] To date, there is no exact definition of regeneration, it could be argued that gentrification in the United States means regeneration in Ireland.

[162] Susan R. Jones and Dorcas Gilmore, 'Community Lawyering' (n 3) 239.

[163] Thus, because of subcontracting, most of the workers among these industries were found in the low-wage sectors, some faced severe working conditions as many of them were without documents to legally work in the United States, making almost impossible to organise to obtain better working conditions.

In trying to bring an end to this problem, public policy initiatives were needed, leading public interest lawyering and organising to play a pivotal role in its development. For example, CED lawyers could assess the law to determine if New Markets Tax Credits[164], Empowerment Zones[165], and Government subsidies could play a role in the creation of "living wages". CED lawyers could also review the legal options to raise employment standards such as organising workers among the sub-contracting industry and within large scale service companies (as they do not have enough union investment). Thus, two new campaigns were born, the "Forever 21"[166] campaign which sought to end the "sweatshop" conditions in the LA garment industry and the "living wage campaign" aimed at bringing a proper minimum wage income to the working poor.

(1) The end of the LA sweatshops and the Living Wage Campaign[167]

The development of CED meant that CED lawyers together with other public interest law lawyers could help in conceiving, creating and defending strategies to end sweatshop working conditions and to enact living wages by focusing on the role played by the local government when purchasing garments and when enacting minimum wages laws. Lawyers helped to conceive and formulate ideas, to research, and to form coalitions among local groups, at the national level and among organised labour. Lawyers also created appropriate contracts and any other legal document needed. Lawyers also enforced work-related laws that influenced living wages and lobbied for the creation of new laws.

(a) The Forever 21 Campaign and the end of LA sweatshops

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[164] For more information on this, refer to chapter two at section 2.3.3.1(3).

[165] For more information on this, refer to chapter two at section 2.3.3.1(1).

[166] Forever 21 is a clothing store with outlets in the United States and in other countries around the world. In Ireland, they have an outlet at the Jervis Shopping Centre in Dublin. For more information about the store go to: <http://www.forever21.com/EU/Product/Main.aspx?br=f21> [Accessed last 8 November, 2012].

[167] For a better and more detailed account of these two campaigns, *see* Victor Narro, '¡Sí Se Puede! Immigrant Workers and the Transformation of the Los Angeles Labor and Worker Center Movements" (2009) 1 *L.A. Pub. Int. L.J.* 65–106 and for the LA Sweatshop Campaign *see* in particular *Victor Narro, 'Finding the Synergy between Law and Organizing: Experiences from the Streets of Los Angeles' (2008) 35 Fordham Urb. L.J.* 339, 345–359 (the focus of the article is on law and organising but it gives a very good account of the campaign).

The "Forever 21" campaign sought to put an end to the sweatshop conditions faced by many workers in the garment industry of Los Angeles. The problem was particularly acute among the immigrant population. Campaigns to stop the sweatshop conditions were started at the local and national levels. These tactics gave a bad "public image" of the company, compelling the owner of the company to negotiate. Litigation also ensued but the judge at the Federal level dismissed the case, resulting in the owner of the company suing all the organisations for defamation in an attempt to demobilise the campaign. Thus, in order to keep the "Forever 21" campaign alive, the workers kept organising and campaigning. This process was sustained for 3 years. A three-year task meant clear communication between lawyers and organisers was needed. The workers also needed to understand the full process of litigation and its duration. Although the case never reached the courts as the owner agreed to an out-of-court settlement, there was still a need for monitoring compliance as Forever 21 was now opening a distribution centre. The campaign resulted in the issuing of a City Ordinance[168], which states that uniforms (used by city workers) cannot be made in sweatshops and also it covers subcontractors.[169]

(b) The Living Wage Campaign and the Century Corridor

Workers from the hotels adjacent to Los Angeles Airport (hereafter "Century Corridor") with the help of the Los Angeles Alliance for a New Economy[170] (hereafter "LAANE") campaigned for the enactment of a "Living Wage Ordinance" in order to secure proper living wages. This ordinance was a very radical measure as it applied to public and private businesses.

The hotels in the Century Corridor had threatened to fight back, including the use of litigation if necessary, if the Ordinance was enforced. However, Antonio Villaraigosa, the Mayor of the city of Los Angeles, rescinded the Living Wage Ordinance and gave new incentives to hotels if they improved minimum wages. So, a new ordinance was passed in

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[168] L.A. Cal., Admin. Code div. 10, art. 17, §§ 10.43–10.43.7 (2005). The wording of the Ordinance can be downloaded from <http://gsd.lacity.org/sms/SupSweatFreeOrdinance.pdf> [Accessed last 31 July, 2012].

[169] Talk given by Victor Narro, guest speaker at "Solving Problems for the Public Interest" (LLM Seminar, UCLA Fall, 2008).

[170] LAANE was founded in 1993 and it is recognized around the United States as an organization working and advocating on behalf of the working poor. For more information to go: <http://www.laane.org/> [Accessed last 24 July, 2012].

2007. Yet the hotels challenged the legality of this ordinance, saying it was substantially similar to the previous Ordinance and thus unenforceable. However, the Court disagreed as the new ordinance was not substantially similar and as enacted result, the city was able to enact the Ordinance.[171] The litigation by the hotels slowed down the development of the Living Wage Ordinance as now it had to go through rigorous steps before been enacted. It ended up costing more money, implementation became very slow and there were some exemptions for some hotels. Note, however, if there were a CBA in place prior to the development of the Century Corridor, a low wage ordinance would not have been necessary.

Low-wage organising and the laws enacted around it have worked well. By 2009, there were 122 cities had enacted living-wage ordinances around the country.[172] However, questions such as how effective living-wages ordinances are or if they should be implemented at a local or national level still remain.[173]

(2) The Day Labourers Campaign and the establishment of Day Workers Centres[174]

In 1994 the City of Los Angeles enacted an ordinance in order to limit the location where day labourers could gather in order to ask for work.[175] The ordinance intended to cover a big area of Los Angeles and surroundings. However, day labourers challenged the Ordinance in the Federal Courts on the ground that it impeded their First Amendment right to peaceable assembly. The court found that the ordinance was unconstitutional. The result was an order sent to all the municipalities to create day workers centres.

This establishment of workers centres changed the national labour movement, at least in Los Angeles, as it brought a process of revitalization and created a new model of how to work together among different ethnic communities on issues relating to

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[171] *Rubalcava v. Martinez*, 158 Cal.App.4th 563 (2nd Dist. 2007).

[172] Richard C. Schragger, 'Mobile Capital, Local Economic Regulation, and the Democratic City' (2009) 123 *Harv. L. Rev. 482*, 513. For a list of resources on the Living Wage, go to: <http://laborcenter.berkeley.edu/livingwage/resources.shtml#sites> [Accessed last 31 July, 2012].

[173] With the downturn of the economy, the presumption is that living wages are needed.

[174] Victor Narro, '¡Sí Se Puede! Immigrant Workers and the Transformation of the Los Angeles Labor and Worker Center Movements'' (n 167).

[175] For more information on the ordinance, *see* chapter one at section 1.2.1(2).

immigration, driving licences and others, as well as creating cross-cultural networks and organising activities. For example, networks of different "low-wage immigrant worker-based organizations" were formed such as the Multi-ethnic Immigrant Workers Organising Network[176] (hereafter "MIWON") and as a result language and cultural barriers were broken. Thus, by 2008 there were 200 worker centres around the country.[177]

(3) The CLEAN[178] Car Wash Campaign[179]

The car-wash workers' campaign started in 2008 as a response by many of the car-wash workers to exploitation by their bosses (car-wash owners) and in order to obtain a proper salary. The income of many of the car-wash workers in Los Angeles was the daily tips left by the users of the car-wash facilities. The workers, many of whom were immigrants, would make around $10-$30 dollars a day for a 10-15 hour shift.[180] The campaign required thinking "outside the box" as unionising was very important for the car-wash workers but at the same time extremely hard, as the car-wash industry was very fragmented. Thus, a new strategy was needed, akin to the worker's centres discussed previously.[181]

A car-wash workers' organising committee was created and subsidised by the unions.[182] It also formed "a diverse coalition of labour, immigrant rights, religious, environmental, and community organizations"[183] in order to "educate the public and build support for the Carwash Workers Organizing Committee."[184] This Community - Labour -

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[176] <http://www.miwon.org/about_us> [Last accessed 2 May, 2012].

[177] Note that the use of popular education to educate workers is also highly used in the centres.

[178] The Community-Labor-Environmental Action Network.

[179] <http://www.cleancarwashla.org/index.cfm?action=cat&categoryID=559E3C78-738E-42A6-9DCD-C174522891BA> [Accessed last July 23, 2012].

[180] Sonia Nazario and Doug Smith, 'Workers getting soak at Southland carwashes', *Los Angeles Times* (23 March 2008) <http://articles.latimes.com/2008/mar/23/local/me-carwash23> [Accessed last July 23, 2012].

[181] For more details about the campaign up to 2008, *see* Victor Narro, 'Finding the Synergy between Law and Organizing: Experiences from the Streets of Los Angeles' (n 167) 359–371.

[182] For example, by the AFL-CIO (American Federation of Labour and Congress of Industrial Organizations).

[183] <http://www.cleancarwashla.org/index.cfm?action=cat&categoryID=5abd8d03-bff7-4e5e-a7d1-1abcd6edf4b3> [Accessed last July 23, 2012].

[184] <http://www.cleancarwashla.org/index.cfm?action=cat&categoryID=5abd8d03-bff7-4e5e-a7d1-1abcd6edf4b3> [Accessed last July 23, 2012].

Environmental Action Network (hereafter "CLEAN") to-date has over 100 members.[185] Their campaign also maximised litigation by bringing one big claim of wage-hour violations against the owners of several car-washes around Los Angeles.[186] This strategy was used in order to ensure the owners would comply with Labour Law Regulations.[187] The use of social networks[188] was also important as it helped to mobilise and organise picketing in timely fashion.

The Los Angeles City Attorney also filed criminal charges[189] against the owners and managers of car-washes who were been sued in civil court for labour law violations. In order to maximise the legal strategies, it was imperative to advance the organising strategies as well. This is because "the law is as good as its implementation,"[190] and as such, there was (and still is) a need to ensure enforcement of the judgment after the litigation was over. Thus campaigners created a website, issued press-releases about the progress of their cause, and organized boycotting of certain car-washes. The car-wash campaign was a success (and still is) as it is a mixture of law and organising. What was also helpful was the use of different labour laws to file grievances and others, as well as bringing wage-hour litigation to the fore. This meant that thinking outside the "legal-box" was extremely important.

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[185] Their webpage gives a number of community groups and unions, totaling 126 to date, 84 of them are actually Unions. For a complete list, go to: <http://www.cleancarwashla.org/index.cfm?action=cat&categoryID=5abd8d03-bff7-4e5e-a7d1-1abcd6edf4b3> [Accessed last 24 July, 2012].

[186] The owners, two brothers, are been prosecuted for violation of four of their car-washes around Los Angeles.

[187] This strategy also pushed for out of court settlements. For example, a settlement agreement that included pay back and a reinstatement of workers who had been fired because of the campaign was reached on August 26 2009 by the Vermont Hand Wash. <http://www.cleancarwashla.org/index.cfm?action=article&articleID=055486be-df58-476e-83dd-143827271be4> [Accessed last 24 July, 2012].

[188] Such as Facebook, Twitter, distribution e-mail lists and online networks.

[189] Press Release February 10 2009, available at: <http://www.cleancarwashla.org/index.cfm?action=article&articleID=1f354246-692f-4327-bbea-fdb30cad80ea> [Accessed last 2 May, 2012].

[190] Statement by Victor Narro, one of the lawyers helping with the campaign (summer 2009).

The car-wash workers campaign was also aided greatly by research done by students as there was no data available to determine the situation of car-wash workers.[191] Research found, for example, that when there was a change of ownership of a car-wash facility, any wage-hour claims naming the previous owner would not be carried over to the new owner, making it very easy to avoid enforcement of a successful wage-hour claim against the previous owner, despite the fact that legislation was enacted in 2003 to ensure there were no labour abuses.[192]

Thus, immigrant organising campaigns also added to the innovation and advancement of CED lawyering, providing access to justice to organisations as well as using community action and law and law and organising as part of their strategies. This provides further insights as to how CED could further develop in Ireland.[193]

3.4 Conclusion

The development of the theoretical aspects of CED law via the different ways lawyering techniques are used together with the innovative ways public interest law lawyers and CED lawyers work "on the ground" have pushed the law to further frontiers. Lawyers, organisers, and communities as a whole have experienced, throughout the years, success (albeit sometimes limited) in finding solutions to the root-cause of poverty.

Deborah Rhode, in writing about access to justice, posed the question as to what type of access we mean when we refer to access to justice. In short, she asked "access to

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[191] Note that empirical legal research is always useful for organisers and campaigns. The study was done under the direction of Professor Gary Blasi from the UCLA School of Law as part of his clinical course.

[192] In 2003, the Legislature in California passed a law "The Carwash Worker Law" (with effect 1 January 2004) to provide for the registration of carwashes within the State and other provisions within labour law. However, compliance was skimp. Then in 2009 the law was extended until 2014 due to the large-scale problem experienced by the workers. <http://www.cleancarwashla.org/index.cfm?action=article&articleID=052c7088-0906-428a-a3b4-e6b84304fd05> [Accessed last 24 July, 2012]. For the text of the amended law, go to: <http://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml> (AB-236). For further information including a policy analysis and a full copy of the original Carwash Worker Law *see*
Kevin Barry, Marcy Koukhab, and Chloe Osmer, 'Regulating the Car Wash Industry: An Analysis of California's Car Wash Worker Law' (UCLA School of Public Affairs, April 2009) <http://www.spa.ucla.edu/ps/research/Regulating_the_Car_Wash_Industry.pdf> [Accessed last 24 July, 2012].

[193] This includes the potential of student-led research which can directly benefit communities.

what?"[194] The practice of CED law and CED lawyering in the United States as a strategy for redressing urban poverty has offered access not only in the form of access to legal services but also access to better working conditions and living wages, to community education, to empowerment and most importantly, to help communities in helping themselves by addressing points of legal intervention and by bringing accountability to the fore. The empowerment of communities therefore has been a constant when talking about CED.

It is hoped that by using the examples mentioned in this chapter together with the historical overview and development of CED in the previous chapter a thorough analysis of CED lawyering in Ireland can take place[195] and we can ascertain if CED lawyering has a role in promoting/implementing a strategic approach to legal aid, thus widening our understanding as to what we mean when we talk about access to justice.

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[194] Deborah L. Rhode, *Access to Justice* (Oxford University Press 2004) 79–102.

[195] For specific lessons in relation to the experience of the United States and how it might be useful to Irish lawyers, *see* chapter seven at section 7.3.

PART TWO

CROSSING THE ATLANTIC TO IRELAND

Chapter Four CED from a non-American perspective: the Law Centre Movement, the Independent Community Law Centre and the creation of a paradox

"Seeking social change and making social change may not, however, be the same."[1]

4.1 Introduction

One issue relevant to the development of CED is the role played by independent community law centres (hereafter "CLCs") within the international and Irish legal landscape and within the respective communities they serve.[2]

CLCs in Ireland service particular geographical areas such as Coolock[3] or Ballymun[4], specific communities of interest such as travellers[5], the homeless[6], immigrants[7] and refugees[8] or the public generally[9]. Despite a population of almost five million[10] and an increasing need

[1] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (Sijhnhoff and Noordhoff 1980) 131. This quote reflects Garth's words of caution, which remind us "not to overestimate the significance of the NLF movement and its success in becoming institutionalized". He also adds that "institutional victories are vital to the continuation of a movement." The quote also seeks to reflect the paradox of CED as explain in section 4.4 of this chapter.

[2] These can be communities based on a geographical focus or communities of interest.

[3] Northside Community Law Centre (NCLC).

[4] Ballymun Community Law Centre (BCLC).

[5] Irish Traveller Movement Law Centre (ITM Law Centre).

[6] Mercy Law Resource Centre (MLRC).

[7] Immigrant Council of Ireland Law Centre (ICI Law Centre).

[8] Irish Refugee Council Law Centre (IRC Law Centre).

[9] Free Legal Advice Centres (FLAC).

[10] The latest census, dated April 2012, indicates the population estimate is 4.59 million <http://www.cso.ie/en/media/csoie/releasespublications/documents/latestheadlinefigures/popmig_2012.pdf> [Accessed last 8 November, 2012].

for civil legal aid services, there are just seven independent CLCs[11] in the country[12], all of which are found in Dublin[13].

CLCs (outside the United States) were born out of the law centre movement which was inspired by the establishment of the Neighbourhood Legal Services Programme of the War on Poverty in the United States in the 1960s.[14] CLCs were also influenced by the progress made by the civil rights and CED movement, which showed a different model to combat poverty that stimulated political action at the grass-roots level to advance a "broad-based, redistributive economic agenda".[15] At the same time, the concept of empowerment also made its mark.

Based on these experiences, the law centre movement saw that establishing CLCs would allow for people to 'access justice' which in turn would combat poverty. However, while this was true in the United States during the 1960s and early 1970s, the Neighbourhood Legal Service Programme as envisaged by the War on Poverty had ceased to exist by the mid-1970s and the alternative anti-poverty model once espoused by the civil rights movement had been replaced by a more market-based approach to combating poverty[16], with less government

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[11] S.I. No. 103 of 2006 (as amended) 'The Solicitors Acts, 1954 to 2002 (Independent Law Centres) Regulations, 2006'. The regulations contain the names of only five independent CLCs (Ballymun Community Law Centre, Free Legal Advice Centres (FLAC), Irish Traveller Movement, Northside Community Law Centre, and Immigrant Council of Ireland) <http://www.irishstatutebook.ie/2006/en/si/0103.html> [Accessed last 14 March, 2012].

The Mercy Law Resource Centre opened its doors in 2009 <http://www.mercylaw.ie/httpwwwmercylawieabout-us8html/httpwwwmercylawieabout-usabout-us17html.17.html> [Accessed last 14 March, 2012] and the Irish Refugee Council Law Centre in 17 February 2012 <http://www.irishrefugeecouncil.ie/law-centre> [Accessed last 14 March, 2012].

[12] The government also runs law centres but their focus is mostly on family law and not everyone is eligible for their services. For more information, *see* section 4.4.1 of this chapter.

[13] Although soon there will be two more centres, one servicing children from across the country and the other the regenerated communities in Limerick. *See* chapter five at footnote 235 for more information.

[14] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (Institute of Public Administration 2002) 322. *See* also footnote 174 on the same page.

[15] Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (2002) 54 *Stanford Law Review* 400, 417.

[16] Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (n 15).

involvement in local economic policies.[17] This resulted in a paradox that would see the development of CLCs (outside the United States and at least in Ireland) to be based on a programme that no longer existed, fusing the embryonic CED movement of the 1960s and 1970s of the United States with that of the law centre movement, making the practice of CED outside the United States to be based on an access to justice approach which in turn would became part of what independent[18] community law centres do[19] as part of their every-day work. In other words, while CED developed in the United State in response to the demise of the neighbourhood law firms (NLFs) of the 1960s and early 1970s (as established by the Neighbourhood Legal Service Programme), it developed in other jurisdictions as part of the CLC (NLFs) movement.

Thus, the emergence of the community law centre in Ireland and in turn, its version of CED lawyering, found itself within this paradox. Although Irish CLCs were influenced by the United States' experience, they were also influenced by the English experience, an experience which toned-down political action at the grass-root level taking away its redistributive economic agenda and concentrating solely on access to justice and legal aid[20]. However, the Irish experience further benefited from the developments taking place in Canada and also (at least in theory) in Australia.[21] As a consequence, Ireland unsuspectingly was influenced by different foreign transplants thus having as its disposal alternative methods of how to develop its CLCs and how to influence civil legal aid and combat poverty via the use of the strategic model of legal aid,[22] while at the same time having the seeds of CED as its disposal.

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[17] Harold Wolman, 'Cross-National Comparisons of Urban Economic Programmes: Is Policy Transfer Possible?' in *Community Economic Development* (The Macmillan Press 1993) 25. As a result, many of the community groups (including legal services) that had organised through the Community Action Agencies (CAAs) became the first wave of community development corporations, community law centres or organisations working on community economic development. For more information on the CAAs *see* chapter two at section 2.3.1.2(1).

[18] The word "independent" is used to symbolise all the community law centres that are independent from government control although they might or might not receive their funding from government sources.

[19] Albeit the practice of CED law among public interest lawyers has not developed in Ireland, its CED lawyering approach has.

[20] *See* section 4.3.2(2)(a) on this chapter for more information on this issue.

[21] These influences were not much about ideology (as they all shared the same ideology as posed by the War on Poverty and the Neighbourhood Legal Service Programme) but because of the historical reasons as to how CLCs came into existence.

[22] Whether Ireland has taken advantage of this fact is another matter.

By tracing (with broad strokes) the history of CLCs in a number of common law jurisdictions and assessing how they may have influenced the development of CLCs in Ireland (including how the seeds of CED may have made it across the sea), this chapter develops a two-pronged theory. Firstly, it establishes a theory of how CED developed outside the United States or what I call "the paradox of the development of CED" (hereafter "the CED paradox") and secondly, it offers an understanding how the practice of CED as a lawyering strategy ("CED lawyering") in Ireland came into being.[23]

The aim of this chapter therefore is twofold. It first aims to offer an overview of the history and development of CLCs outside their birth place (i.e.: United States) and their influence on how CLCs developed in Ireland. And secondly, it aims to understand how the development of the CED paradox took place and how CED lawyering may have emerged within the CLC model thus setting the background for the case-studies to be discussed in a later chapter. It is hoped that in this way an understanding of CED lawyering and how it applies to the strategic approach of legal aid in Ireland can be achieved.

The structure of the chapter is divided into three sections. Section one offers an overview of the development of the community law centre movement (that is, the available literature common to CLCs) making some parallels with Ireland when appropriate. Section two traces (in general outline) the development of CLCs in a number of common law jurisdictions outside Ireland, namely, England, the United States, Canada and Australia. Finally section three offers an explanation of the development of the CED paradox theorising as to how the American concept of CED lawyering emerged (or may have emerged[24]) in Ireland as influenced by other jurisdictions.

4.2 Section One: Overview of the community law centre movement

This section is aimed at explaining the common background the development of CLCs share, highlighting a number of different influences found within the literature review.

[23] The theory about the practice of CED lawyering is developed further in the case-studies found in chapter six.

[24] Because research on CED lawyering outside the United States to date is non-existent, it is hard to know if and how the American concept of CED lawyering exists in other jurisdictions (other than Ireland of course). Thus, this chapter presents one theory as to in it may have emerged.

Starting from the works of Cappelletti and Garth in relation to access to justice and legal aid, to the role played by legal transplantation and legal education, the literature review shows these are important aspects to keep in mind when talking about the development of CLCs in different jurisdictions (including how the CED paradox developed) and how they have influenced Ireland. However, they also highlight the huge gap that exists in the literature as not much has been written in relation to CLCs in general.

As a result, when it comes to finding out about the initial developments of CLCs in other jurisdictions, the work of Bryant Garth, published over thirty years ago[25] becomes essential in more than one way[26] as it helps with the advancement of the two-pronged theory namely, the theory that the American concept of CED became embedded into what CLCs do and also how it may have made its way to Ireland, particularly the practice of CED lawyering, supporting further the view that CED lawyering may help to implement a strategic model of legal aid.

4.2.1 The Community Law Centre Movement: An overview of the available literature common to the CLCs

The development of the community law centre in a number of common law jurisdictions and its eventual recognition as an integral component in the provision of civil legal aid have become key influences in determining how independent CLCs in Ireland have developed (or should be developed). Albeit these jurisdictions differ in how their CLCs developed, there are still a number of common elements they all share.

As such, the structure of this section, therefore, is not divided by jurisdictions but rather it is divided into the most common elements applicable to all of them, pointing out relevant literature review and explaining in a great or lesser detail how different writings have affected the general development of the CLCs from their inception to the present day. These

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[25] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1).

[26] This is because 1) Garth describes the origins of the CLCs and makes general points before embarking into a discussion of a number of countries. 2) His work provides the foundations for the understanding of how the CLCs developed in the different jurisdictions and how they influenced Ireland. 3) His research supports the proposition that the development of the CLCs outside the United States greatly affected how the American concept of CED lawyering emerged in other jurisdictions.

common elements are: 1. access to justice[27] and legal aid[28]; 2. access to justice in general; 3. legal transplantation; and 4. legal education. It is important to highlight that any specific literature research in relation to the general provision of civil legal aid in Ireland and its interactions with the CLCs have been conducted post-2002 (except when it comes to their influences onto CLCs) as previous research has already been conducted on the matter.[29]

4.2.1.1 Access to Justice and Legal Aid

A study of the different legal aid systems of many countries, offering an array of views and understandings of how legal aid programmes can be designed or redesigned[30] may explain why access to justice became the main vehicle for the establishment of independent CLCs in Ireland and why CLCs developed the way they did.

While within the United States CLCs became essential in securing access to legal representation in litigation ("legal aid as a welfare right" [31]) as certain problems were just unique to the poor, such as those relating to government benefit programmes[32], CLCs in other parts of the world sought to promote a broader, more strategic, right of access to justice that would tackle structural poverty. This type of response (together with others) relating to how legal aid developed and how access to justice took place in different parts of the world, either

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[27] Albeit Professor Gerry Whyte provides an account of the law centre movement on his seminal book *Social Inclusion and the Legal System*: *Public Interest Law in Ireland*, it was felt a more comprehensive review was needed in relation to this topic and thus complementing his research. *See* Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 14) 322–326.

[28] The gap in the literature and research of legal aid in Ireland is so vast, that answering all the questions that emanate from this literature review creates further areas of research that are unlike to find answers any time soon.

[29] Professor Gerry Whyte has already given a good summary of the development of legal aid in Ireland up to 2002. *See* Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 14). *See* particularly Chapter 9 "Access to Legal Services" at pages 279-339.

[30] Mauro Cappelletti, James Gordley, and Earl Johnson Jr., *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies (Texts and Materials)* (Oceana Publications 1975) xi.

[31] Earl Johnson Jr., 'Alternative Methods of Delivering Legal Services to Low Income Persons' in *Toward Equal Justice: A comparative Study of Legal Aid in Modern Societies (Texts and Materials)* (Oceana Publications 1975) 136.

[32] ibid.

in the form of CLCs or under government run programmes, were first studied by Cappelletti and Garth in the late 1970s, in their celebrated four-volume book *Access to Justice*[33].

In its first volume, Cappelletti and Garth indicate that since 1965, "three basic approaches" (or waves) in response to access to justice have taken place, namely, (i) *legal aid;*[34] (ii) the reforms aimed at providing *legal representation for "diffuse" interests*[35] (e.g.: consumer and environmental protection); and (iii) the "*access-to-justice approach* [which] attacks access to barriers in a more articulate and comprehensive manner."[36] Because these waves correspond to how justice can become more accessible, the first wave or legal aid refers to the provision of information or access to legal representation, particularly when people cannot afford it. The second wave refers to the obstacles faced when protecting class or collective rights (hence the reference to the legal representation for "diffuse"[37] interests) and the remedies available such as class actions. The last or third wave includes the previous two waves, but also goes beyond as it looks for other possibilities to access justice[38] (*see* Figure 4.2.1.1 below for a representation of this).

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[33] Mauro Cappelletti (ed), *Access to Justice* (Alphen aan den Rijn: Sijthoff and Noordhoff 1978).

[34] Mauro Cappelletti and Bryant Garth (eds), 'Access to Justice: The Worldwide Movement to make rights effective A general report' in *Access to Justice*, vol. I: A World Survey (Alphen aan den Rijn: Sijthoff and Noordhoff 1978) 21.

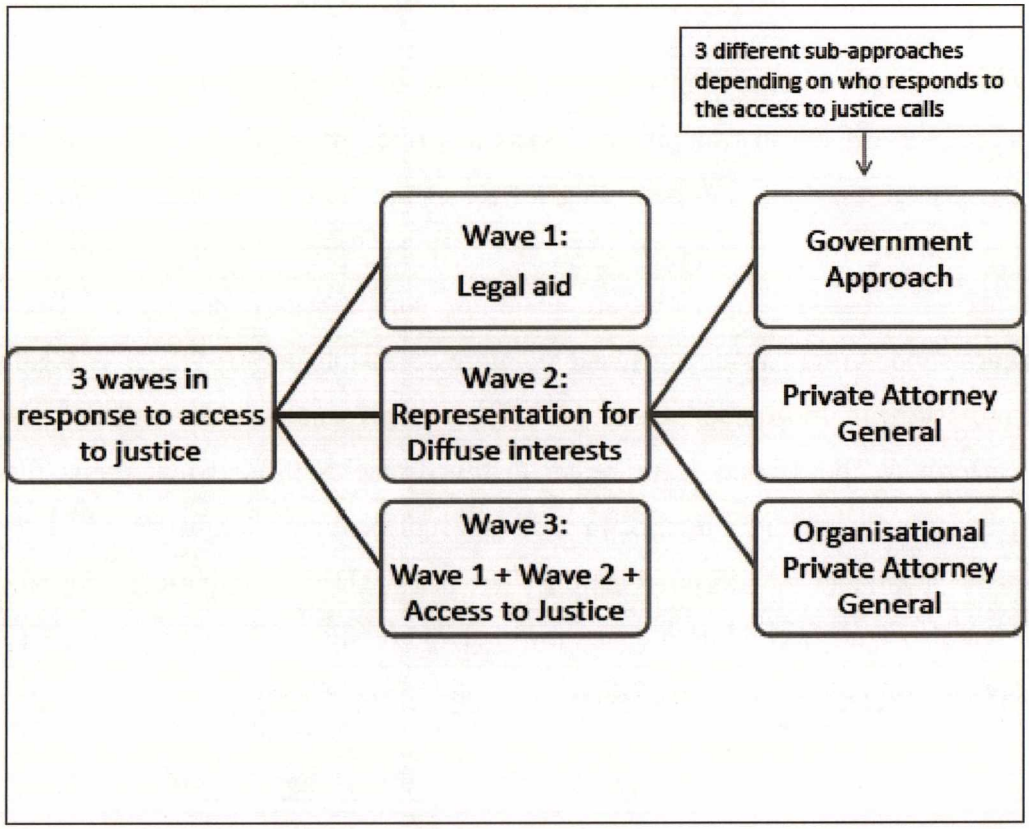
[35] ibid.

[36] ibid.

[37] The word "diffuse" means "not concentrated" or "spread out", hence the use of the word to encompass those interest that are scattered all over and affect a large number of people such as environmental or consumer interests.

[38] Mauro Cappelletti and Bryant Garth, 'Access to Justice: The Worldwide Movement to make rights effective A general report' (n 34) 21–54.

Figure 4.2.1.1: Cappelletti and Garth three waves of reform



Within this classification, it is the second wave or the legal representation for "diffuse interests" where the seeds of CED start to be sown and also how public interest law started to develop.

(1) Waves of reform and their importance

(a) Legal Aid and the legal representation for diffuse interests

According to Cappelletti and Garth, it was the second wave of reform (legal representation for diffuse interests) that brought about the reforms safeguarding the representation of interests relating to a group or to the public (e.g.: diffuse interests such as consumer and the environment) and ensuring that the "very basic traditional notions of civil procedure and the role of the courts" [39] were reconsidered. This is because, traditionally, litigation was perceived to be an affair between two parties and was intended to settle a

[39] ibid. 35.

dispute pertaining to people's rights as individuals and not as a group as rights pertaining to a group or to the public were simply not part of that tradition.[40]

To better understand the second wave of representation for diffuse interests, Cappelletti and Garth divided this second wave into three different sub-approaches, depending on who was responding to access to justice calls. These were the government approach,[41] the private attorney general[42] and the organisational private attorney general.[43]

Cappelleti and Garth also divided the organisational private attorney general sub-approach into three different categories. These categories provided for two further levels of reform[44] and for a pluralistic mixed solution. The first level of reform recognised groups and the second level attempted to go beyond those existing groups to support the emergence of new groups in the future.[45]

This second level of reform helps in explaining the development of public interest law in the United States as access to justice was not meant to be just for existing groups but also for those groups that may form in the future. Moreover, it helps to understand the division between the different types of legal practice found within public interest law such as class actions, counsel provided by government and others.[46] It is submitted that this development also influenced to a great extent the development of public interest law in other parts of the world as legal practice also was divided between the type of legal practice found within public interest law and within government.

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[40] ibid.

[41] ibid. 36–39. Cappelleti and Garth note that because of the very nature of government, it cannot represent diffuse interests on its own as it may be "slow, inflexible and passive in carrying out its duties".

[42] ibid. 40. An example of this, the authors indicate is "the acceptance of citizens actions to challenge and stop a particular governmental practice. Groups may finance such individual actions as test cases... [e.g.] environmental protection".

[43] ibid. 40–48.

[44] a) "A first level of reform: the recognition of groups" ibid. 40–42 and; b) "A second level of reform: beyond existing groups". ibid. 43–48.

[45] Mauro Cappelletti and Bryant Garth, 'Access to Justice: The Worldwide Movement to make rights effective A general report' (n 34) 43–48.

[46] Other types of legal practice for example, within the realm of public interest law are the public interest actions and the public interest law firms and within counsel provided by government one finds public counsel.

It is important to highlight that the organisational private attorney general also acknowledges that group action in the public interest is needed[47] but because group action can also be "the source of abuses… public (governmental) checks and controls over this form of representation have also been evolving"[48]. Therefore, if solutions are to be found, these solutions should, as Cappelletti and Garth indicate, "*facilitate* the creation of effective organizational private attorneys general."[49]

Thus the authors explain that when it came to facilitating the creation of solutions, the creation of solutions in relation to access to justice appeared to be most advanced in the United States, as it was in this country where one could find the class actions/public interest actions, the public interest law firm, public counsel[50] and the pluralistic (mixed) solution.[51]

In relation to the creation of the public interest law firm, Cappelletti and Garth indicate that another reason for their creation was that because some diffuse interests were unable to find representation in "effective organizations" dealing with issues such as environmental degradation or consumer protection, a different type of law firm was needed to address these issues. This lack of effective organisations meant a number of private lawyers formed public interest law firms to deal with some specific issue, making "the non-profit organization funded by philanthropic contributions"[52] the most common type.

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[47] Mauro Cappelletti and Bryant Garth, 'Access to Justice: The Worldwide Movement to make rights effective A general report' (n 34) 41.

[48] ibid.

[49] ibid. 44.

[50] Cappelletti and Garth mention the creation of the Office of Public Counsel under the Regional Rail Reorganization Act of 1973 as a creation of an example of a "governmentally subsidized institutions to serve the public interest... [t]he idea is to use government resources but rely on the energy, interest and control of private groups." The Office of Public Counsel had "to assist communities and rail service users in articulating their concern in public hearings... [It] has organized communities to recognize and asset their legal rights; its task has been to seek, help, mobilize, and, at times, subsidize private groups which otherwise would be at best weak advocates for their interests of rail users." ibid. 47.

[51] The pluralistic (mixed) solution combines the idea of public counsel with other approaches in order to offer a solution to the representation of diffuse interests. ibid. 48.

[52] ibid. 45.

The first of this type of public interest law firm was founded by the Ford Foundation back in 1970.[53] It provided "expert legal counsel and constant oversight on behalf of unrepresented, unorganized interests" [54] which also helped to strengthen existing groups and replacing groups that had not 'even formed".[55]

In their work, Cappelletti and Garth also criticised public interest lawyers in the United States as accountability in relation to the interest they represented was lacking but they recognised that these lawyers did important work. Noticeably, they indicated that,

> "[t]he institution [the public interest law firm] may or may not be exportable, but it is certainly important in providing effective access to justice for diffuse interest within the limits of available resources".[56]

It could be argued that the practice of CED law, such as working on behalf of the community as a group and using the non-for-profit type of public interest law firm to represent them, fits within of the second wave of reform. Consequently, the practice of CED permits the representation of diffused interests, and so should be considered in the context of attempts to secure access to justice - (*see* Figure 4.2.1.1(a) below for a representation of this).

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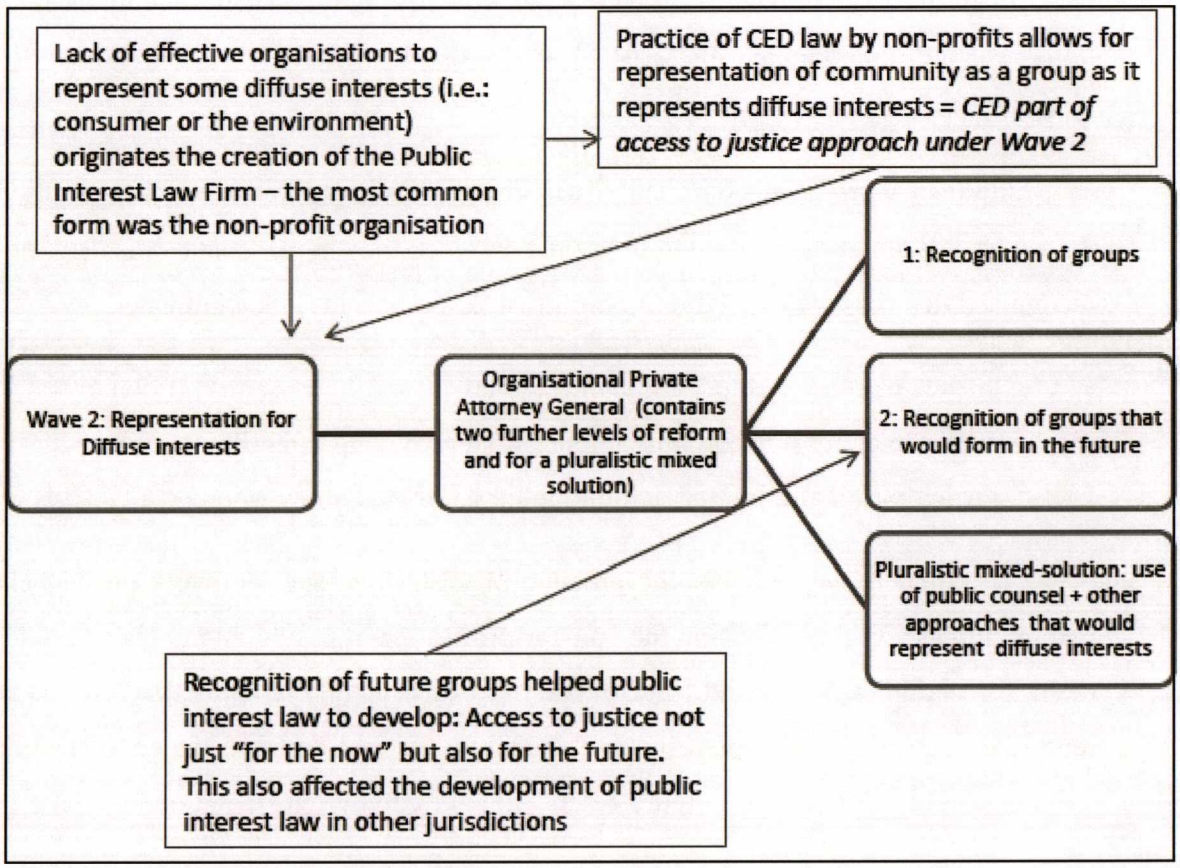
[53] ibid.

[54] ibid. 46.

[55] ibid.

[56] ibid.

Figure 4.2.1.1(a): Representation for diffuse interests and CED



(b) The access to justice approach

Cappelletti's and Garth's third wave of reform or what they called the "access-to-justice approach" because of the wide-ranging scope it entails, not only encompasses the previous two waves of reforms but it also treats them as part "of a number of possibilities for improving access."[57] They also indicate that this approach is said to include not just advocacy but also something that goes beyond advocacy, as it focuses "on the full panoply of institutions and devices, personnel and procedures, used to process, and even prevent, disputes in modern societies."[58]

Furthermore, because the access-to-justice approach believes that the civil process must adapt to the type of dispute at hand, it does not fear the use of "comprehensive, radical

[57] ibid. 49.

[58] ibid.

innovations, which go much beyond the sphere of legal representation".[59] The access to justice approach keeps in mind that the repercussions of the disputes may be collective as well as individual,[60] and thus, legal assistance does not mean representing someone in court.

> "It implies help in making people aware of their rights in order to plan their important transactions; indeed, at its best it helps people to participate more effectively in the basic private and governmental decisions that affect their lives. Hence, the basic question of how to make high quality legal assistance available to everyone has understandably become a key focus of access-to-justice reformers".[61]

Therefore, the links between the reforms of legal aid as developed in the United States under the Legal Services Programme in 1965 and the reforms that "continued around the world in the early 1970s"[62] as elaborated by Cappelletti and Garth, marked the birth of the CLCs outside the United States.[63] At the same time, the reforms of legal aid brought about by the Legal Services Programme also became the conduit for the seeds of CED to travel across the sea (*see* Figure 4.2.1.1(b) below for a representation of this).

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[59] ibid. 52

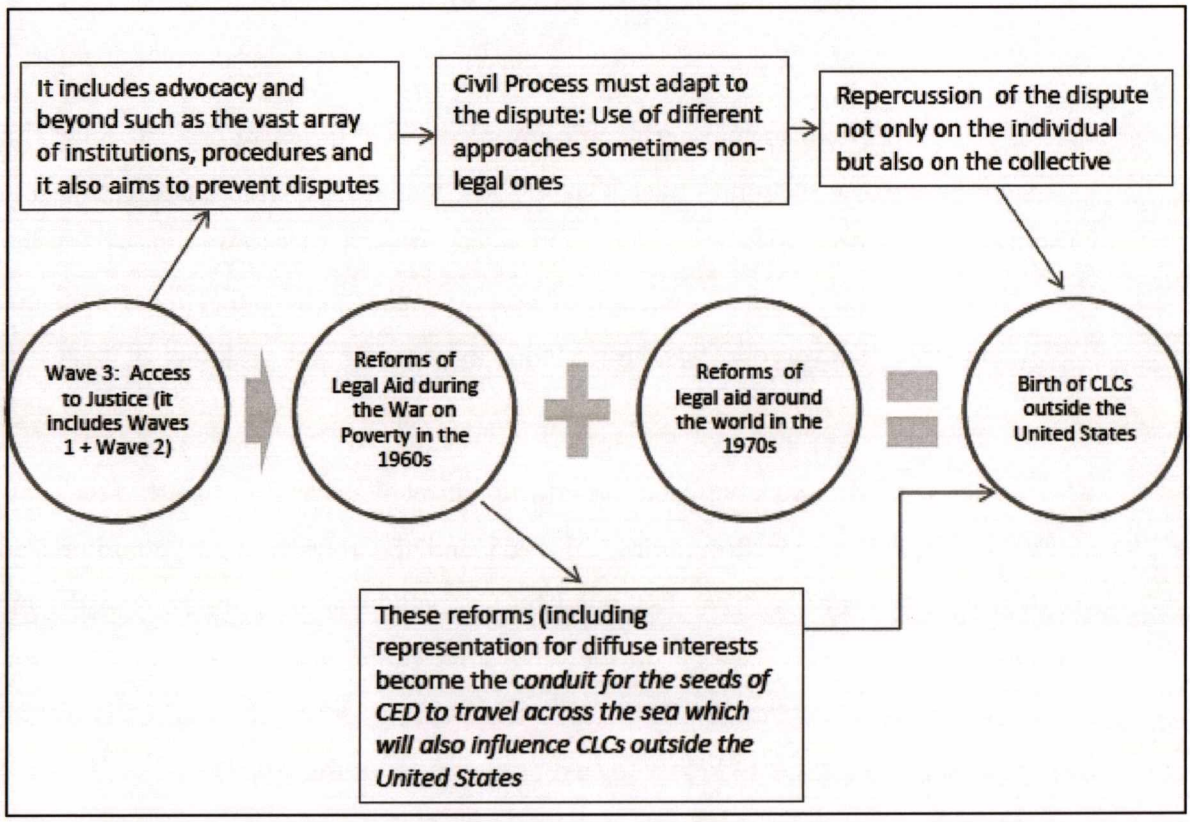
[60] ibid. 53.

[61] ibid. 108.

[62] ibid. 23.

[63] It is interesting to point out that notwithstanding the experiences in the United States, Cappelletti and Garth also give a "warning conclusion" in relation to the limitations and risks of using the access-to-justice approach outside their birth-place. They indicate, particularly, that legal aid reforms should not be just transplanted from one jurisdiction to another as even if successful, their environment in the host jurisdiction may work very differently in practice. To counter-act this problem, they note that interdisciplinary and empirical research should also be carried out in order to determine the type of legal aid reform needed and to ensure the implementation of legal aid reform are monitored. ibid. 122 (footnote omitted). A noteworthy feature of the Irish situation is the dearth of research in this area, and it is arguable that Irish lawyers have, in fact, ignored this warning conclusion.

Figure 4.2.1.1(b): The access to justice approach and the conduit for CED



(2) Social and historical context of access to justice and legal aid

In discussing the social and historical context of access to justice, Friedman[64], writing in the second volume of *Access to Justice*[65] indicates that when it comes to access to justice, "[e]very "solution" to a problem implies a unique definition of the problem, and, indeed, we will see many definitions, many solutions – and varying degrees of success."[66]

We can observe that CLCs developed in this way, as part of an array of solutions to the access to justice problem, not only in the United States but also in many parts of the world, including Canada, England and Wales, Australia and Ireland. Although embedded in the

[64] Lawrence Friedman, 'Access to Justice; Social and Historical Context' in *Access to Justice*, vol. II: Promising Institutions Book 1 (Alphen aan den Rijn: Sijthoff and Noordhoff 1978).

[65] Mauro Cappelletti, *Access to Justice* (n 33).

[66] Lawrence Friedman, 'Access to Justice; Social and Historical Context' (n 64) 5.

second wave of reform, CLCs also became part of the third[67], as they brought an approach to legal aid and access to justice reform that combined, in other words, "legal services and procedural reforms".[68]

In summarising the historical context of access to justice, Friedman also indicates that by the 19th century[69], citizens and their law were drifting apart and although efforts to ameliorate the issue started to take place, these were not intended for the benefit of "the average workingman, but for the benefit of tradesmen, small businessmen and professionals."[70] As a consequence, the emergence of new movements that tried to close this gap gave rise to a series of conflicts such as conflicts about different notions of justice[71] or conflicts "between speed and efficiency in the one hand, and careful, individualized justice on the other hand".[72]

Friedman thus offered his advice when reforming access to justice approaches. Reformers, he indicates, may want to reform access to justice by either converting "expectations, hopes and desires into substantive *rights*"[73] or by placing emphasis on individual justice[74], either informal[75] (lay justice) or formal[76] (i.e.: the process is

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[67] *See* figure 4.2.1.1(b) above.

[68] Lawrence Friedman, 'Access to Justice; Social and Historical Context' (n 64) 7.

[69] Friedman describes this was a modern legal system as it had a "single, uniform, rational body of law".

[70] Lawrence Friedman, 'Access to Justice; Social and Historical Context' (n 64) 15.

[71] ibid. 15–16.

[72] ibid.

[73] Francis Regan, Alan Paterson, Tamara Goriely, and Don Fleming (eds), *The Transformation of Legal Aid: Comparative and Historical Studies* (Oxford University Press 1999) 2. Lawrence Friedman, 'Access to Justice; Social and Historical Context' (n 64) 21. Substantive rights are those basic rights such as life or freedom of speech.

[74] Individual justice refers to the specific case and not to those basic rights.

[75] Informal justice, says Friedman, is "a response to the complaint that justice is slow, expensive, and uncertain". Lawrence Friedman, 'Access to Justice; Social and Historical Context' (n 64) 22.

[76] Formal justice "responds to the complaint that the law is blind, impersonal, wrong-headed, or simply too busy to listen." Ibid.

individualised when "each case is scrutinized on its merits, each complaint handled delicately and carefully in its human uniqueness"[77]).

For Friedman, his preference was for lay justice, as lay justice spoke the language of "the poor"[78] and seemed more persuasive than formal justice especially when wanting to achieve improved access to law on behalf of the poor or the disadvantaged. Moreover, lay justice had always played a part in societies.[79] In this regard, CLCs became particularly influenced by the concept of lay justice and thus started to provide access to justice in the form of know-your-rights' seminars and courses.[80]

In relation to how much access should be provided and what type of justice should be achieved, Cappelletti and Garth, writing in relation to access to justice and the welfare state in the early 1980s[81], indicate that the debate should be constant and although the debate had "shifted" towards access, the issues raised by the debate were "by no means resolved".[82]

It is submitted that the repeated problems of access to justice reforms efforts that different jurisdictions have tried to resolve, as acknowledged by Cappelleti and Garth, are still "by no means resolved" and as a consequence, the relevance of Cappelleti and Garth's writings in relation to access to justice and legal aid have not succumbed to the passage of time.[83] Moreover, every economic crisis seems to reignite the debate of access to justice and

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[77] ibid.

[78] ibid.

[79] ibid. 24. Nevertheless, lay justice is a "complex concept", says Friedman and thus he identifies three types of lay justice. The first type is when the judge or mediator stands socially above the litigants; the second type takes place when the judge is a wise man, an elder; and the third type is when the social status is the same, such as a neighbour or "peers". ibid. 22–23.

[80] For example, FLAC started to provide know-your-rights courses. For more information on this see FLAC & Coolock Community Law Centre, 'Free Legal Advice Centres- The first eighteen years' in *The Closed Door: Report on Civil Legal Aid Services in Ireland*, 1987.

[81] Mauro Cappelletti and Bryant Garth, 'Access to Justice and the Welfare State: An introduction' in *Access to Justice and the Welfare State* (Alphen aan den Rijn : Sijthoff 1981).

[82] ibid. 1–2.

[83] Note however, that Mel Cousins, in researching legal aid reform in France and Ireland, criticises the work of Cappelletti and Garth indicating that they did not see or chose not to see the fact that Catholic countries have "much lower levels of legal aid" (at page 159). *See* Mel Cousins, 'Legal Aid in France and the Republic of Ireland in the 1990s' in *The Transformation of Legal Aid: Comparative and Historical Studies* (Oxford University Press 1999).

legal aid,[84] influencing even more how CLCs develop. As a consequence, the debate of access to justice and legal aid and the advancement of CLCs becomes part of the political landscape but the debate is not always initiated by government.

For example, the pressure to reform legal aid in England and Wales came not from government but rather from private lawyers, as private lawyers saw reform as a way of stimulating new markets during a time when there was an "oversupply of lawyers".[85] As such, legal aid reform became related to the politics of the welfare state[86] influencing the evolution of CLCs which would focus on servicing the individual needs of matters relating to social welfare such as social housing or welfare entitlements rather than anything else. Currently, the total number of CLCs in England and Wales and Northern Ireland is 53.[87]

(3) Access to justice through legal aid and the enforcement of welfare rights

In talking about the experiences of Britain as a whole, particularly from the point of view of the welfare state, Goriely[88] indicates that Cappelletti and Garth saw legal aid as a way of ensuring access to justice yet legal aid was not the only way to do so.[89] Goriely points out that their mistake "was to treat as universal and self-evident a proposition that is contingent and controversial. The belief that social rights require individual enforcement is dependent on both time and place."[90] The time was 1965-1988 and the place was the "individualistic

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[84] The later example is the legal aid reforms taking place in England and Wales, with the result that legal aid for immigration cases may no longer be available. See, Law Centres Federation "Justice for All Campaign" at <http://www.lawcentres.org.uk/press/detail/justice-for-all-campaign-launches/> [Accessed last 15 May, 2011].

[85] Francis Regan, Alan Paterson, Tamara Goriely, and Don Fleming, *The Transformation of Legal Aid: Comparative and Historical Studies* (n 73) 2. It is interesting to point out that the high rate of unemployment among solicitors is making solicitors to also start focusing their work towards clients having welfare issues something that up to a few years ago would have been very hard to achieve, other than on a pro-bono basis. Anecdotal evidence related by solicitor working at NCLC (April 2009).

[86] ibid. 2.The authors note that there is a gap in the literature in relation to the expansion and decline of legal aid in England and Wales. They indicate that the decline in the 1980s has been documented in 1996 by Goriely & Paterson and in 1993 by Cousins.

[87] <http://www.lawcentres.org.uk/about-law-centres/law-centres-on-google-maps/alphabetically> [Accessed last 8 November, 2012].

[88] Tamara Goriely, 'Making the welfare state work: changing conceptions of legal remedies within the British welfare state' in *The Transformation of Legal Aid: Comparative and Historical Studies* (Oxford University Press 1999).

[89] ibid. 89.

[90] ibid.

'liberal' welfare states of developed capitalist democracies". [91] Goriely, therefore, argues that there are three ways of enforcing social rights and not just individual enforcement as postulated by Cappelletti and Garth. Enforcing social rights under these three ways, namely, "collective enforcement, individual legal enforcement and consumerism" [92] enables uses and service providers to respond "to specific social values and circumstances" as well as to understand their "social setting". Therefore, the way welfare rights are enforced "have profound implications for the job legal aid is expected to do." [93]

For example, if calls for enforcing social rights via consumerism mean that the individual can put forward a complaint via formal complaint mechanisms without the need for legal intermediaries, the social setting of the individual is ignored. This is because the individual using such complaint mechanism is "usually poor, often vulnerable, inarticulate, suspicious and overwhelmed" [94] and may need advice and assistance in asserting his or her social rights via this complaint mechanism. [95] Thus, there is a gap in the help needed to voice their concern and the one provided. [96] This gap, in turn, would have to be met by legal aid.

When examining this process in Ireland, particularly within the development of CLCs *vis-à-vis* civil legal aid, it can be argued that there was never a type of collective enforcement and as such, legal aid was directly taken from the individual enforcement mechanism of the welfare state/legal aid. The office of the Ombudsman did offer an alternative mechanism of individual enforcement to going through the courts but collective enforcement is non-existent.

In order to understand the modern development of civil legal aid and where it stands, particularly in relation to CLCs, it is important to keep in mind the constant evolution of civil legal aid and how international developments influence Ireland. For example, in relation to

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[91] ibid.

[92] ibid. 90.

[93] ibid.

[94] ibid. 92.

[95] ibid.

[96] ibid.

Canada[97] Zemans indicates that its modern legal services started in the province of Ontario in 1967, when a legal aid plan was developed to pay lawyers for working on criminal and civil cases[98]. Then, in the 1970s, developments in legal aid and legal services, especially in Quebec, Ontario and Saskatchewan, allowed citizens to take part in the "delivery of legal aid and administration of justice".[99] Zemans also notes that the major changes of the 1970s were in fact an adaptation of the judicare model[100] as practiced in the UK and the neighbourhood law firm of the United States. Both of these models were based "on the belief that the provision of legal services on a gratuitous basis will be the greatest assistance to low income citizens."[101]

The judicare model as used in the UK[102] has in fact been used as a model in jurisdictions around the world[103]. This scheme started in 1949, under the *Legal Aid and Advice Act, 1949*. However, developments in other jurisdictions, such as the War on Poverty, as initiated in the United States, also influenced the development of legal aid in Ireland.

> "[A]n integral feature of this "war" was the massive increase in the use of legal services as part of the strategy for attempting to win increased rights for the poor and underprivileged in that country. In this climate of opinion, it was not surprising that a number of lawyers in the U.K. began to think about the possible relationship between poverty, law and the legal system."[104]

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[97] Frederick H Zemans, 'Canada' in *Perspectives on Legal Aid: An International Survey* (Frances Pinter Ltd 1979) 93–133.

[98] ibid. 93.

[99] ibid.

[100] The judicare model means that legal services are provided by private lawyers but they are paid by the State. For a description of the different models of legal aid (charitable, judicare, salaried and mixed) *see* chapter five at section 5.3.1.2(1).

[101] Frederick H Zemans, 'Canada' (n 97) 120.

[102] Martin Partington, 'Britain' in *Perspectives on Legal Aid: An International Survey* (Frances Pinter Ltd 1979) 158–176.

[103] ibid. 159.

[104] ibid. 163 (footnote omitted).

Partington, in writing about the experiences of the UK in the late 1970s[105], also indicates that the "Justice for All" report[106], which analysed how the 1949 Legal Aid and Advice Act was working, came up with a number of suggestions of reform, adding that,

> "[t]he most radical of these ideas, drawn from American experience, was that the services of a local legal centre should be made available without a means test to people living in poor neighbourhoods".[107]

Thus, a pressure group to "campaign specifically for improvements in legal services and legal procedures"[108] was formed in 1972, called the Legal Action Group. Partington also indicates that, at the time, opportunities for "the successful cross-fertilization of ideas" existed.[109]

It could be argued that it was this cross-fertilization of ideas about CLCs together with the developments in other jurisdictions that mostly benefited the Irish experience - as it created a bundle of legal transplants under which Ireland became a beneficiary.[110]

It could also be argued that organisations, such as CLCs and NGOs in general, therefore, have driven the modern development of legal aid and access to justice. For example,

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[105] Martin Partington, 'Britain' (n 102).

[106] Society of Labour Lawyers, *Justice for All: Society of Labour Lawyers Report* (Fabian Society 1968).

[107] Martin Partington, 'Britain' (n 102) 164.

[108] ibid. 165.

[109] ibid. 171.

[110] It is interesting to point out that Partington, other than making suggestions for reforms, also highlighted the distinction between the two different types of defects in legal aid that existed at the time. One type of defect was of a remediable character and the other was of a structural type. Defects of a remediable character could be changed, as if there was more government money and little alteration to the statutory framework such as changes to the means test, salaries, representation in tribunals, contribution levels, application to apply for legal aid, administration of legal aid, the defects in legal aid could be overcome. However, if the defects were of a structural type, meaning that even with the changes the problem still remained, then the question used to solve the defect is not about funding but about something else. For example, the question to ask would be if the legal aid scheme would be in a position "to provide effective legal services" [110] to all the members of the community by countering the difficulties caused by the "location of solicitors, psychological barriers, ignorance of legal rights, education and background of lawyers, community issues [and] control of legal services" ibid. 166–168.

The applicability of Partington's distinction between the two different types of defects to Ireland is important as when trying to remedy the defects in legal aid, it seems that calls for changes have covered both types .For example, the establishment of CLCs have tried to remedy structural defects within legal aid. FLAC while also trying to remedy structural defects has also looked at defects of remediable character such as changing of the means test or representation in tribunals.

when looking at the development in legal aid in relation to the poor and the disadvantaged in the late 1970s, particularly in relation to the United States, Joel Handler[111] points out that,

> "[o]rganizations have been and continue to be the principal mechanism for defining the legal needs of the poor and the underrepresented, for changing the legal consciousness of society, and for the recruitment and training of most lawyers in legal rights activities. In the process of formation and through their continual efforts to mobilize resources, organizations develop ideologies and define legal needs that attract lawyers and provide the focus for their work. The structured job opportunities which organizations provide are the most important in directing young lawyers towards a continued career in these activities. The success of organizations in winning cases, obtaining publicity, and attracting public support, generates new organizations and other efforts to offer similar kinds of opportunities in the two major sectors of the legal profession – private practice and government."[112]

Handler further indicates that "[e]mphasis on individual services stemmed from the assumption that the law was just, that for poor people the problem lay not in the nature of the law, but in obtaining access to the law."[113] This meant that the more lawyers, the more fair the system would be as more people would be able to access the law, but because of lack of funding, eligibility standards had to be set (which also meant no community education or publicity of legal aid services).[114]

In relation to class-actions, in the years following *Brown v. Board of Education,*[115] (hereafter "the Brown case") Handler specifies that this type of class-action was "a model of

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[111] Joel Handler, 'United States' in *Perspectives on Legal Aid: An International Survey* (Frances Pinter Ltd 1979) 318–345.

[112] ibid. 318.

[113] ibid. 320.

[114] It is interesting to note that Handler mentions that "[w]ith few exceptions, young, activist, social-minded lawyers would not join legal aid or defender programs". For Ireland the question that arises therefore is where do the young, activist, social-minded lawyers go? It is submitted that the development of CED law and CED lawyering could benefit from new ideas, making better use of social-minded lawyers. ibid. 320–321.

[115] 347 U.S. 483 (1954).

social reform that was openly encouraged by the court itself."[116] The perspective of the court was that "under the conditions of modern government, litigation may be the sole practicable avenue open to a minority to petition for redress of grievances".[117] Therefore, the legal training of young lawyers in the United States as well as "the law school conception of the role of law and lawyers in social reform concentrated on appellate court litigation".[118] Therefore,

> this model of class action law reform strategy became the single most important influence in the development of Office of Economic Opportunity (OEO) Legal Services, consumer and environmental law, and public interest law. It became the popular standard for measuring the quality and effectiveness of other legal rights activities. In time, it also became the focus of political attacks on legal rights activities.[119]

The transplant of the OEO Legal Services model to other jurisdictions, therefore, forgot the background under which the model of legal services had been established (while the experience in the United States focused more on the collective – through the use of class actions – the UK experience focused more on the individual) adding to the development of the CED paradox (the CED paradox is discussed later on in this chapter).

According to Handler, by 1965, when the war on poverty added lawyers to its arsenal, "the focus of attention became not the quality of legal defense of southern blacks but representation of the poor."[120] Therefore, poverty law seemed to have replaced, to some extent, civil rights law.[121] The transplant of the legal service model of the OEO however also carried forward the triumphs of the civil rights law movement such as the case of *Brown* case and the victories of the Warren Court, thus linking representation of the poor with civil rights law, something that would be later observed on how the concept of CED became embedded

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[116] Joel Handler, 'United States' (n 111) 322.

[117] ibid.

[118] ibid. 323.

[119] ibid.

[120] ibid. 326.

[121] ibid.

into the development of CLCs as the OEO legal services model had within it, the seeds of CED.

(4) The role of the citizen and allocation of resources

The role of the citizen in relation to his/her interaction with legal aid services and the different approaches used within societies including resource allocation, although apparent, deserves some commentary. Francis Regan, in writing about the reasons as to why legal services vary between societies,[122] asserts that,

> "societies should recognise the potential for assisting their citizens to defend and assert their legal rights in a variety of ways. In reality … citizens in fact require different sorts of assistance to respond to different sorts of legal problems in different sorts of ways."[123]

Regan calls these different types of assistance "outside litigation" as not all the legal problems make it to court. Moreover, because of the complexity of legal rights, different services are needed and not just litigation.

This means that when allocating resources in order for legal aid to be covered under an array of services, more could be gained by assigning resources to a number of strategies, such as "advice centres, legal education campaigns, improved public legal education and law reform" rather than prioritising the allocation of legal aid for individuals.[124]

Given the economic restrains and issues of legal aid funding, the idea that allocating resources to CLCs is more cost-effective than simply resourcing legal aid for individuals makes sense. Moreover, when looking at the role of the citizen and how the allocation of resources can be sustained, the role CLCs play within society should not be dismissed. Moreover, the practice of CED within CLCs may also offer other types of cost-effective solutions.

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[122] Francis Regan, 'Why do legal aid services vary between societies? Re-examining the impact of welfare states and legal families' in *The Transformation of Legal Aid: Comparative and Historical Studies* (Oxford University Press 1999) 179–201.

[123] ibid. 181.

[124] Jon T Johnsen, 'Studies of legal needs and legal aid in a market context' in *The Transformation of Legal Aid: Comparative and Historical Studies* (Oxford University Press 1999) 232.

4.2.1.2 Access to Justice in general

Comparing the works of Cappelletti and Garth back in the 1970s to modern writings, one finds that access to justice "enjoys an energetic and passionate resurgence"[125] around the world. Garth, commenting on the revival of access to justice research in 2009,[126] indicates that access to justice is "a topic engaged in social-legal research" but it is also "a key component of legal profession ideology". Garth asserts that these two are connected - "the more committed the organized legal profession to the issue of access to justice, the higher the profile of scholarly research on topics that relate in one form or another to access to justice."[127] Given the lack of scholarly research in Ireland in relation to access to justice research, one can only ponder if the relationship described by Garth is applicable to Ireland.

Access to justice has also reappeared in the international agenda, particularly under the umbrella of reform and post-Cold War efforts to rebuild the rule of law.[128] Garth also mentions the rhetoric of access to justice in the developing world to which the World Bank, the OECD, the UNDP and the World Justice Forum of the ABA[129] are part but this re-awakening involves "more professional ideology than scholarly research."[130] This is also of importance in relation to the internationalisation of public interest law and CED as some of the programmes within these organisations such as the UNDP have a form of CED built onto them.[131]

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[125] Rebecca L. Sandefur (ed), *Access to Justice*, (Sociology of Crime, Law and Deviance vol. 12) (Emerald Group Publishing Ltd. 2009) xi.

[126] Bryant G. Garth, 'Comment: A revival of Access to Justice Research?' in *Access to Justice* (Emerald Group Publishing Ltd. 2009) 255–260.

[127] ibid. 255.

[128] ibid.

[129] ibid. 255–256.

[130] ibid. 258. Perhaps the rhetoric of access to justice in Ireland has actually more to do with professional ideology rather than scholarly research and this may be the reason as to why so little research is in fact carried out in Ireland when it comes to legal aid and access to justice.

[131] *See* chapter one at section 1.1 for more information about this.

It is also important to keep in mind that under an overall international view, Vottori Denti[132] has indicated that "legal assistance... is a result of the development of the concept of legal systems"[133] and that the goal of all of the reforms of legal aid is the achievement of social justice "through civil justice." [134]

The starting point for Denti is the English *Legal Aid and Advice Act* of 1949, which shaped the development of legal assistance in modern jurisdictions.[135] Denti also indicates that legal assistance has also been shaped, to a great extent, by the role of the legal profession. In the 1960s, particularly due to the different social movements, the role of lawyers started to change giving rise to a new type of lawyer. From acting as counsel for individual cases, lawyers started to see that the economic and social improvement of the underprivileged was also an important part of the legal assistance they offered, which occasioned the birth of the public interest lawyer.[136]

Denti also indicates that "a number of sociological studies on the relationship between poverty and justice" carried out at the time showed that "[t]he welfare state model and the expansion of the U.S. anti-poverty program have led to the awareness that legal assistance is essential to achieving upward mobility"[137] and that a series of factors hampered the progress of the poor in attaining social mobility, that is, a lack of information about their rights and how to enforce them, as often, "the poor live far from the centre of large cities ... and with inflexible working schedules" [138] making it difficult to consult a lawyer when needed. Therefore, Denti specifies that,

> "the need for justice acquires a clearer definition: it is no longer simply the need to be represented by a lawyer, but rather the need to be assisted at various

[132] Vittori Denti, 'International View' in *Perspectives on Legal Aid: An International Survey* (Frances Pinter Ltd 1979) 346–361.

[133] ibid. 346.

[134] ibid. 348.

[135] ibid.

[136] ibid. 349. This is also expressed in the views of the three waves of reforms developed by Cappelletti and Garth as discussed in section 4.2.1.1 of this chapter.

[137] ibid. 350.

[138] ibid.

levels during the course of a legal action. In this context, legal advice has come to be regarded as a basic form of social assistance."[139]

Denti concludes with the argument that there are "three basic trends emerging viewing the overall picture of legal assistance in contemporary countries": [140]

1) Legal assistance must ensure equality before the court [free counsel] [141];

2) The services rendered by private lawyers are of public and social interest and are to be delivered within the framework of a wider assistance programme directed or controlled by public bodies[142]; and

3) Legal assistance is part of a broad range of social services. According to this concept, the goal of social advancement should, in principle, be more effectively reached by public centres operating within a general plan for a more advanced concept of social justice.[143]

While legal aid, legal centres and neighbourhood law centres belong to these trends respectively,[144] Denti indicates that the OEO Legal Services Programme is an example of the third trend.[145] To Denti, the OEO Legal Services Programme, was

> "the most advanced legal aid programme in capitalist countries …[which] was also characterized by the direct participation of community representatives in the running of the legal assistance centres. This kind of participation, which was unique in the history of legal assistance schemes, was recognition of the need for community participation."[146]

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[139] ibid. 351.

[140] ibid. 350.

[141] ibid.

[142] ibid. 351.

[143] ibid.

[144] ibid. 352.

[145] ibid. 353.

[146] ibid. 353–354.

At such, the community participation[147] element is what has made the CLCs develop the way they have across different jurisdictions, making legal assistance part of a broad range of social services but also as part of access to justice, as awareness legal aid would create "upward mobility".

This is particularly true when it comes to Ireland and how CED lawyering started to develop within CLCs. While government run legal aid programmes (such as those offered by the Legal Aid Board[148]) can be said to be part of the first and second trend, they are not part of the third. CLCs in Ireland do not just offer equality before the law or provide services but they have also helped to advance social justice.

Thus, when talking about the advancement of legal aid and access to justice, the particular trend to which they belong is important, otherwise arguments for and against lend themselves to misunderstandings. For example, advocates for the furtherance of CLCs may be talking for the advancement of the third trend whereas government actors may be talking about the second. But most importantly, because CED lawyering is also a feature of the third trend (as social justice implicitly includes economic justice), if proposals for the development of CED lawyering are to come forward, it is important to highlight the trend it belongs to in order to avoid any confusion and ensure all parties refer to the same trend.

4.2.1.3 Legal Transplantation

In order to see how CLCs have been developed outside the United States and in Ireland, understanding how legal transplantation takes place is important. The literature shows that because of the Rule of Law[149] efforts and globalisation, legal ideas are crossing borders constantly.

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[147] The argument as to what is meant by participation is a contested issue. For example, Halpern indicates that during the War on Poverty, participation was "a relatively broad and ill-defined term" and it was not clear what it meant, although there was "an assumption" that it was good for people. *See* Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* (Columbia University Press 1995) 108–109.

[148] For more information on government run legal aid programmes in Ireland, *see* section 4.4.1 in this same chapter.

[149] Bergling succinctly describes the essence of the rule of law. He indicates that the rule of law "is believed to prevail where the government itself is bound by the law, every person in society is treated equally under the law, the human dignity of each individual is recognized and protected by law, and justice is accessible to all." Per Bergling, *The Rule of Law on the International Agenda* (Intersentia 2006) 1 at footnote 1.

According to Watson, a legal transplant is "the moving of a rule or a system of law from one country to another, or from one people to another … [and] ha[s] been common since the earliest recorded history".[150] And, it is particularly important that, when it comes to its success, as

> "[a] successful legal transplant – like that of a human organ – will grow in its new body, and become part of that body just as the rule or institution would have continued to develop in its parent system. Subsequent development in the host system should not be confused with rejection."[151]

Watson further indicates that legal transplants are "the most fertile source of development"[152] when it comes to legal progress. [153]

Legal progress can readily be seen when talking about the rule of law on an international agenda.[154] Bergling for example indicates that the context into which the foreign legal concepts are transplanted is essential.[155] So in relation to,

> ""transplanted", "received" or "borrowed" laws… people and institutions choose how to behave not only in response to the law, but also to a surround of other social, economic, physical and subjective factors arising from history, custom, geography, technology, etc."[156]

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[150] Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2nd edn, University of Georgia Press 1993) 21.

[151] ibid. 27. Watson also indicates that there also are "voluntary major transplants", and can be divided into three different categories: when people move and there is no civilisation, they take the law with them; when they move to comparable civilisation and take the law with them; and when people accept a large part of a legal system of another people or peoples. ibid. 29–30.

[152] Alan Watson, *Legal Transplants: An Approach to Comparative Law* (n 150) 95.

[153] ibid.

[154] Per Bergling, *The Rule of Law on the International Agenda* (n 149).

[155] ibid. 29.

[156] Bergling, although referring to the "aid factor", transplanted laws are affected by the same issues he mentions, and it is not just influenced by the aid factor. *See* ibid. 28 (footnote omitted) BUT on the footnote 76 he indicates that the doctrine on this issue is vast. And recommends to see "Corne (1997); Gillespie (1996); Greenberg (1980); Potter (1994); Waelde & Gunderson (1994); and Watson (1974).

This is also true when seeking to transpose CED law and CED lawyering into Ireland and why it is important to learn about access to justice and legal aid, as only certain areas of American CED law and CED lawyering can be applied to Ireland[157], despite the fact that they share the same roots which gave origin to the CED paradox.

Therefore, when looking into comparative law and the approach to take when it comes to legal transplants[158] Watson indicates that if there is no relationship between the systems being compared, then there cannot be a comparative law element. This means that whatever comparisons are made between rules, they will be "arbitrary and without systematic worth."[159] This means that when making comparisons,

> "[i]t thus becomes important to establish the nature of possible relationship: where one system or one of its rules derives from another system, probably with modifications; where more than one system or rules of such systems derive from a further system; or (where derive is too strong a term) when one system exerts influence on another. In any general or introductory work this type of relationship should have a pride of place, first because the relationship itself is more obvious than any other type, secondly because the degree of borrowing and adaptation is more easily spotted, thirdly because the relevant factors in the development can be isolated more simply, and fourthly because *in the Western word borrowing (with adaptation) has been the usual way of legal development*."[160]

Watson's words are particularly true when it comes to the concept of the CLCs and the development of legal aid (this is also why an overview of access to justice and legal aid has been provided for in this chapter). As it will be shown, Ireland borrowed the CLC concept from developments taking place in other jurisdictions, notably England and Wales, which, in

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[157] These are regeneration, the role of the community law centre and community legal education. For example, when it comes to CBAs, for example, the nature and dissimilarities of local government between County Councils in Ireland and local government in the United States does not lend itself to valuable lessons.

[158] Watson indicates that "as an academic discipline in its own right, [Comparative Law] is a study of the relationship, above all the historical relationship, between legal systems or between rules of more than one system." Alan Watson, *Legal Transplants: An Approach to Comparative Law* (n 150).

[159] ibid. 7.

[160] ibid. (my italics).

turn, borrowed the concept from the Neighbourhood Legal Services of the War on Poverty of the United States.[161]

It can be concluded that in relation to legal aid and access to justice across jurisdictions, transplantation has been taken place since the 1960s. The only issue is that the different contexts of the jurisdictions has been overlooked and it may be one of the reasons as to why CED outside the United States, particularly the practice of CED lawyering, has develop the way it has, creating a paradox (which in turn has given rise to some significant differences between the United States and Ireland in relation to the development of CED lawyering, such as for example the greater use of market forces in the United States when compared to Ireland or the greater role of the government involvement in Ireland when compared to the United States[162]).

4.2.1.4 Legal Education

Legal education, although a subject in itself, is seen as important when it comes to CLCs as with the spread of the American model of law firms around the world, it is not only the provision of legal services that has been influenced by legal transplants but legal training and legal education has also been influenced by them.[163]

The emergence of CED clinics in the United States has largely influenced the development of CED as a legal practice, adding to its expansion.[164]

It is interesting to point out that Trubek and Cooper indicate that while legal education has also made progress in the teaching of legal ethics and professionalism and the practice of

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[161] Similarly, Canada developed their legal clinics in light of the development of the United States and also from England and Wales. Australia borrowed it from Canada, England and Wales and the United States.

[162] *See* chapter seven at section 7.2 for a detail account of this.

[163] Louise G. Trubek and Jeremy Cooper (eds), *Educating For Justice Around the World: Legal Education, Legal Practice and the Community* (Ashgate Dartmouth 1999).

[164] *See* for example, Anna Cody and Barbara Schatz, 'Community Law Clinics: Teaching Students, Working with Disadvantaged Communities' in *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press 2011) 167–182, where the authors describe two different models of community law clinics, one from the University of New South Wales in Australia and the other from the Columbia Law School in New York, indicating they share certain characteristics as students on both jurisdictions learn how law impacts society and that by thinking critically about this, they can "further social justice" (at page 167). They also indicate that these types of clinics, although not referred to as CED clinics but rather as community clinics, are growing around the world. Note the list of references at pages 181-182 is also a useful guide for further research on the topic.

pro-bono[165] has appeared in the international vocabulary, there has also been a decrease in lawyers' social commitment due to the income and status of working in corporate practices - a fact that has been long noted in the legal education landscape in the United States.[166] It could be said that establishing CED law clinics across the world could help to ameliorate this trend, although further research would be needed.

It is argued therefore that legal education has a role in encouraging the understanding of how the law can "empower or disempower underrepresented people" [167] thus influencing and shaping the future development of CLCs and CED in general. [168]

4.3 Section Two: The development of CLCs outside Ireland

4.3.1 Some general points in relation to the origins of CLCs

(1) Origins and NLF's characteristics

The origins of CLCs can be traced back to the War on Poverty of the 1960s and the Neighbourhood Law Firm (hereafter "NLF"). Garth indicates that their importance has increased in modern western societies, grouping them into three different types according to certain characteristics.

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[165] Louise G. Trubek and Jeremy Cooper, 'Rethinking Lawyering for the Underrepresented Around the World: An Introductory Essay' in *Educating For Justice Around the World: Legal education, legal practice and the community* (Ashgate Dartmouth 1999) 10–11.

[166] ibid. 12.

[167] ibid. 13.

[168] ibid. 2. Louise G. Trubek and Jeremy Cooper indicate examples of the writing such as the classic article in the Yale Law Journal, written by Edgar and Jean Cahn and published in 1964, entitled "War on Poverty"; the work of Handler, Hollingsworth, and Erlanger (1978) and "the massive volumes by Cappelletti *et al,* (1972; 1978-9)". This means that the same as with legal transplantation, legal education can benefit from the process of borrowing legal ideas. Trubeck and Cooper, in using the idea of legal transplantation and comparative law to analyse the development of legal education, use the comparative method to,

> "distinguish accidental differences and similarities among jurisdictions from those which are structural, rooted in a particular legal culture. In this context, we take legal culture to include the whole complex of beliefs, values, and modes of reasoning that typify a given society... Lawyering for social change presents a rich and fertile library of pioneering and imaginative scholarship which has been developed extensively in the American context."

Firstly, some NLFs are of an activist type as they have social reform oriented lawyers working on behalf of the poor. Secondly, there are some other types of NLFs which locate themselves in lower-class neighbourhoods, and thirdly, there are those which have their salaries generally paid by a government (or, in a few cases, a charitable organization).[169]

Garth explains that "law centres, law shops and the like" have also been created by "activist lawyers", challenging the traditional roles of lawyers and the way legal aid is provided to the poor.[170] Moreover, the similarity of the Western welfare states[171] and their common language (English), have made it easier to create similar institutions in countries such as "Australia … Canada, [and] England"[172] all of which have been influenced by the United States.

(2) Lawyers' dominance and the conversion of social problems into legal needs

Garth indicates that because of the emphasis the legal profession places on "independence", activists NLFs' lawyers are insulated from political pressure, affecting their accountability. This independence, to Garth, tends to make lawyers accountable to themselves and nobody else.[173] This lack of accountability also brings another problem, or what Garth describes as a dilemma, namely, the conversion of social problems into legal needs. For Garth, this dilemma was most noticeable in the way legal education was delivered. Garth asserts that,

> "[l]egal education, in a sense, creates social critics with powers to help change the society… Legal training, however, also teaches "legalistic" skills which may lead well-intentioned reformers to turn social problems into "legal needs", for which the "solution" is mistakenly believed to be found only in legal

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[169] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) xviii. As a corollary of this, although Garth does not indicate what type of law centre he is researching, most of his studies of the NLFs are focused on the law centres that are mainly government funded, as his description of the NLF indicates that "in a few cases, salaries are paid by a charity".

[170] ibid. xvii.

[171] Garth defines the Welfare States as those in which "their governments are committed, among other things, to ameliorate some of the hardships and inequalities generated by the operation of their economic systems". ibid. xvii.

[172] ibid. at footnote 2 of page xxi.

[173] ibid. xix.

strategies... translated into the NLF movement, this may result only in an advanced form of social control – domination by professionals".[174]

Garth further indicates that there is a danger in relation to legal needs studies, as while legal needs studies provide support for NLFs as well as making "respectable the adoption of legal strategies aimed at change on behalf of the poor as a class",[175] these studies forget to ask "[t]he hard questions of politics, effectiveness, and accountability".[176]

Garth's issue about domination by professionals also has resonance to the Irish CLCs and poses a particular question for the Irish law centre movement in general as it could be argued that the Irish law centre movement has only seen problems as legal needs without looking any further – a point that will be discussed in a later chapter.[177]

(3) Strategies and Tactics: NLFs' classification and political claims

The strategies and tactics used by the NLFs created the main differences between the United States and England as while in the United States NLFs sought to make rights effective, in England, they were focused on meeting the unmet legal needs of individuals. These also affected how the CED paradox would develop, as it isolated lawyers from the wider redistributive economic agenda and political agenda found within grass-roots groups in the United States, making CLCs to be a 'solution' to the unmet legal needs of individuals rather than to make rights effective and influence social change.

Based on his research findings, Garth classified the NLFs into five different types or models[178] and also divided NLFs into three different paths or ways in relation to what they wanted to achieve. These paths were specialisation, decentralisation and the use of legal strategies in a positive way. Thus, some NLFs wanted to

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[174] ibid.

[175] ibid. 12.

[176] ibid..

[177] One of the main proponents of the law centre movement in Ireland has been FLAC. FLAC has tended to dominate the arena. *See* Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 14) 321 and also chapter five at section 5.3.1.1, particularly subsection 5.3.1.1(3).

[178] These are: the legal needs model, the professional model, the therapeutic model; the community control models and the social reform through groups model.

(1) become specialized in those areas of the law where the poor have serious "legal problems" but will not seek legal help – *e.g.*, consumer, landlord-tenant, labor and administrative (social welfare) matters-despite the existence of a legal aid system;

(2) become decentralized and able to break down barriers of communications to inform the poor of their rights and "proactively" enforce them;

(3) be able to utilize legal strategies positively… to challenge laws and practices against the interests of the poor.[179]

It is important to highlight that Garth also described rights against landlords, governments and corporations as "political claims" involving "questions of power";[180] therefore, if the NLFs were to become involved in the betterment of the poor as a class, then NLFs had to be involved in "political" struggles[181] (his views add to the creation of the development of the CED paradox as his was a view not necessarily shared by CLCs in England[182]). This is because,

> "many of the problems of the poor stem from poverty, not from unenforced rights. Tenants, overburdened debtors, and recipients of various social security laws such as unemployment compensation possess underprivileged *statuses* recognised by the laws. The enforcements of these new welfare states laws can only ameliorate the status, not eliminate it. The creation of more jobs, the development of greater supply of housing, or the provision of a guaranteed income… cannot realistically be accomplished by lawyers using legal strategies. Broader social movements and reforms are required."[183]

He further emphasised that this is not necessarily a reason to avoid legal strategies, but that there is the danger in doing so, as the provision of lawyers to the poor will be a substitute

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[179] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 7–8.

[180] ibid. 10.

[181] ibid. 11.

[182] *See* North Kensington Neighbourhood Law Centre at section 4.3.2(2)(a) later on in this chapter.

[183] Note the CED movement aim of tackling poverty.

for real improvements in the lives of the poor, even if those lawyers succeeded in enforcing the welfare rights of a number of individuals.[184]

Garth also indicates that, when researching NLFs, close attention has to be given "to the policies and politics of the welfare state governments, to the interests and ideology of the legal profession, with its various components and divisions, and to the activities and aims of the NLFs' lawyers and their constituencies"[185] and that the left-right dichotomy is better not to be used but rather it is better "to examine the positions of the various interests groups".[186]

With this general overview in mind, and based on the available information provided by Garth and the international influences found in the Irish jurisdiction in relation to CLCs[187] a number of different jurisdictions will be described, namely the United States, England, Canada and Australia.[188] However, given the influences of England over the development of CLCs in Ireland[189], the first CLC to appear in England will be studied in detail, namely the North Kensington Neighbourhood Law Centre.

4.3.2 The different jurisdictions

(1) The United States[190]

In relation to the United States, although it has already been discussed in chapter two, it is important to highlight that although the appearance of NLFs are officially said to begin in

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[184] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 11. He also cites Abel (1979) as a source of his statement.

[185] ibid. 16.

[186] ibid.

[187] The literature review in Ireland showed that the United States and England were mentioned by the Pringle Committee. The FLAC submission to the Pringle Committee talked about the United States, England and Canada.

[188] Note that Northern Ireland will not be discussed either as given funding constrains detailed research was not possible.

[189] The FLAC submission to the Pringle Committee was heavily influenced by the English experience. *See* chapter six at section 6.2.3(1)(a) for detailed information in relation to this and also FLAC, 'Submission by FLAC to the Committee on Free Legal Aid and Advice' in *FLAC Report 1974*, 1974 26.

[190] Because the Legal Services Programme of the United States has been discussed in more details in chapter one at section 2.4, only a brief note is given in relation to this jurisdiction.

1965[191], there were three "historical" developments that inspired their birth: the provision of legal aid for civil cases by way of local bar associations with full-time salaried lawyers; the development of litigation techniques, especially the "test case" such as the *Brown* case as a way of "changing the law and promoting social reform"[192] and, "the awakening of interest in poverty and strategies for eliminating it, particularly that of "community action".[193]

It is submitted that these three historical developments, coupled with how the NLFs were perceived by people from outside the United States, gave rise to how CLCs developed in other jurisdictions – a perception that would mostly see CLCs as the answer to the question of how to meet the unmet legal need of the poor rather than as an engine for social change.

(2) England

Garth points to the very different legal environments of England and United States as in England, legal aid was initially administered by the Law Society and not by local bar associations. Also, and the political controversies over the creation and funding of the Legal Services Corporation[194] was not replicated in England.

English CLCs took form without the political views of law reforms that were characteristic of the American NLFs, particularly, the type of cases brought for example by the California Rural Legal Assistance[195] (hereafter "CRLA"), which in part, was the trigger as

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[191] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1).

[192] Garth indicates that it provided for the "unique possibilities of social change through the courts in the United States" and that its importance in social reform as a model for the NLF movement "can scarcely be exaggerated") ibid. 21.

[193] ibid. 17. For more information in relation to community action and how it affected the development of CED see chapter on the American CED. Also note that community organising was seen as too 'political' by English standards when the development of CLCs in England was taking place.

[194] *See* chapter two at section 2.4.

[195] CRLA was founded in 1966 as part of the Legal Services Programme of the War on Poverty. It was the first state-wide legal services programme. In 1967 for example, succeeded in forcing the Governor of California at the time, Ronald Reagan, "to restore $211 million to the state's MediCal program for the poor and elderly" <http://www.crla.org/major-victories> [Accessed last 8 November, 2012]. Their tactics employed were not only legal ones but also campaigns, political pressure and others. For more information on CRLA, *see* Jose R. Padilla, 'California Rural Legal Assistance: The Struggles and Continued Survival of a Poverty Law Practice' (2011) 30 *Chicano-Latino L. Rev.* 163–176 and also <http://www.crla.org/> [Accessed last 8 November, 2012].

to why English CLCs would not be wanted to be seen as political, because of their fears as to how the public would perceive them.[196]

Thus, the environment in which CLCs developed in England was different to that from the United States and at times contradictory. Although the *Legal Aid and Advice Act 1949* made provision for the establishment of legal advice centres, these were not established until 1970, with the advent of the North Kensington Neighbourhood Law Centre. Additionally and prior to that date, the poor could also rely on the charitable "poor man's lawyers centres"[197] such as Toynbee Hall.

Added to this, the English system, prior to the establishment of the North Kensington Neighbourhood Law Centre, "had no emphasis on "social change" through law".[198] Therefore, the type of activities that made the American NLFs into a movement for social change did not initially follow in England[199], as CLCs' lawyers were expected to provide no more than just individual legal services.[200]

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[196] *See* Anthea Byles and Pauline Morris, *Unmet Need : the Case of the Neighbourhood Law Centre* (Routledge and Kegan Paul 1977).

[197] For more information on the Poor Man's Lawyer, see John Mervin Jones, 'Free legal advice in England and Wales : a report on the organisation, methods, and future of poor man's lawyers/ prepared for the executive committee of Cambridge University Settlement, Camberwell, London, S.E.5 ; with a preface by Viscount Maugham' (Oxford : Slatter & Rose 1939). Here, Jones has a description of the work carried out in London by these lawyers. It indicates that at the time, there were "about one hundred and twenty-five free legal advice centres in England and Wales. Of these, fifty-five are [were] in London" (at page 13). Some were organised by the legal profession, others "run entirely as a branch of social work, by residential settlements; and although, of course, managed by lawyers, their policy is directed by the settlement itself"; and those "under the control and management of a local Council of Social Service, a Community Council, a Borough Welfare Committee, or a Personal Service Society". Some others were run by churches, missions or philanthropic societies. For example, in Chester, "free legal advice is part of the work of the Chester County of Social Welfare". Many of the problems are resolved by "common sense" by the county, but when legal aid is needed, they are referred to a solicitor (at page 28).

[198] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 58. Garth indicates that perhaps because the centres needed support from charities and from local and national law societies, the idea of social change was downplayed. Garth also points out that because "[p]overty was rediscovered by policy makers in England in the 1960s" the country faced the same pressures experienced by the United States when finding "a technical, inexpensive "abolition" of poverty"" thus, the services that could be provided by a community law centre made sense (at page 54).

[199] ibid. 60.

[200] ibid. 64.

Nevertheless, with the expansion of more CLCs in England, "a more social reformist orientation" took place[201] which made English lawyers "more wary of law reform and more receptive to strategies designed to give power to the disadvantaged".[202] Thus, in addition to the North Kensington Neighbourhood Law Centre, three alternative law centres were also created, namely, the Newham Rights Centre and Brent Community Law Centre, both in London, and Adamsdown Community Law and Advice Centre in Cardiff.[203]

These three alternative law centres were funded through the "Urban Aid Programme"[204] administered by the Home Office, and according to Garth, it seems to have been very similar to the Community Action Programme of the United States[205]. Significantly, says Garth, the Urban Aid Programme funded a number of Community Development Projects which had "a close orientation to U.S. – style community action"[206] and it had "many similarities in aim to community action in the United States".[207] These projects included the three 'alternative community law centres' just mentioned and it is here that one starts to find how the seeds of CED may have made it across the Atlantic.

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[201] ibid.

[202] ibid. 65.

[203] ibid. Note that the establishment of these law centres was important as they resemble more closely the CED law model that later ensued in the United States. Unfortunately, very little literature exists about these law centres, making proper comparisons impossible.

[204] The "Urban Aid" programme was a "partnership between central and local government concentrating on inner-city rejuvenation, or by charitable foundations". *See* Frederick H Zemans and Aneurin Thomas, 'Can Community Clinics Survive? A Comparative Study of Law Centres in Australia, Ontario and England' in *The Transformation of Legal Aid: Comparative and Historical Studies* (Oxford University Press 1999) 80-81 and footnote 14 on the same page. Zemans and Thomas indicate that "funding for the United Kingdom law centres has never been part of the mainstream of publicly funded legal services. Many centres were funded under Urban Aid... these grants were time-limited". By 1982, funding was done via local authorities, so it depended on what local authority the centre was in. The more conservative, the less funding and the less political activities (community organisation, challenging policies of local authorities) the law centres were allowed to do.

[205] However, the Urban Aid Programme did not fund two applications for funding for the law centre in North Kensington, despite two different requests, which showed the lack of local support for the centre - Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 59.

[206] ibid. 65.

[207] ibid.

Thus, the work of Garth helps to elucidate the roots of how CED as a lawyering strategy may have developed in England and Wales as alternative law centres were funded as part of community development projects.

Furthermore, the bifurcated paths created by the way CLCs were funded in the United States – those under the Legal Services Corporation and those which received no government funding – meant that CLCs outside the United States looked back at the original Legal Services Programme of the War on Poverty (including the three historical developments that had taken place prior to 1965). This was a programme which included "group work and reformist strategies"[208], adding to the paradox of how CED would develop.

Therefore, in England, the day-to-day experience of how CLCs could help people and their community determined how the CLCs developed (e.g.: do group work) and not government policy as was the case with the United States (i.e.: NLFs of the War on Poverty).

The difference in the provision of judicare also created a different reality for English CLCs. Garth points out that judicare in England pays for private solicitors to assist individuals with their cases, while in the United States, judicare never really took-off.

(a) England's first CLC: North Kensington Neighbourhood Law Centre

Back in the late 1970s, Byles and Morris[209] described the experiences of the first law centre ever to have opened in England[210] called North Kensington Neighbourhood Law Centre, located in London. It opened its doors in 1970. North Kensington was selected because, at the time, it was a densely-populated area, poor, with immigrants and poorly paid workers, with "dilapidating houses and grim conditions…with a heavy concentration of

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[208] ibid. 67.

[209] Anthea Byles and Pauline Morris, *Unmet Need : the Case of the Neighbourhood Law Centre* (n 196).

[210] Note that although the "Mary Ward Law Centre" already existed at the time, it was established as the "Poor Man's Lawyer Service, a precursor to the postwar legal aid scheme. The Legal Centre has a long history of helping people who are disadvantaged. It is part of the Mary Ward Settlement. The Settlement was established in the late 19th century to provide education and social services for the local community." The services therefore were voluntary, and not under a government scheme. For the Mary Ward Legal Centre see <http://www.marywardlegal.org.uk/index.php?option=com_content&view=article&id=56&Itemid=62> [Accessed last 12 November, 2012]

problems."[211] As such, a "considerable amount of voluntary group activity... aimed at improving local conditions" existed since 1958.[212]

The background to the setting up of the centre was a recommendation by the Society of Labour Lawyers made in the report titled "Justice for All"[213] aimed at establishing legal centres at a local level and based on the model of the American NLFs, which at the time was federally funded as part of the anti-poverty programme (i.e.: the War on Poverty).[214] This recommendation was offered in order to address the problem of the lack of solicitors in the poorest areas as well as a response "to the growing dissatisfaction with the workings of the 1949 *Legal Aid and Advice Act*"[215]. The idea was the government would fund law centres so people would not be charged for the legal services. Byles and Morris point out that it is important to highlight that the Society of Labour Lawyer's approach was in contrast to the recommendation submitted by the Conservative Political Centres in a pamphlet called "Rough Justice" in 1968,[216] under which government subsidies would be given to lawyers in order to set up practices in poor areas. However, in order to compensate for the lack of government funds to implement the proposal, the Society of Labour Lawyers also sought funding from charitable trusts to set up "one or more law centres on an experimental basis."[217] Thus, the North Kensington Law Centre was opened with grants provided by two charities for a 3 year period and a total sum of £9,000[218].

For Byles and Morris it was not surprising to learn that "an academic lawyer who had been prominent in the preparation of "Justice for All"... had recently returned from North

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[211] Anthea Byles and Pauline Morris, *Unmet Need : the Case of the Neighbourhood Law Centre* (n 196) 2–7.

[212] ibid. 7.

[213] Society of Labour Lawyers, *Justice for All: Society of Labour Lawyers Report* (n 106).

[214] Anthea Byles and Pauline Morris, *Unmet Need : the Case of the Neighbourhood Law Centre* (n 196) 3.

[215] ibid. 60.

[216] ibid. 3–4.

[217] ibid. 4.

[218] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 58; Anthea Byles and Pauline Morris, *Unmet Need : the Case of the Neighbourhood Law Centre* (n 196) 10.

America with first-hand knowledge of American Neighbourhood Law Firms".[219] Prior to the recommendation, the Society of Labour Lawyers had had a conference in Oxford, and a working group was set up in order to "outline proposals for the creation of a neighbourhood law centre"[220] in which community workers working in the area were also involved. So the functions of the law centre were seen as akin to that provided by the "traditional family doctor… lawyers working there would become accepted as part of the community".[221]

The original plan for the centre had the appointment of a community worker as well, but because of the fear of the political actions that a community worker may have initiated for example, joining a trade union, participating in demonstrations or strikes, or becoming publically involved in a controversy with the local council,[222] no community worker was appointed. Moreover, because of the political implications that may have ensued from this, not to mention the damage to the reputation of the centre and of any future law centre for that matter, it was envisaged that a receptionist would be more useful.[223] As an alternative proposal "a research and development officer" was also proposed, which also caused controversy and as such it would be "crucially reviewed after three months".[224] But because the job description was open ended, there was no direction and the person appointed "was new to the country, with no legal background and who, initially as least, interpreted his role as being largely that of a PR man 'showing the flag for the centre'." [225] Byles and Morris note that the confusion on his role came from the earlier intention of appointing a community worker and because other people involved with the centre wanted the emphasis on legal research that would also link to the legal needs of the community.[226] The appointment was terminated after one year.

Byles and Morris further indicate that,

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[219] Anthea Byles and Pauline Morris, *Unmet Need : the Case of the Neighbourhood Law Centre* (n 196) 9.

[220] ibid.

[221] ibid. 9–10.

[222] ibid. 16.

[223] ibid. 16.

[224] ibid. 18.

[225] ibid.

[226] ibid. 19.

> "[t]he potentially abrasive nature of the 'political' approach was modified by those who viewed access to the law as a means of achieving law reform, either by pointing up anomalies in the existing legislation, or by undertaking test cases and class actions."[227]

Moreover,

> "issues having strong political connotations such as group action in the housing field, immigration, community relations, and the enforcement of rights... were recognised as potential areas of conflict with local or national government, and as such, a threat to the 'non-political' role which it was felt proper that a solicitor should maintain, at least in his professional capacity."[228]

The staff of the law centre, however, wanted to expand into these areas (i.e.: housing, immigration, community relations and the enforcement of rights) as given their position within the community, they needed to provide more than just a "solicitor's service".[229] However, criticisms in relation to other than providing for a solicitor's service came from two sides: one side, the older, traditional agency[230] wanted the role of a law centre to be passive[231], while the other side wanted the law centre to be more active[232] (this side included community agencies working in the neighbourhood)[233]. There were also different views as to what the centre's goals were meant to achieve – there were those who wanted to concentrate on case work and

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[227] ibid. 20. Also on footnote 11 of chapter 3, they indicate that such an approach involves a programme designed to achieve social change by means of a transfer of economic and political power to the poor community and the active involvement of the staff in such programme.

[228] ibid. 31. *See* also the footnote 6 on chapter 4, which indicates that "the Representative of the Law Society on their management committee [the committee of a new law centre] made it quite clear that it was not the policy of law centres to undertake work of that nature.

[229] ibid.

[230] Note that under the 1949 Act legal aid was provided to people of low income means but not under a law centre format.

[231] Anthea Byles and Pauline Morris, *Unmet Need : the Case of the Neighbourhood Law Centre* (n 196) 63.

[232] More radical or revolutionary groups wanted the law centre to offer leadership and support via their legal skills they had. They wanted the centre to "take a more active role in stimulating community organisation; in the development of legal competence, and in demystifying the law for their clients. They were critical of the conventional role played by the staff as mediators, believing that this both supported the status quo and protected their won professionalism". ibid.

[233] ibid. 50–52.

those who wanted the law to be used as a resource, "as means of promoting social change."[234] Both sides did agree, however, that the main role of the centre was to "make a lawyer's service available to those not normally having such access"[235] resulting in a compromise and as such it can be argued that neither side won the debate.

Interestingly, Byles and Morris warn that drawing "too close a comparison" between the developments of meeting the legal needs in the United States and England was "unwise" as,

> "whereas in the USA legal services were seen as part of the much wider 'war on poverty', in England the aim at that time was a more modest one, namely to provide professional service to those who did not normally have access to the legal profession."[236]

It is also interesting to point out that at the time Byles and Morris published their book, another law centre, Newham Law Centre, was founded, which in their opinion, was at the other end of the spectrum of what law centres did using what we would now call the 'strategic approach'[237] to legal aid.[238] This is because the approach this new law centre was using was one of a socio-legal nature as it sought to

> "provide an opportunity for lawyers, social workers and community workers to share their knowledge and experience, and to involve the local community at grass roots level, not through any advisory board or committee, but through active involvement."[239]

This approach was seen as multi-disciplinary and was much more practical if they were to work with and through local groups rather than simply deal with individual cases.

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[234] ibid. 61.

[235] ibid.

[236] ibid. 60.

[237] For further details on the strategic approach, *see* chapter five at section 5.3.1.2.

[238] Unfortunately, no more information is provided by Byles and Morris about this centre nor was I able to get any more information about its development.

[239] Anthea Byles and Pauline Morris, *Unmet Need : the Case of the Neighbourhood Law Centre* (n 196) 65.

Byles and Morris also indicated that since the report, the North Kensington Neighbourhood Law Centre had extended its work to include community and local groups[240] and that the rationale to have such a multi-disciplinary approach came about from a previous study.[241]

It is also important to highlight that in relation to the Society of Labour Lawyers' report[242] recommending the establishment of the law centres, Michael Zander wrote a paper on the development of the NLFs which in turn became an appendix to the Society of Labour Lawyers' report.[243] Zander indicated that at the time,

> "[t]here are [were] significant differences between the circumstances in which the American institution evolved and the present situation in this country. In America, for instance, legal aid provisions are considerably less satisfactory. It would be wrong to suggest, therefore, a comparable institution should be developed here simply because the NLF (neighbourhood law firm) has been so successful in America. *Equally, however, it would be irresponsible to ignore the many lessons to be learned from its success*... Lastly, *the American NLFs have concentrated, as the local legal centres would concentrate, on advising and representing the interests of the poor in society, who have in the past usually remained outside the range of the private professions. The similarities are striking* and the analysis of the American system provides ample justification for confidence that the local legal centres would be institutions equal to the demands to be put upon them."[244]

Therefore, the American NLFs' model was not transplanted simply because NLFs were successful but rather because of the similarities found when providing for legal services to the poor.

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[240] ibid. 93. See also footnote 3 on the same page.

[241] Byles and Morris refer the reader to P. Morris, J. Cooper and A. Byles, "Public attitudes to Problem Definition and Problem solving: A pilot study", *British Journal of social work*, vol. 3, no. 3.

[242] Society of Labour Lawyers, *Justice for All: Society of Labour Lawyers Report* (n 106).

[243] ibid. 40.

[244] ibid. (my italics).

Zander further elaborated on the idea of the community law centre. He saw the law centres as operating "by way of extension not incursion upon, the existing arrangements for legal aid and advice"[245] and that by establishing law centres, "the image of the legal profession as a whole" would be improved "significantly."[246]

Did this mean that there was a hidden agenda to establish the law centres in order to improve people's view about the profession rather than ameliorating the legal needs of the poor? This seems to be the reason as to why there was a fear from certain parts of the profession in relation to "political" activities, as they were seen as activities that would damage the profession as whole. It is important to highlight that the political or community action carried out by the NLFs in the United State were part of the roots of CED. This lack of political involvement may offer an answer as to why the CLCs in the form of Newham Law Centre were established only as pilot experiments using a more strategic approach and why the CED paradox developed, embedding the seeds of CED onto the CLCs.

Initially, the 'political' fears and the lack of community workers within the law centres in England prevented those English CLCs having the same impact as those NLFs found in the United States. It is argued that this in turn affected the lack of awareness of the CED movement among CLCs as it took away any redistributive economic agenda that may have ensued.

In relation to the administration of the centres, the Society of Labour Lawyers proposed to have a national management committee and also local administrations composed of staff from the centre, members of the community and "possibly other members of the legal profession."[247] It also saw the role law students could play, as they indicated that the American experience suggested that there was:

> "great scope here both for improving the legal education by making it more concrete and connected to the problems of the real world and at the same time getting a socially useful contribution from the students. Students could, for instance, be employed or encouraged to work under supervision on a voluntary

[245] ibid. 41.

[246] ibid. 49.

[247] ibid. 46.

basis in various kinds of community advice centres. The same is true of students undertaking their professional training in preparation for the bar or solicitors' final examinations."[248]

The cases cited as examples of the works of the NLFs carried out in the United States challenging state departments, particularly in housing and welfare issues, may also have been viewed as too "political" for England, thus they do not seem to appear in the Society of Labour Lawyers' report. However, the seeds of CED, particularly as to what the law could accomplish on behalf of the poor did not go unnoticed by some – as it will be shown, Ireland did follow the English example, but also those from other jurisdictions as well, including the United States.

(3) Canada

In relation to Canada, the development of legal aid was influenced by the developments of legal aid in the United States and the United Kingdom.[249] For Canadian lawyers, it was the judicare model of the English legal system that was the most attractive, while students and "idealistic lawyers"[250] wanted a "movement for change"[251] based on the American experience. The debate as to which approach to take when delivering legal aid services became known as "a Great Canadian Debate"[252] as it was a matter of selecting what type of system of legal aid to have. Experiments on legal aid by "idealistic students and members of law faculties"[253] took place often in the form of clinical education programmes which were geared towards the American NLFs model and thus, "legal assistance clinics were set up".[254] What differed from England, Garth indicates, was that the Canadian Federal Government had seen the virtues of the American NLFs, and in 1971 made, under the

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[248] ibid. 36.

[249] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 85; *see* also pages 101–102.

[250] ibid. 85.

[251] ibid.

[252] ibid.

[253] ibid. 86.

[254] ibid.

Canadian federal Department of Health and Welfare, ""demonstration" grants to four community law projects, all of which had begun through law student-law faculty initiatives".[255]

These community law projects were Parkdale Community Services in Toronto, Ontario; Dalhousie Legal Aid Service in Halifax, Nova Scotia; Community Legal Services Inc. in Point St. Charles, Montreal, Quebec; and Saskatoon Community Legal Assistance Society in Saskatoon, Saskatchewan.[256] Garth specifies that "[t]hese federal grants, according to all commentators, provided the decisive catalyst for legal aid change".[257] All of the projects "promoted a social-change-oriented NLF model" such as

> "preventive law, drafting and lobbying for reform;... organizing and animating community groups,... research,... the elaboration of a "truly community clinic, responsive to the needs and priorities of the people of the districts" and the tactic of community organization, as reflected in the plan to hire two experienced organizers".[258]

The federal grants thus fostered "NLF innovation, and they succeeded to a remarkable extent, providing powerful models of and advocates for provincial change".[259]

Garth indicates that Ontario's judicare system was based on the English model. The only difference was that, at the time, in Ontario, the Law Society administered both criminal and civil legal aid. Therefore, Ontario faced similar issues to those in England, particularly because the legal profession was wedded to the judicare model, resisting any more radical changes.[260] Parkdale Community Services therefore challenged the judicare system and thus created "independent" local clinics separate from the provincial legal aid system. With time, a "statutory non-profit corporation named Legal Aid Ontario" was created which took over the

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[255] ibid. 86–87.

[256] ibid. 87.

[257] ibid. Garth quotes commentators such as "Brooke, 1977:536-37; Cowie, 1975 in Canadian Development Council, 1975: 315; Penner, 1977: 148").

[258] ibid.

[259] ibid.

[260] ibid. 99.

Law Society's control of legal aid, developing "staffed neighbourhood legal aid clinics" to "complement" the judicare system".[261] And once the funds of Parkdale Community Services had run out, the Ontario Legal Aid funded it as well as recognising the importance of such a clinic.[262]

This independence closely resembles the creation of the independent law centres in Ireland, as even though some predate the government scheme, they run parallel to the government funded legal aid scheme.[263] It is also important to note that if there is anything to learn from the Canadian experience, it is the role clinical legal education can have in furthering the role of CLCs (and CED) in Ireland.[264]

(4) Australia

In relation to Australia, the civil legal aid system adopted was modelled on that of England, that is, a judicare system administered by the Law Society of each state[265] and, just as in England and Canada, the "social model of advocacy being developed in the United States"[266] became very attractive to students and "concerned legal professionals"[267], thus leading to the formation of voluntary law centres.

One of the centres formed was the Fitzroy Legal Service in Victoria, which was also influenced by the American NLFs when introduced as a proposal. In contrast to the experience in England, however, the Fitzroy centre received government funding as a pilot scheme but unlike Canada, no other "pilot centres" were created. Added to this, the election of a new Labour government[268] meant that a "new and ambitious legal aid scheme" [269] was created,

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[261] ibid. 100.

[262] ibid.

[263] Northside Community Law Centre and FLAC predate the government scheme.

[264] *See* section 4.2.1.4 for more information on clinical legal education and CED.

[265] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 105.

[266] ibid.

[267] ibid.

[268] Garth observed it was the first Labour government in twenty three years. ibid. 106.

[269] ibid. 105.

forming the Australian Legal Aid Office (hereafter "ALAO") in the early 1970s, which supplemented State programmes via a "network of legal advice centres, staffed by full-time salaried lawyers"[270] (albeit they lacked the other components of the American NLFs such as "the role of law reform", "group work", and others[271]). Thus, CLCs became part of a government-run legal aid scheme.

It is interesting to point out that although the CLCs run by the ALAO did not have a "community action"[272] component or were not involved with the "anti-poverty orientation of the federally-sponsored NLFs" [273] (which meant they were never really seen or developed "into an innovative alternative to traditional legal aid"[274]) CLCs were also seen as a way of combating poverty.

Just as happened in England, Canada and the United States, "poverty was rediscovered in Australia in the 1960s"[275] and because CLCs were also seen as part of an antipoverty programme rather than a legal one, the concept of CLCs was also "embraced" as "a tool for combating poverty".[276] However, subsequent change of government from a Labour to a Liberal-National coalition meant that the plans about the creation of CLCs under a combat poverty approach changed. The new government enacted an independent Legal Aid Commission in each state, which also lessened the role of the ALAO[277] and government views about role of CLCs in combating poverty. Still, some States such as New South Wales, had started to operate a "Community Law Centre" since 1975 (which was run by the Law Society)

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[270] ibid. 106 Garth indicates that in 1973-1974 the ALAO advertised for lawyers to join new offices and "by 1975 the ALAO had established thirty-nine new offices located in shopping centres and similarly accessible locations". ibid. 107.

[271] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 106. *See* also page 107.

[272] ibid. 116.

[273] ibid.

[274] ibid.

[275] ibid. 110.

[276] ibid.

[277] ibid. 113–114.

and in 1977 had founded the Redfern Legal Centre (an independent law centre funded almost in its totality by the Sidney Municipal Council)[278].

Developments in Australia thus show how the idea of CLCs also made it into government programmes. Although they did not follow the model developed by the NLFs, the alleviation of poverty also appeared to be present, thus allowing for the seeds of CED to grow within the concept of what CLCs could do and achieve – adding to the creation of the CED paradox. It is submitted that further research would be needed to assert if the practice of CED law and CED lawyering indeed took off in Australia.

4.3.3 Parallel comparisons among different jurisdictions

In giving an overview and comparing the more day-to-day work of CLCs among England, Australia and Canada (namely Ontario)[279], Zemans and Thomas indicate that in Australia, by 1997, there were 151 community law centres[280] and that starting from the Fitzroy Legal Service in 1973, CLCs had evolved into "community-based and community-managed organisations, structure[d] to provide 'free, accessible and easy to understand legal services'."[281]

They also note that although funding was always an issue, CLCs in Australia had become an integral part of the "legal aid infrastructure"[282] and despite the fact that a large part of their funding came from the government, CLCs in Australia "always stressed their independence, from both the government and the legal profession"[283]. However, despite an increase in funding for CLCs by their Labour Government in 1995 in recognition of their importance and as an endorsement of the principle of community control as an important component to ensure CLC's "effectiveness and accessibility"[284], a new conservative

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[278] ibid. 115.

[279] Frederick H Zemans and Aneurin Thomas, 'Can Community Clinics Survive? A Comparative Study of Law Centres in Australia, Ontario and England' (n 204).

[280] ibid. 65.

[281] ibid. 66.

[282] ibid. 67.

[283] ibid.

[284] ibid. 69–70.

government in 1996 reduced funding for CLCs and increased their managerial control. As a result many law centres were forced to close down[285] and/or reduce the level of community representation.[286]

In relation to Ontario, Zemans and Thomas indicate that CLCs here saw the introduction of the concept of the community legal worker, a concept not seen in other CLCs. These community legal workers "were primarily community organisers whose focus was community legal education, law reform and community development"[287]. They were first employed in Parkdale, which opened its doors in 1971. Parkdale was created to complement the services of the private bar under their judicare model of legal aid.[288] Interestingly though, to ensure there was community control and the centre's mandate for law reform was preserved, autonomy in relation to their policy and administration was considered a "necessary".[289] Zemans and Thomas also indicate that Ontario had two types of centres (or clinics), generalist and specialist, and that specialist clinics also included advocacy groups, a fact that has not appeared in other literature before.[290]

Thus, in Ontario,

> "[c]linics such as the Advocacy Resource Centre for the Handicapped, Justice for Children and Youth, the Correctional Law Projects… have made invaluable contributions to the development of laws and policies for the betterment of all Ontarians. These speciality clinics have been able to devote more resources to law reform activities than general service clinics. As well, they are likely to have well established links to social/political movements with the same goal… *specialty clinics have been able to develop larger strategies, working with*

[285] ibid. 70.

[286] ibid. 71.

[287] ibid. 71–72.

[288] ibid. 72.

[289] ibid. 73.

[290] ibid.

others in a larger social/political movement, in order to target resources and skills effectively."[291]

In relation to England and Wales, Zemans and Thomas indicate that "high-level test cases have become much more a specialty of national not-for-profit pressure groups such as the Child Poverty Action Group, Shelter, and Liberty."[292] They indicate that,

> "[l]aw Centres in England and Wales have never been as significant an element in the legal aid system as the legal clinic in Australia or Ontario. The historic lack of substantial funding for Law Centres has considerably limited their development and effectiveness. Moreover, Law Centres are now being tempted to compete with the private bar and the advice sector for limited funds."[293]

On a more general note, Zemans and Thomas also argue that law centres "have been defined by two different notions of community".[294] While generalist centres organise themselves in relation to the geographical communities they serve, offering services in a areas other than commercial law and concentrate mostly on "referral, information, advice and education"[295], specialist centres organise themselves according to the respective interest of communities of common interest such as tenants, consumers or refugees. Their services are thus geared towards solving problem in these specific areas and as such, they "conduct more test cases and carry out significant law reform activities."[296] Nevertheless, "[a]cross all centres, assistance to individuals is a major, and often predominant, aspect of centres' work".[297]

As a result, one can see the seeds of CED spread across different jurisdictions and among the different type of work they do. Although there is no substantive "CED law"

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[291] ibid. 78. (my italics).

[292] ibid. 83. Zemans and Thomas point out that in other jurisdictions, this type of work is done by the specialist law clinics and that in England, both specialty clinics and "lawyer-employing pressure groups" exists.

[293] ibid. 84.

[294] ibid. 67. On the one hand one finds those of a general remit while on the other are those who specialise.

[295] ibid.

[296] ibid.

[297] ibid. 68.

practice, some of their work such as that related to working with larger social and political movements may have some substantive CED components. The notion of community is also present, either defined geographically or as part of a community of interest. And although individual case is dominant, assisting the needs of community groups is also present. [298]

In relation to the types of communities CLCs serve, one find the two types of law centres, the generalist and the specialist co-exist in Ireland, despite their low numbers.[299] Thus there are a number of specialist centres such as the Irish Traveller Movement Legal Service (working on behalf of the traveller community), the Immigrant Council of Ireland (working on behalf of immigrants) or the Mercy Resource Law Centre (working on behalf of the homeless). In relation to the generalist type, one may argue that NCLC and BCLC belong to this category. FLAC's activities are mixed, albeit they are geared towards the generalist centre type because of their activities.

When looking at the parallel comparisons between jurisdictions, it is also important to highlight that the seeds of CED developed within what community law centres did as "alternative options" to government run legal aid programmes such as the case of the CLCs in England or as part of government programmes such as the case in Australia or Canada.

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[298] In linking the writings of Thomas and Zemans to the Irish experience, in relation to advocacy groups and their role within the Irish legal aid landscape, the question that arises is whether advocacy groups in Ireland, specifically those that target a specific client group, such as the elderly, handicapped, environment, children and youth are also part of the Irish legal aid/CLCs landscape in the same way as in Ontario. It is unknown if these advocacy groups have been subject to academic research within Ireland. The fact that advocacy groups in Ireland receive funding from an array of sources may have caused their relationship to legal aid to go unnoticed. Moreover, the argument that advocacy centres or groups could form part of a broader access to justice approach is uncertain as further research would be needed.

These organisations could also be researched as part of the development of CED as a whole in Ireland. This is because groups such as Barnardos (they offer services to children and their families) and Focus Ireland (they service the homeless and those at risk of becoming homeless) provide services to their clients but they also consider themselves campaign organisations aimed at changing legislation. For more information about Barnardos go to: <http://www.barnardos.ie/> [Accessed last 2 August, 2012] and for more information about Focus Ireland to go: <http://www.focusireland.ie/> [Accessed last 2 August, 2012]. Another group, The Society of St. Vincent de Paul (working towards tackling poverty, including social justice) used to offer legal services but this is no longer the case (conversation with Gerry Whyte, 2012). For more information go to: <http://www.svp.ie/Home.aspx> [Accessed last 2 August, 2012].

[299] The vast amount of NGOs doing advocacy work in order to influence policy (including legislation) in Ireland may help to explain why there is such a low number of independent law centres within the country. However, further research would be needed to identify if this assertion is correct.

4.4 Section Three: The development of the CED paradox and the emergence of CED lawyering in Ireland

Prior to discussing the development of the CED paradox and the emergence of CED lawyering in Ireland (which is also further analysed in the next chapter) it is important to understand how the government scheme of civil legal aid operates in Ireland. This is because this understanding helps to explain why CLCs in Ireland have developed in a way that differs greatly from their counterparts in other jurisdictions and why it has been the search for an alternative to the statutory civil legal aid scheme that has prompted the seeds of CED to grow – adding a further understanding as to how the CED paradox was created.

4.4.1 An overview of the government scheme of civil legal aid in Ireland

Civil legal aid in Ireland, in the same way as its counterpart in the United States, is provided by a two-tier system.[300] The statutory Legal Aid Board provides a service model of legal aid[301] while the voluntary sector offers a strategic model.[302] Independent CLCs in Ireland are part of the voluntary sector and thus not subject to any imposed constraints at to the type of work they can do.[303]

(1) Background to the statutory scheme

Back in 1969, spurred by the impetus of the access to justice movement[304] (including the formation of CLCs based on the American experience) as well as by the idea that legal education should not just be taught at a theoretical but also at a practical level, a student-run organisation aimed at highlighting the unmet legal aid need in Ireland was established.[305] This new organisation, called the Free Legal Advice Centres (hereafter "FLAC"), successfully

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[300] *See* chapter two at section 2.4.4.1 for explanation of the two-tier system applicable in the United States.

[301] *See* chapter five at section 5.3.1.2 for further information.

[302] Ibid.

[303] Note that not all the independent law centres receive state-funding and those who do, are not necessarily funded by the Department of Justice.

[304] See for example, Francis Regan, Alan Paterson, Tamara Goriely, and Don Fleming, *The Transformation of Legal Aid: Comparative and Historical Studies* (n 73) 1-2, where the editors describe the "optimism" of legal aid literature of the time.

[305] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 14) 302-303.

opened a number of advice centres in Dublin and within a few years it also had underlined the problems caused by a lack of legal aid.[306] By 1974, FLAC had dealt with more than 8,000 cases[307] and when it threatened to close its service, a committee charged with making recommendations on the provision of civil legal aid and advice at a state level was established by the government in July 1974.[308]

Three years later, in 1977, the report to the Minister for Justice from the Committee on Civil Legal Aid and Advice (hereafter "the Committee") was completed and because it was chaired by Mr. Justice Denis Pringle, the report became commonly known as the "Pringle Report" (hereafter "the Report"). Among its recommendations, which were influenced by the arguments posed by FLAC and others[309], was the call for the establishment of a comprehensive scheme of legal aid and advice in Ireland, which included the establishment of community law centres.[310]

Although the Report was published over thirty years ago, it is often quoted as the type of legal aid and advice scheme Ireland should have, that is, a comprehensive civil legal aid scheme (hereafter "the scheme").[311] Because its recommendations were based on a bygone era, it was deemed necessary to study in more detail the contents of the Report and confirm if it is indeed relevant to the existing scheme of civil legal aid and advice operating in Ireland (be it government or NGO run). It is important to highlight that from the outset, the scheme recommended by the Committee only applied to natural persons; thus any corporate body was

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[306] ibid. 304. FLAC produced its first Annual Report in 1972 indicating that family law needed to be reformed.

[307] ibid. 304.

[308] ibid. 305. Despite the fact that FLAC was a "Dublin-based phenomenon" the issue of legal aid was a national need.

[309] Mel Cousins, 'Legal Aid in France and the Republic of Ireland in the 1990s' (n 83) 162.

[310] It is important to note that in relation to the need for a comprehensive scheme the Report indicated that the need for such scheme "was already well recognised" so there was no need to assert if a comprehensive scheme was needed or not. Thus, the Committee covered, the type and service to be provided, for whom and subject to what conditions, how it should be provided, administered and its costs and how the costs should be met. *See* Dennis A Pringle, 'Report to Minister for Justice: Committee on Civil Legal Aid and Advice' (Stationary Office 1977) 22.

[311] One of the proponents for the model, FLAC has often addressed the issue of access to justice and the type of civil legal aid scheme Ireland should have, quoting the Pringle Report constantly.

out of its reach,[312] curtailing the use and extension of legal aid services on behalf of community groups.

(a) The Pringle Report

The "Warrant of Appointment" of the Report indicated that the Committee was,

> "[t]o advise on the introduction at an early date of a comprehensive scheme of legal aid and advice in civil matters and to recommend on the form, nature and administration of the scheme and on the legislation necessary to establish it."[313]

As a result, the conclusion of the Committee was that legal aid advice and assistance was to be provided through a combination of judicare and service models of legal aid, by which lawyers in private practice would be placed on a legal aid panel and community law centres and legal advice centres would be staffed by lawyers funded by the government.[314] The way of providing legal aid and advice services as envisaged by the Committee was one under which services would be provided by "private practitioners" [315] and "legal aid and advice centres". [316] The Report also provided for an interim scheme, knowing that the comprehensive scheme would take longer to be put into place.[317]

In relation to the comprehensive nature of the scheme, the Committee asserted that a definition of what "comprehensive" meant required a "discussion on the philosophy behind a legal aid and advice scheme"[318] indicating that there were three approaches as to what comprehensive meant.

These three approaches were,

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[312] Dennis A Pringle, 'Report to Minister for Justice: Committee on Civil Legal Aid and Advice' (n 310) 13.

[313] ibid. 4.

[314] ibid. 14.

[315] ibid. 78.

[316] ibid.

[317] ibid. 134–135.

[318] ibid. 23.

a) approaches that "cater only for "known" legal needs"[319];

b) approaches that cater for "hidden" legal needs and provide for the pursuit of test cases[320] (the person does not avail of legal assistance perhaps because of poverty, ignorance of a legal remedy or because of "reluctance to approach a solicitor"[321], and

c) the combination of both of the first two approaches which in turns "encourages the pursuit of legal remedies – sometimes referred to as an "activist" approach."[322]

However, the Committee highlighted that the "activist" approach may help to encourage "the pursuit of legal remedies" and recognised that this type of encouragement was "not always in the interests of those who have legal difficulties". [323] Therefore, the Committee indicated that when a person experience a "partly legal and partly social" problem, it was better for the person not to go through the legal proceedings route to solve the problem.[324]

Hence, the comprehensive legal aid and advice scheme, as articulated by the Committee, was a scheme that catered for the everyday known legal needs of the individual, provided for legal education and litigated when essential individual or community rights were infringed. It was also a scheme that recognised that not all problems with a legal angle were best resolved by providing a legal solution or answered by legal professionals and that it was better to refer the person to the appropriate body working hand-in-hand with the legal service provider. Their version of the comprehensive scheme was not a scheme that provided legal aid and advice for all free of charge or one that would cover all sorts of legal issues.

The Report also indicated that it could not justify paying of solicitors' fees for advice or assistance when that service could be provided "more effectively" and "at less cost" by

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[319] ibid. 23–24.

[320] The Report indicates that under their vision of the comprehensive scheme, test cases should be covered under the Scheme to bring cases, for example, "for the purpose of enforcing constitutional rights". ibid. 25. This is because of "their potential importance to the community as a whole or for particular social groups" ibid. 57.

[321] The Report indicates that in the United States and England, law centres have proved "very effective in uncovering and meeting the hidden need" and that FLAC's experience suggested that there was a hidden need in Ireland. Dennis A Pringle, 'Report to Minister for Justice: Committee on Civil Legal Aid and Advice' (n 310) 24.

[322] ibid. 23.

[323] ibid. 25.

[324] ibid.

other bodies, such as the Community Information Centre,[325] recommending as well that coordination between legal aid and advice and other social services should take place, so the person could be referred to appropriate bodies if needed.[326] The Committee also recognised that a "ready-made blueprint for the ideal service" did not exist so it would have to be worked at.[327]

Interestingly, however, is that in relation to the administration of a legal aid and advice system, the Report quotes the submission of the then President of the High Court, Mr. Justice Finlay, indicating that the Department of Social Welfare was better positioned to administer legal aid and advice.

Mr. Justice Finlay submitted that:

> "it would seem to me extremely desirable that the administration of a system of free legal aid in civil cases should be divorced as far as is possible from direct Government Agency ... it would seem to me therefore that legal aid in civil cases should be seen from the beginning as a social welfare provision and not as a function of the courts themselves nor the Department of Justice."[328]

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[325] ibid. 40–41. The Report acknowledges the fact that the solicitor needs to be paid for what is legal advice and assistance and not when the advice has anything to do with legal matters. However, drawing the difference between legal and non-legal (i.e.: justiciable problems) may be harder to assert at times.

[326] ibid. 42.

[327] ibid. 26. Compared to the current way legal aid and advice is delivered in Ireland, it could be argued that legal aid does cater for those three approaches described by the Committee, albeit not all of the approaches are funded by the Department of Justice as the government does cater for the hidden and non-hidden legal needs of persons by providing funding for some of the independent law centres and citizens information centres under the Dept. of Social Protection as it is the case of the Northside Community Law Centre or Dept. of the Environment as it is the case with Ballymun Community Law Centre. What is needed is more financial support to ensure the services provided are effective, but the basis for a comprehensive scheme is already found within the current system. This is because, as said, a system of legal aid and advice has been developed outside the remit of the Department of Justice. So, within government funded legal aid, there is also a two-tier system of legal aid and advice, one provided by the Dept. of Justice, the other provided by other government departments, but often ignored in the available literature. Although Citizens Information Centres do not provide legal advice per se, information about entitlements may highlight a legal need (although the research of citizen's information centres in Ireland is also lacking, Dr. Morag McDermont from the University of Bristol has started to conduct research in the UK equivalent "Citizen's Information Bureaux" focusing on how these create legal consciousness) and this is why it could be argued they should be included as part of the system of legal aid and advice (research into the role of Citizens' Information Centre however is outside the scope of this research).

[328] ibid. 118.

Another argument against giving the Department of Justice political and financial responsibility was that because of the increasing importance of the primary function of the Department of Justice[329], there was "a danger that the time and resources necessary for the proper development of a legal aid scheme would not be forthcoming and that, in consequence, the efficiency of the scheme would be impaired."[330]

There were others, however, who saw all government departments as having a "social dimension" and who argued that the lead role should be played by the Department of Justice, even though there could be an argument for having the legal aid and advice service as part of social welfare or health.[331]

The argument for having the Minister for Health or Social Welfare in charge was that legal aid was a social service, but the Report indicated "it was not strongly supported".[332] The view from the proponents of having the Department of Justice having "control" was that

> "the basic purpose of a legal aid and advice scheme is to make the courts and the services of legal practitioners more easily accessible to persons of limited means...it would be logical to have control of the two [criminal and civil] schemes under the same agency."[333]

However, the Report left the door open as to which government department would have control of the legal aid and advice scheme, indicating that the Committee, "did not reach an agreed view on the question of political responsibility for legal aid and advice services... this is [was] a matter for decision, in any event, by [for] the Government".[334]

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[329] The primary function of the Department of Justice, indicates the Report, was that as expressed under the Devlin Report: "to preserve law and order and protect the community against crime through the Judiciary, the Garda Siochana and the Prison System". ibid. 122.

[330] ibid.

[331] *See* submission of the Institute of Public Administration quote (ibid. 118). *See* also pages 119-120. It is interesting to note also that a subcommittee of the Pringle Committee met in London in 1974, which Professor Zander attended, indicating that administration/control of legal aid in the United States was under the Office of Economic Opportunity (thus advocating for control not on the Department of Justice but some other body under which the public's view is more acceptable and not associated with justice).

[332] ibid. 120.

[333] ibid. 120–121.

[334] ibid. 125. The other option submitted was to give the responsibility given to the Attorney General.

Also, there was recognition that the overall approach towards the development of legal aid and advice service should be flexible and it should be provided in the legal aid legislation[335] and coordinated with other social services.[336]

In relation to CLCs,[337] the Report noted the attention CLCs had received in the years preceding the publication of the Report[338] and it further commented on the practical advantages of full-time law centres, particularly in relation to overcoming the psychological barriers and the creation of expertise particular to the "underprivileged".[339] (Although the State did establish law centres beginning in 1980 these were not of the strategic variety contemplated by the Pringle Committee. In contrast, the NGO sector did establish a limited number of strategic law centres such as NCLC[340]).

Therefore, it could be argued that the model of legal aid envisaged by the Report is in place, albeit through a combination of State and voluntary action rather than exclusively provided by the State.

It could also be argued that the Report also implicitly facilitated the view that legal services should also be coordinated with other social services, and that the responsibility of providing legal aid should not rest solely with the Department of Justice as other government departments could also look after the provision of civil legal. Moreover, by recognising that a person may face legal and social problems and that the resolution of the legal problem may not necessarily resolve the social problem, it further accepted that the resolution of social

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[335] ibid. 149.

[336] ibid. 150.

[337] The Pringle Report covers the different type of law centres (i.e.: full time, part time, location and others) *see* ibid. 87–116.

[338] ibid. 87–89. The Report makes references to three sources: Society of Labour Lawyers, *Justice for All: Society of Labour Lawyers Report* (n 106) 61, indicating that valuable experience could be obtain from the neighbourhood law firms of the United States (*see* also section 4.3.2 (1) of this chapter and section); Jerry Alan Green and Ellen Sickles Green, 'The Legal Profession and the process of Social Change: Legal Services in England and the United States' (1969-1970) 21 *Hastings L.J.* 563, describing how the neighbourhood law office operates in that the lawyer acquires expertise at handling the unique problems faced by the poor; and Pauline Morris, Richard White, and Philip Lewis, *Social needs and legal action* (Robertson 1973) (P. Morris, was the Research Director of the Nuffield Foundation's Legal Advice Research Unit at the time). It is interesting to highlight that the Nuffield Foundation funded the "experimental/pilot" law centres in England, which contain the CED law ethos, the Society of Labour Lawyers piloted the North Kensington Law Centre, the first law centre in England.

[339] Dennis A Pringle, 'Report to Minister for Justice: Committee on Civil Legal Aid and Advice' (n 310) 90–91.

[340] *See* chapter six for more information on these types of CLCs.

issues are also key – a point that CED lawyering, by its very definition, agrees to as it is a strategy that addresses urban poverty.

Yet, the failure of the State to implement the recommendations of the Report inadvertently gave independent CLCs the space in which to experiment, to provide legal aid and assistance and legal education not only to specific geographical communities but also to different interest groups, further nurturing the growth of a distinctive Irish-style of CED, with the practice of CED lawyering at its heart.[341]

(2) The Statutory Scheme

The background to the statutory scheme dates back to 1979, when the European Court of Human Rights held, in *Airey v. Ireland*,[342] that Ireland's failure to provide legal aid for judicial separation was a violation of a person's rights under, *inter alia,* Article 6(1) of the European Convention on Human Rights. In response, the State committed to providing civil legal aid initially in the area of family law under an "extra-statutory scheme" which provided for the establishment of a Legal Aid Board and state-controlled law centres[343] but did not follow the recommendations of the Pringle Report such as organising legal education programmes on legal rights and research on legal aid[344], and "eschewed any commitment to strategic work on behalf of the Board's clientele".[345]

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[341] I mean an Irish style to differentiate it from the American jurisdiction. I see the Irish style of CED lawyering as one comprising different communities (not just geographic but also of interests), one that offers legal advice and assistance to community groups and also individuals and one that practices vast amounts of community legal education as a way of empowering individuals and their communities. It is also one that it is so embedded in the day-to-day work of community law centres that sometimes it is hard to distil. It is also a style that resembles the practice of what is known in the United States as community lawyering, albeit it is not the same (although this might change in the future, as Jones and Gilmore have indicated "[t]he scholarship on community lawyering [in the United States] continues to emerge". Susan R. Jones and Dorcas Gilmore, 'Community Lawyering' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009) 237.

[342] [1979] 2 E.H.R.R. 305.

[343] State-controlled law centres provide legal advice and, when appropriate, legal representation in a limited number of areas (mostly family law). The main difference with the independent CLCs is that they do not follow the strategic approach. For more information on the strategic approach, refer to chapter five at section 5.3.1.2.

[344] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 14) 288–289.

[345] ibid. 289.

The statutory scheme which provided for civil legal aid via the Legal Aid Board (hereafter "LAB") was eventually enacted in 1995, with the passing of the *Civil Legal Aid Act 1995* (hereafter 'the 1995 Act') and subsequent amendments.[346] Under the 1995 Act, there are a number of "designated matters" excluded from the remit of legal aid, matters relevant to public interest law, particularly when groups want to create social change.[347]

The legislation provides for a further sixteen different restrictions on the availability of legal aid which include a merits test and a means test. Even where a person qualifies for legal aid, it is not free and the person has to make a contribution, except in cases of undue hardship.

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[346] For a full list of the regulations and other Acts amending it, see the Irish Statute Book website at: <http://www.irishstatutebook.ie/isbc/1995.html#a32_1995> [Accessed last 16 May, 2012]. In addition, the statutory scheme is complemented by some ad hoc schemes such as the Mental Health Legal Aid Scheme, the Attorney General's Scheme and the Coroner's Court Legal Aid Scheme.

[347] Section 29(a) i-ix of the 1995 Act mention the exclusion of areas "designated matters":

> (i) defamation;
>
> (ii) disputes concerning rights and interests in or over land;
>
> (iii) civil matters within the jurisdiction of the District Court (Small Claims Procedure) Rules, 1993;
>
> (iv) licensing;
>
> (v) conveyancing;
>
> (vi) election petitions;
>
> (vii) a matter as respects which the application for legal aid is made in a representative, fiduciary or official capacity and the Board, having regard to any source from which the applicant is or may be entitled to be indemnified in respect of the costs of the proceedings concerned and any resources of the persons who would be likely to benefit from a successful outcome of the proceedings for the applicant, is of opinion that legal aid should not be granted;
>
> (viii) a matter the proceedings as respects which, in the opinion of the Board, are brought or to be brought by the applicant as a member of and by arrangement with a group of persons for the purpose of establishing a precedent in the determination of a point of law, or any other question, in which the members of the group have an interest;
>
> (ix) any other matter as respects which the application for legal aid is made by or on behalf of a person who is a member, and acting on behalf, of a group of persons having the same interest in the proceedings concerned.

It is worth noting that the last two paragraphs explicitly exclude test cases and representative actions, two useful tools for protecting the interest of marginalised groups through the courts.

Available from: FLAC, 'Civil Legal Aid in Ireland: Forty Years On' (FLAC April 2009) 6. Available at <http://www.flac.ie/download/pdf/cla_in_ireland_40_years_on_final.pdf> [Accessed last 12 November, 2012].

It is important to highlight that FLAC has acknowledged that although community organisations provide vital services, they do not and, it is not their role, "to provide the legal services omitted by the civil legal aid scheme."[348] However, with the current state of affairs of the economy, the voluntary sector will continue to play an important role in the provision of legal aid for the foreseeable future and their involvement in issues of poverty is likely to increase.

4.4.2 The development of the CED paradox

The unique experience in the United States of how NLFs developed and their eventual dismantling under the establishment of the *Legal Services Corporation Act 1974* influenced how the CED movement would develop in the United States and how CED lawyering would come to the fore.[349] In contrast, CLCs outside the United States, which were modelled on the NLFs of the War on Poverty of the 1960s, continued to exist and grow. CLCs, at least in England and Ireland, became part of an access to justice movement with the aim of providing free legal aid to all, taking for granted the role CLCs had in addressing issues of poverty in the United States. As such, the seeds of CED became embedded into the concept of CLCs and overtime CED law (in rare occasions) and CED lawyering became part of what CLCs did as part of their practice,[350] creating a paradox as to how CED developed outside the United States – that is, CED developed in the United State in response to the demise of NLFs but it developed in other jurisdictions as part of the CLCs (NLFs) movement.[351]

This apparent paradox can be explained as although CED law and CED lawyering in the United States was influenced by the emergence of the NLF as envisaged by the Legal Services Programme, American CED law and CED lawyering developed outside this concept.[352] In contrast, the development of CED law and CED lawyering in Ireland, and

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[348] ibid. 20.

[349] *See* chapter two.

[350] Note that the emergence of CED in Ireland was separate from developments taking place in the United States. It is suggested that because CED also has its roots in the NLFs of the War of Poverty, somehow the idea of CED was transplanted into Ireland and given the right environment was able to develop, although not under a separate name.

[351] This paradox can further be perceived in the case-studies found in chapter six.

[352] The development of CED law in the United States as a strategy for redressing urban poverty comprised non-traditional approaches to lawyering as well as the use of alternative models of community legal services which

arguably in countries other than the United States (although further research would be needed to ensure this assertion is correct), became part of the CLCs' concept. For example, the UK, Canada and Australia integrated legal, social policy and community development tools into their community law centres' practices, as evidenced by the "alternative/pilot" CLCs such as Parkdale Community Legal Services[353] in Canada, Redfern Legal Services[354] in Australia and the North Kensington Law Centre[355] and the Brent Community Law Centre in England, servicing geographically defined community, offering community legal education and offering their services to local groups.

Thus, by understanding the development of the CLCs outside the United States as explained in the previous sections and asserting how the American concept of CED lawyering may have emerged in Ireland, one can learn that CED lawyering and to a certain extent CED law is present in those other jurisdictions but not in the way it is found in the United States. By tracing the development of the CLCs in England (and referring to Canada and Australia as well), it is submitted, one can trace the development of CED outside the United States. This is because of the common theme they all share, that is, the idea of the law centre movement as initiated by the War on Poverty.

4.4.2.1 Embedded examples[356]

(1) Planting the seed of CED by making contact with local communities

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were influenced, separately and in conjunction, by three factors. One of them was the fact that the government stopped much of the funding for the types of community law centres the Legal Services Programme had created and established the Legal Services Corporation instead. These changes created a two-tier approach in the provision of civil legal aid services by facilitating two types of community law centres: one which was government funded and the other which was not. This meant that under the Legal Services Corporation, law reform and social change were no longer part of the community law centres' practice (otherwise, the community law centre could not apply for government funding). The other two factors were the evolution of the marriage between community action and law and the interactions between law and community organising. *See* Chapter Two for further information.

[353] Dianne L. Martin, 'A Seamless Approach to Service Delivery in Legal Aid: Fulfilling a Promise or Maintaining a Myth?' (Dept. of Justice Canada March 2002).

[354] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 115.

[355] Albeit North Kensington Law Centre would later focus on individual work.

[356] Most of the examples derives from the work of Bryant Garth as it helps in the understanding of the development of the CLCs outside the United States aiding in the development of the idea of how the American concept of CED lawyering may have emerged in other jurisdictions.

Based on the definition as to what CED means, certain characteristics are essential for CED to take place (i.e.: having geographically defined communities, having face-to-face encounters rather than impersonal relations and accountability[357]), all of which are discussed below to show how, with the advent of CLCs, the seed of CED was planted as CED and CLCs share these same characteristics.

Geographically defined communities: Garth notes that in relation to community participation, one main difference in relation to English CLCs (when compared to NLFs) was that English law centres sought to offer their services to "geographically-defined *communities* rather than poor individuals",[358] making this "a basic characteristic of the English law centres".[359] For Ireland, some CLCs have also tended to concentrate in servicing geographically defined communities such as Ballymun and Coolock[360] - the same CLCs that showed the first signs and practice of CED. This is because having geographically defined communities is an essential component of the definition[361] of CED, a characteristic also found within these CLCs.

Face to face encounter rather than impersonal relations: For Garth, lawyers were needed to solve the legal needs of the poor as their unmet needs[362] which were usually "social welfare, consumer, creditor-debtor and landlord-tenants areas",[363] were too technical or complex for the person acting alone to be able to satisfy.[364] For example, the establishment of

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[357] *See* chapter two at section 2.2.1 for a further insight into what is meant by CED.

[358] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 147 (emphasis on the original).

[359] ibid.

[360] Although current literature now indicates that CED does not need to be restricted to a location, as it also encompasses communities of interests, in Ireland CED started to emerged in geographically defined communities. To date, ground research does not show these other CLCs practice CED and this is why CLCs servicing communities of interests are not part of the case-studies/research. *See* chapter five at section 5.3.3.3(1).

[361] William H. Simon, *The Community Economic Development Movement: Law, Business, and the New Social Policy* (2nd edn, Duke University Press 2001) 41.

[362] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 162.

[363] ibid.

[364] ibid. 163.

the small claims court in England allowed the CLCs to play a role in "advising individuals how to find and use the new techniques and institutions."[365] As a consequence, CLCs were not only making rights effective but were also helping to develop "an individual's legal competence"[366]. In Ireland, the emergence of CLCs such as FLAC and Northside Community Law Centre (NCLC) teaching 'know-your-rights' courses to inform people of their entitlement for benefits meant having face-to-face encounters that developed the client's abilities in the same way CED does, particularly when it comes to developing people's legal competence. For CED, having face to face encounters is essential and the interaction between lawyers and people, as experienced in England and Ireland also are an example of how CED became embedded into CLCs (as this is another shared characteristic between CED and CLCs).

Accountability: CLCs also monitored legal reforms and the effects new institutions designed to help the poor[367] may have had in practice. By monitoring these reforms and new institutions, accountability towards the people these reforms and new institutions were meant to help also became part of what CLCs did[368] (such as BCLC - as its creation was also a way of holding accountable those carrying out the regeneration of Ballymun[369]). For CED, making development accountable to the local community is essential and although development may be equated with infrastructure development, legal reforms and new institutions indirectly affect the development of communities in other ways, such as their social or economic development.

As a result, CLCs have had a bigger role to play in creating actions that help the poor as a class, such as "law reform, group action and community education"[370] and by helping the poor as a class CED can ensue.

(2) A mixing of ideas – law reform and the incomplete transplant

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[365] ibid. 164.

[366] ibid. 165.

[367] ibid.

[368] It could be argued that CLCs can only be held accountable for their own initiatives and can aid in holding others accountable for the development and reforms as well as institutions they monitor.

[369] *See* chapter six, at section 6.3 for BCLC's case study.

[370] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 169.

"Law reform", according to Garth "means simply changing the law on behalf of the poor".[371] It includes legislative advocacy and test-case litigation. However, the idea that law reform can also bring about social change, so it is not just changing the law on behalf of the poor but also is using the law to address issues of poverty thus bringing about development, has also appeared in Ireland, enabling CED lawyering to take shape.

Background: Garth indicates that in the United States, law reform implies class-actions (which is one of the most prominent types of law reform in the United States including the test-case litigation[372]) and that law reform for the United States also means the use of litigation strategies, due in part to the background origins of the NLFs such as the popularity of the test-case litigation used in the *Brown* case, as well as the acceptance of the Warren Court that test-cases were "a uniquely effective method of social change through law".[373]

What it is interesting and seldom mentioned is that in order to complement the litigation strategies of the local NLFs in the United States[374], back-up centres (or support centres) were formed, a type of organisational method that encouraged and ensured class actions could be handled accordingly. The National Housing Community Development Law Project[375] and the National Economic Development Project, both located in Berkeley, were an example of this.[376] They specialised in "an area of the law of particular concern to the poor, including consumer, housing, employment and welfare law".[377]

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[371] ibid. 172.

[372] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 172.

[373] ibid.

[374] Note that ligation is brought by the NLF not the back-up centre, the back-up centre offers research, etc. ibid. 174 and footnotes 3-4 on the same page.

[375] Now it is called the "Insight Centre for Community Economic Development" <http://www.insightcced.org/about-us/history-2.html> [Accessed last 8 August, 2012].

[376] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 174.

[377] ibid. Note that housing and welfare law are areas Irish CLCs specialise in.

Garth further indicates that the *Legal Services Corporation Act 1974* meant to destroy these "back-up centres specialising in law reform"[378] yet some of them survive to this day.[379] This is because from 1967 to 1972, "219 cases involving the rights of the poor" [380] had been brought to the U.S. Supreme Court, "mostly by legal services attorneys." [381] However the results of this high-impact litigation was criticised as there was no effective enforcement of judicial rulings,[382] showing "the weakness of litigation as a strategy for social change."[383] In other words, "law reform – legislative or judicial – is simply too limited a strategy for social change."[384]

It is important to highlight that these back-up centres were the first CEDs organisations in the United States. Moreover, in the 1980s, changes in attitudes of poverty lawyers about test-case litigation also helped to spur the growth of CED law and CED as a lawyering strategy.[385]

In England, in contrast, there was no creation of back-up centres for law reform but law reform was seen rather as a strategy that helped the poor to organise, because of the need to enforce the laws.[386] This is why, for example, Brent Law Centre indicated on its *First*

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[378] ibid. *See* also footnotes 3-4 on the same page. Garth indicates that the back-up centres were later changed in name to support centres.

[379] Such as the Insight Centre for Community Economic Development <http://www.insightcced.org/about-us/history-2.html> [Accessed last 8 August, 2012].

[380] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 175.

[381] ibid.

[382] ibid. 176.

[383] ibid. 177.

[384] ibid. 178.

[385] *See* chapter two for more information about this.

[386] Although enforcement of judicial decision is important, the lack of back-up centres meant that strategic approach to legal aid would suffer as CLCs cannot divide their time servicing individuals and focusing on law reform at the same time (this limits the research capabilities of CLCs when bringing about test-case litigation for example). This is another reason why CED lawyering can help to implement the strategic approach to legal aid.

Report (1975) that the client is the one carrying "the political and economic punch"[387] and not the lawyer. Moreover,

> "the effort to develop or strengthen community groups has been part of the NLF arsenal since the OEO program began in the United States, but it has only recently [1979-1980] emerged, particularly in England, as a realistic challenger of the law reform and individual service functions as the major strategy for NLFs seeking to effect social change."[388]

However, by suggesting the divesting of lawyers from the 'political or economic punch' meant that the law and lawyering process became isolated from politics or economic development, influencing how CED law and CED lawyering would develop in Ireland (as influenced by the UK), as it would become part of access to justice rather than as an option to attain economic justice.

It is interesting to point out that in his work, Garth cites an article by Wexler[389] criticising the American test cases and how they influenced English and Canadian CLCs more than in the United States.[390] Thus, as a consequence of the failure to enforce the outcomes of the test-cases, England opted for a more political approach to reforms rather than a purely "professional"[391] approach such as the one practiced in the United States. It could be argued that this is one of the reasons why law reform is more accentuated in the United States than in England, as in England the 'professional' focus is more on group action ("group work").[392]

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[387] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 178 citing Brent Law Centre *First Report* of 1975 at page 15, and pages 30-31.

[388] ibid. 179.

[389] ibid. 180 footnote 11. Full citation of the article is: Stephen Wexler, 'Practicing Law for Poor People' 79 *Yale L.J.* 1049 (1969-1970).

[390] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 179. The article was published in 1970, thus some of the NLF were founded after that date.

[391] The word "professional" it is meant to indicate lawyers.

[392] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 171.

Moreover, attaining law reform through the courts is not as effective in countries outside the United States.[393]

Therefore, law reform and the incomplete transplant of NLFs as whole (including back-up centres) in England meant that a mixing of ideas took place, embedding CED into the work CLCs did. It is suggested that one way the American concept of CED may have emerged in other jurisdictions is therefore through the assimilation of the different components that provoked the short-lived NLFs in the United States. With time, the concept of CED lawyering would emerge but go unnoticed – furthering the theory of the development of the CED paradox as explained above.

(3) Developing the legal capacity of the poor – helping community groups

As evidenced in England, community legal education, community action and the role of corporate counsel became key components of the practice of CLCs in the same way they did in Ireland. The use of these are thus a further example of how the concept of CED law/CED lawyering became embedded within the concept of CLCs.

Corporate Counsel: By using the role of "corporate counsel" to assist community groups such as "advising groups on the legal implications of possible courses of action"[394] (as evinced by the work performed by the Brent Community Law Centre in London) the legal capacity of the poor is developed, which is also an important element of CED as a lawyering strategy, particularly when helping community groups. Garth indicates that Brent Law Centre offered advice in relation to constitutional issues, problems and issues affecting tenants and residents as a group as well as individuals who ask their associations for advice.[395]

Moreover, CLCs "can help social reform groups as "hired guns" just as corporate lawyers serve corporate interest".[396] Therefore, it is suggested that the idea of CED lawyering

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[393] ibid. 180. Note that in Ireland however there is no direct equivalent to the United States' class action, although it is possible to bring representative actions where all the members of the class authorise the litigation – *see Tate v. Minister for Social Welfare* [1995] 1 I.R. 418.

[394] ibid. 187.

[395] ibid., citing Brent Community Law Centre 1972:12.

[396] ibid.

became part of what CLCs did in England, so there was never a need for differentiation or labelling. [397]

Another example of how the CED lawyering concept may have taken place in England in the 1970s, is the establishment of the Adamsdown Law Centre's campaign to defend the homes of some of its residents against a slum clearance programme which would have destroyed the houses. It even succeeded in creating a housing area as well as the Adamsdown Housing Association.[398]

In relation to the Irish experience, detailed research is provided in the following chapters. Yet, the question that arises is if any of the advocacy groups in Ireland were formed due to campaigns or with the help from any community law centre.[399] For example Threshold was funded in 1978 and has a "know your rights" section. Currently, the housing group in Ireland launched a booklet titled "Social Housing Rights Explained" and it might be an example of CED lawyering in action.[400] This is because by providing "know your rights" community legal education[401], an Irish style of CED lawyering takes place.[402]

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[397] Currently, there are 56 CLCs in England and have an umbrella organisation called the Law Centre Federation (originally called the Law Centres Working Groups and which Garth sometimes mentions) was established in 1978 as an umbrella organisation for the different law centres that existed at the time. *See* also a time-line of the law centres' development in England <http://www.lawcentres.org.uk/uploads/Significant_Dates_in_the_History_of_Law_Centres_07.pdf> [Accessed last 8 August, 2012].

[398] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 188–189.

[399] It is suggested that further research would be needed such as finding out all the advocacy groups that exists in Ireland at the moment and perhaps past ones, assert how many of them provide "know your rights", if they receive support from lawyers or law centres and other and how many interact with the community law centres.

[400] The housing group comprises Ballymun Community Law Centre, Barnardos, CAN (Community Action Network), Focus Ireland, the Irish Traveller Movement Law Centre, Mercy Law Resource Centre, Northside Community Law Centre and the Public Interest Law Alliance. The informal group meets on a monthly basis to share information and consider matters of housing law and policy relevant to their work.

[401] Note that not all community legal education forms part of CED. For example, making people aware of their rights under criminal law does not promote economic development which could be contrasted with community legal education covering employment issues or housing which helps towards the alleviation of poverty, an essential part of CED.

[402] Note that Garth indicates that it is important for the NLFs "survival" that they build constituencies, meaning they should work with local community groups as well as "facilitating alliances and communications with groups not strictly composed of poor persons." Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 233.

Interestingly, Garth indicates that there is another strategy to help the poor as a class in the United States and quotes "economic development" but at the time (1980), CED was "in the womb". Garth indicates that this strategy was found

> "especially in the United States, and it is often termed "economic development", meaning an effort to create organizations which can attract funding and capital [these organizations are the community development corporations]".[403]

According to most sources, Garth indicates, "it has never played an important role in the U.S. legal services program".[404] Of course, economic development did not play a role then as it was in its infancy. It was only in the 1990s when CED became part of public interest law.

Community legal education: Community education, which also seeks to help the poor as a class, is often referred to as "preventative" legal aid because it allows people "to take steps to safeguard their positions or to exercise their rights at the appropriate time and in the appropriate manner".[405] Examples include lectures, seminars, conferences, and others. The practice of CED also gives community legal education a proper place, as the client community by understanding its rights and obligations can provoke change. In England, community legal education was also given a high priority advising groups which can in turn advice their members as well as the individual as it is "necessary to make the other activities [of the law centre] successful"[406] - a practice that it is also very prominent in Ireland.

4.4.3 Influence of other jurisdictions and their influence on the Irish style of CED lawyering

The relevance of the Australian, Canadian, English and American experiences as discussed in previous sections, as a whole, highlight a worrying trend when it comes to legal aid in Ireland, that is, the dearth of research in the subject and the misconception that arises due to this. This is most noticeable when it comes to calls for the establishment of CLCs and

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[403] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1). *See* footnote 18 of page 194 found at page 202.

[404] ibid.

[405] ibid. 194, quoting The Law Centres Working Group, 1978:43.

[406] ibid. 196.

calls for a comprehensive model of legal aid as developed in the Pringle Report, as they fuse different ideas into one, without giving thorough consideration to their different origins.

For example, throughout the years, FLAC (as the main promoter of CLCs) and its calls for the establishment of CLCs have been akin to the Parkdale Community Services in Ontario in Canada and Fitzroy law centre in Victoria, Australia.[407] However, as shown, these two CLCs were "pilot"/experimental law centres akin to the American NLFs of the Office of Economic Opportunity of the War on Poverty of the 1960s. These CLCs were not the norm but the exception. The fact that the Canadian experience differed from that in Australia in that CLCs had the support of the Canadian Federal Government, while their Australian counterparts were completely independent of government (although they received government funding) has gone unnoticed or perhaps has been considered irrelevant. It could be said that it was irrelevant for FLAC as they have not mentioned this fact in their literature, and this is why understanding the background of CLCs is important as FLAC has made calls to have access to justice in the form of CLCs[408] but no in-depth research has been carried out to date.

After reviewing the CLCs literature, and not wanting to diminish in any way the work of FLAC, one finds that available information when it comes to the establishment of CLCs is not completely accurate. For example, FLAC fails to take into account that the adoption of CLCs in other jurisdictions was not without problems or they were just experimental, such as those in England or that these type of NLFs as envisaged by the War on Poverty ceased to exist a few years after their establishment, with the creation of the Legal Services Commission and the restriction of what type of services CLCs could offer. Moreover, their assertion that the same model was transposed to other jurisdictions is inaccurate, as the CLCs models were oriented or shaped with the NLFs in mind or were similar, but never was the same model used.[409] In short, FLAC has always called for the CLC ideal as envisaged in the 1960s and

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[407] Free Legal Advice Centres, 'Access to Justice: A Right or a Privilege? A Blueprint for Civil Legal Aid in Ireland' (Free Legal Advice Centres July 2005).

[408] ibid.

[409] "Neighbourhood law centres ... were established in the United States during the 'War on Poverty' of the 1960s instituted by the Johnson administration. Their job was to tackle inequality by educating poor people on their legal rights, helping them to fight for these rights in an organised way and lobbying for change. Community groups were represented on their management committees. This model, or variations upon it, soon spread to other countries. However, because of the grudging approach of successive Irish governments to the provision of Civil Legal Aid and Advice, there has been little welcome for the concept here."

based on a United State model which was bound to find difficulties, no matter where it is found. Perhaps this is the main reason why their wish has never been able to materialise and why CED can have a role in implementing the strategic model of legal aid. This insight and its relevance to the development of CED in Ireland are developed accordingly in the chapter to follow.

In relation to CED, although not all the jurisdictions have embraced the concept of community development or have used the law to combat poverty – other than the United States – some made it explicit such as Australia (albeit it was short-loved due to changes in government). Understanding how CLCs developed outside the United States and also how the Irish civil legal scheme operates, offers us insights into how CLCs made it into Ireland and how an embryonic concept of CED rooted in the NLFs and the concept of the War on Poverty – the same concept that helped to move forward the CED movement – was developed in Ireland. Through time, using the law to combat poverty, helping communities to help themselves by offering community legal education and offering free legal aid services to specific communities made the practice of CED as a lawyering strategy (CED lawyering) part of the every-day vocabulary of Irish CLCs – although it is not recognised under that name.

4.5 Conclusion

As indicated in the introduction to this chapter, establishing a theory of how CED developed outside the United States and also providing for an understanding how CED lawyering in Ireland came into being required not only an in-depth look at how CLCs developed outside the United States but also an understanding of how access to justice and legal aid influenced their development.

Cappelletti and Garth's exploration of the three waves of how responses to access to justice took place, particularly the second wave or what they called the representation for diffuse interests, provided the basis for the understanding of how CED became embedded into the access to justice discourse.

Padraig O'Morain, 'Access to Justice For All: The History of the Free Legal Advice Centres 1969-2003' (FLAC 2003) 26.

Garth's detailed research of the neighbourhood law firms for the poor as a comparative study also revealed that the initial CLCs' model as envisioned by the War on Poverty, when borrowed by other jurisdictions, influenced each country's versions of their CLCs and also created a paradox of how CED would develop outside its birth-place.

Thus, the legal transplantation of the CLC model was never the same as envisaged in the United States of the 1960s. Moreover, England and Canada did not embrace the CLC model as imagined, but each version was affected by the countries' specific context. Canada had a few pilot projects funded by the federal government and England also had few funded by the Nuffield Foundation, and Australia only had one pilot scheme.

In relation to the development of the CLC in Ireland and how CED lawyering began to materialise, it was the emergence of CLCs in other jurisdictions, particularly the emergence of CLCs in England and their focus on access to justice that mostly influenced the development of CED in Ireland. However, the focus on access to justice meant that CED became entangled with the concept of what CLCs were meant to do (a view that was also reinforced by the works of Cappelleti and Garth[410]), thus there was relatively little notice taken by Irish public interest lawyers of the relevance of the regeneration of disadvantaged communities to legal aid, prior to the establishment of BCLC where the impetus was community regeneration, not access to law.

Nevertheless, the environment within which the Irish CLC developed meant that until 2002, there was only one independent community law centre in Ireland and to date, all seven CLCs in Ireland are based within the capital, two of which form the basis for the case-studies discussed in a later chapter. These case-studies also further develop the idea as to how the seeds of CED grew in Ireland and assess if CED lawyering can help towards the advancement of the strategic approach towards legal aid.

[410] Refer to figures 4.2.1.1; 4.2.1.1 (1)(a) and 4.2.1.1(1)(b) in this same chapter.

Chapter Five CED in Ireland

"Just as all the roads lead to Rome, whatever strand of the 'Access to Justice' debate we focus on, we are always drawn back to the appropriate use of state resources. In short, we are in the realm of power and politics. Who gets to call the shots? Who is to define the public good?"[1]

5.1 Introduction[2]

To recap from the previous chapters, Community Economic Development (hereafter "CED") as a movement and as a lawyering strategy started in the United States during the 1960s, amidst the social, economic and political changes brought by the War on Poverty of the Kennedy and Johnson administrations, albeit its roots can be traced to much further back.[3] Although there is no exact definition for CED, at its core one finds a composite, mixed-recipe of legal, social policy and community development tools all of which interact to address issues of poverty and disempowerment within communities. CED as a lawyering strategy, in turn, can be described as a strategy for redressing urban poverty that acts as a facilitator by building and empowering communities through the use of different legal tools and approaches. Overtime, these legal tools such as the use of transactional law have become part of a substantive area of law (hereafter "CED law") which together with other legal and non-legal approaches have directed their efforts towards the improvement of the socio-economic infrastructure and development of the communities in which they work.

Outside the United States, however, the influences of the civil rights movement and the War on Poverty, coupled with the quest to provide free legal aid under an access to justice approach, meant that the seeds of CED became entrenched into the law centre movement – creating a paradox as to how the development of CED (from a legal stance), would take place when compared to the United States. In other words, CED developed in

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[1] Alan Paterson, *Lawyers and the Public Good: Democracy in Action?* (Cambridge University Press 2012), The Hamlyn Lectures 62.

[2] Part of this introduction is contained in the abstract of an article published in 2011. Maria Antonieta Nestor, 'The Research of CED Lawyering in Ireland: An Overview' (2011) 1(1) *The Irish Review of CED Law & Policy* 6, 6.

[3] *See* chapter two at Section 2.3.1.

the United State in response to the demise of the Neighbourhood Law Firms (hereafter "NLFs") but it developed in other jurisdictions as part of the CLCs (NLFs) movement.

Due to this paradox, the study of CED as a lawyering strategy or what is commonly referred to as "CED lawyering" lends itself to some interesting and revealing comparisons.[4] In Ireland, for example, this is most noticeable with the establishment of FLAC and Ireland's first independent community law centre[5], which sought to offer an alternative mode of delivering legal aid, focusing not just in access to justice but also in community empowerment and the combat of poverty. This approach was in stark contrast to the government run legal aid programme[6], which focused on servicing the legal needs of individual clients with no commitment to community empowerment, although this is changing.[7]

The aim of this chapter, therefore, is to understand how CED lawyering can be researched in an Irish context as well as setting the ground in order to determine if CED as a lawyering strategy can promote/implement a strategic model of legal aid.[8] It first offers an overview of the research of CED in Ireland, placing CED in a number of contexts aimed at fully understanding the role of CED lawyering as a strategy for redressing urban poverty in Ireland. The contexts are namely law, poverty and social inclusion, community development and social policy. Within the field of law, no detailed background to civil legal aid is provided[9], but suffice is to say that it has been the quest for alternative provisions to the statutory civil legal aid system together with the development of the

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[4] An in-depth study of CED and CED law in Ireland could also form part of future research.

[5] This was the then Coolock Community Law Centre, known also as Northside Community Law Centre and now called Northside Community Law and Mediation Centre (albeit its website still carries the name as "Northside Community Law Centre" *see* <http://nclc.ie/> [Accessed last 9 January, 2013]), which is the subject of a case-study which expands this proposition in the following chapter. Note that to avoid confusion as to the name, Northside Community Law Centre (NCLC) will be used.

[6] *See* chapter four at section 4.4.1 for more detail on this.

[7] *See* the Ballymun Community Law Centre case-study and the interaction the government-run legal aid programme has had with them in the following chapter (chapter six).

[8] Because CED it is not just about empowerment, although it has played an important role in its development, CED is also about working with different stakeholders such as community organisations, individuals and government. When placing CED within an Irish context, and although the strategic approach of legal aid in Ireland provides for community empowerment to a certain extent, it is not enough and it is in this context that CED lawyering may be relevant to Ireland. Therefore, discussions about the Irish situation in relation to the quest for community empowerment (community empowerment has also been an important part of the strategic legal aid model) – will take place at the end of this chapter.

[9] *See* chapter four at section 4.4.1 for more information on this.

community law centre movement here that have prompted the emergence of CED lawyering in Ireland. It concludes by summarizing how CED lawyering applies in Ireland in order to set the stage for the case-studies that follow.

5.2 CED in Ireland: Why focus on CED as a lawyering strategy?[10]

In addressing the social realities brought on by the current economic crisis, the research of CED lawyering in Ireland seeks to introduce a novel public interest law concept and strategy, aimed at widening our understanding of access to justice, and how lawyers and the legal profession can further influence social change and address issues of poverty and economic justice.

In the United States, the responses created by the CED movement, partly as a reaction to the weakness of the social welfare state and partly because of disinvestment, together with the combination of community action and law[11] and law and organising[12], made the practice of CED law and CED as a lawyering strategy an important factor in addressing issues of poverty and equitable development. In contrast, the influences of the social welfare traditions[13] and investment approaches in Ireland, together with that of the European Union[14], provide a different context for the development of CED in this jurisdiction. In Ireland, the Community Law Centre Movement (hereafter "CLC movement") and the quest for alternative provisions to the statutory civil legal aid scheme are the main factors that have prompted the development of CED lawyering rather than a

[10] An earlier and summarized version of this section (5.2) was published in the inaugural issue of *The Irish Review of CED Law & Policy*. Note the abstract in the article has not been included. *See* Maria Antonieta Nestor, 'The Research of CED Lawyering in Ireland: An Overview' (n 2).

[11] Community Action was the "conceptual framework" within which to fight the "War on Poverty". It included participation by the local residents in local projects so the local community could have greater control on antipoverty initiatives. Overtime, more organised approaches ensued, making community-based organisations to consider different lawyering strategies in the achievement of their goals. Lawyers could now use their business and commercial experiences in tackling urban poverty.

[12] In the late 1980s and early 1990s scholars found that the connection between law and social change had diminished among lawyers and that litigation had taken away the "power" of people in bringing about social change. As a result, lawyers started to use their skills in the fight against urban poverty and for the benefit of economic justice movements. *See* Scott L Cummings and Ingrid Eagly 'A Critical Reflection on Law and Organizing' 48 *UCLA Law Review* 443 (2001).

[13] For a general introduction on the Irish welfare system, *see* Mel Cousins, *Social Security Law in Ireland* (Kluwer Law International 2010) 21–39.

[14] For example, the National Development Plan and the investment of the European Structural and Cohesion Funds.

CED movement *per se*.[15] Moreover, in Ireland, bibliography in relation to the role of social policy and community development in tackling poverty and empowering communities is broad[16] yet the role of law and the legal profession in the process of community development and community empowerment seems absent.[17] To further understand this, the necessary background as to why the focus of this thesis is on CED lawyering rather than CED law is offered in the next section.

5.3 Setting the Context for CED lawyering

It is submitted that by understanding the relationship between Irish public interest law and the provision of civil legal aid, poverty and social inclusion and community development and social policy, the role of CED lawyering, if any, in promoting a strategic approach to legal aid in Ireland can come to the fore. Studying this relationship will also set the foundations for the case studies that follow[18]. This section therefore is divided into three sub-sections. Section one, and the most detailed, presents some theoretical aspects in relation to the use of public interest law in Ireland and its application to the provision of civil legal aid, aimed at facilitating the understanding of how public interest law can be viewed in an Irish CED lawyering context.[19] Sections two and three offer an overview of poverty and social inclusion and community development and social policy as applied under a CED lawyering context respectively.

5.3.1 Public interest law and legal aid

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[15] In the Irish context, to date, it is uncertain if CED as a movement was also facilitated by the same factors as CED lawyering. This is why the author refers to the development of CED lawyering only. It is suggested a more thorough research about CED as a movement in Ireland is needed but it is outside the scope of this research.

[16] See for example, Dr. Brian Motherway, *The Role of Community Development in Tackling Poverty in Ireland: A literary review for the Combat Poverty Agency* (Combat Poverty Agency 2006).

[17] There are a few scholars who have published articles in relation to law and poverty in Ireland such as Gerry Whyte but nothing is found when it comes to community economic development and empowerment as lawyering strategies. *See* Gerry Whyte, 'Law and Poverty in Ireland' in *Law and Social Policy: Some Current Problems in Irish Law* (Dublin University Law Journal 1987) and also Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (Institute of Public Administration 2002).

[18] *See* chapter six for the case studies.

[19] Reference to other areas of law could also take place but they are outside the area of research. For example, research in relation to company or tax laws within a CED law framework could also be discussed.

The term "public interest law" was first used in the United States in the 1970s to describe how law and the legal services could be used on behalf of the poor and the disadvantaged.[20] Although the term has also been used by lobby groups to defend political interests that sometimes may not be for the benefit of the poor and the disadvantaged but for conservative purposes,[21] it is the first rather than the later use of the term that is the one referred to in this research.

While public interest litigation arguably dates from the 18th century – the campaign for the abolition of slavery relied, in part, on litigation[22] – the most well-known case in relation to public interest law is *Brown v. Board of Education*,[23] in which the Supreme Court of the United States found that state laws establishing separate schools based on race were unconstitutional. From then on, the use of public interest law spread throughout the world, making its mark in the recognition of rights for many.[24]

(1) Background to the proliferation of public interest law

During the 1960s, the interest in the potential of using the legal system to combat social exclusion was resurrected among lawyers from the western world.[25] In the United States, the establishment of the Legal Services Programme under the Office of Economic Opportunity presented a favourable climate under which public interest law activities[26] such as the establishment of neighbourhood law centres and the offering of legal services

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[20] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 1.

[21] For example, the Pacific Legal Foundation, created in the 1970s was the mirror image of the liberal approach (i.e.: legal aid for the disadvantage). The Pacific Legal Foundation fights for "limited government, property rights, individual rights" and others. *See* <www.pacificlegal.org> [Accessed last 27 October 2011]. For further examples of right wing lawyers and groups, see also, Rajeev Dhavan, 'Whose Law? Whose Interest?' in *Public Interest Law* (Basil Blackwell 1986) 19-20.

[22] The most well-known case is *R v Knowles, ex parte Somersett* (1772) 20 State Tr 1, which held that the law in England and Wales did not support slavery. *See* Dana Rabin, "In a Country of Liberty?': Slavery, Villeinage and the Making of Whiteness in the Somerset Case (1772)' (2011) Vol. 72 *History Workshop Journal* 5–29.

[23] 347 US 483 (1954). *Brown* is not only the most famous case but also is a representative of how social change can take place through the courts. *See* Ross Cranston, *Legal Foundations of the Welfare State* (Weidenfeld and Nicolson 1985) 289-291.

[24] For an account of the many cases brought before the Irish courts, see Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17), particularly Parts 1 and 2. It is also interesting to point out that this added to the creation of the paradox of CED (*see* chapter four at section 4.4.2.1 (2)).

[25] ibid. 2.

[26] ibid. Activities such as class action, public advocacy, education, political lobbying and the use of litigation.

within disadvantaged communities could take place.[27] Added to this, the Ford Foundation also started to fund public interest law activities such as university-based clinical programmes.[28]

Thus, the experience of public interest law during the 1960's and early 1970's in the United States, "led to the fostering of interest in the whole question of access to legal services"[29], for if the fundamental concept of a democratic society was to have a justice system that guaranteed "equality before the law" and be more than just theory, issues of access to justice at the practical level needed to be addressed,[30] including increase in government funding for public legal services.[31] These experiences, in turn, influenced the development of public interest law in other parts of the world, including Ireland, yet it could be argued that many of the ideas generated by public interest law were firstly transposed around the world under the concept of the law centre movement[32] (as part of public interest law) as a way of addressing access to justice issues such as an unmet legal need[33] rather than under the heading of public interest law itself.[34] Remarkably, the seeds of CED also became transposed onto these developments, becoming fused within the idea

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[27] ibid. 3. Added to this, the argument expressed by Cahn's article in 1964, that "lawyers in law centres should not only concern themselves with individual cases but also with seeking social change" was also influential in relation to social change and the legal system. *See* Ross Cranston, *Legal Foundations of the Welfare State* (n 23) 291.

[28] The most important development in relation to public interest law and its relationship with university clinical programmes was the fact that the Ford Foundation started to fund the Council on Legal Education and Professional Responsibility (CLEPR) which allowed for the establishment of clinical legal programmes "as it is known today". *See,* Jeff Giddings, Roger Burridge, Shelley A. M. Gavigan, and Catherine F. Klein, 'The First Wave of Modern Clinical Education: The United States, Britain, Canada, and Australia' in *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press 2011) 5.

[29] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17).

[30] Frank S. Bloch and Mary Anne Noone, 'Legal Aid Origins of Clinical Legal Education' in *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press 2011) 153.

[31] Jeremy Cooper, 'Public Legal Services in a Recession: An Analysis of Survival' (Faculty of Business Studies and Management, Middlesex Polytechnic June 1985), Working Paper Number 7. Cooper indicates that between 1965-1970 funding had gone from a few million to $70 million.

[32] The law centre movement is discussed on the next chapter, suffice is to say that public interest law and the law centre movement originated from the same idea, that is, using the law to help the disadvantaged, albeit public interest law has become a much broader area of law covering an array of topics. Thus, their development was "coincidental". *See* Rajeev Dhavan, 'Whose Law? Whose Interest?' (n 21) 25-26.

[33] Frank S. Bloch and Mary Anne Noone, 'Legal Aid Origins of Clinical Legal Education' (n 30) 153. The authors indicate that in many countries academic research, reports and government inquiries "identified inequalities in the justice system and significant areas of unmet legal need".

[34] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 1-3.

of access to justice and legal aid, affecting the way CED would develop outside the United States.[35]

However, subsequent changes in the United States[36] which saw the closure of 40% of the legal services offices by 1974[37], meant public interest law and access to justice efforts in the United States became a concern for the private bar[38] rather than for government[39]. For example, the American Bar Association (hereafter "ABA") in 1975 passed a resolution indicating that it was part of a lawyer's professional responsibility to provide "public interest legal services"[40] and when the federal government was planning to recommend the termination of the Legal Services Programme in 1981, the ABA also added its support against its termination.[41] In another example, the Board of Governors of the State Bar of California passed a resolution indicating that providing free legal services to the disadvantaged was "consistent with the highest ethical ideals of our profession" and encouraged all lawyers to continue doing so thus meeting the legal needs of those unable to afford the services of lawyers. It also called for law schools and others to continue their work in the development and improvement of programmes that provide legal services to the disadvantaged.[42]

As a result, the responses of the private bar to cuts in legal aid resulted in one of the main differences between the United States and Ireland in relation to the advancement of public interest law.[43] In Ireland, the non-profit sector would become the main engine

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[35] *See* chapter four at section 4.2.1.1(b).

[36] *See* chapter two at section 2.4.1 for more information on this.

[37] Jeremy Cooper, 'Public Legal Services in a Recession: An Analysis of Survival' (n 31).

[38] ibid.

[39] With the advent of the conservative government (Reagan 1980) there was a retrenchment in government funding for public interest law and restrictions on legal aid services. However, *pro-bono* services from private law firms increased.

[40] Jeremy Cooper, 'Public Legal Services in a Recession: An Analysis of Survival' (n 31) 38 and footnote 98 on same page.

[41] ibid. 36–37.

[42] The State Bar of California Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 1981-64 <http://ethics.calbar.ca.gov/LinkClick.aspx?fileticket=ktjO8BLRgL8%3D&tabid=842> [Accessed last 17 November, 2011].

[43] The role of civil legal aid in Ireland has had a direct impact in the way public interest law is practiced. See, Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 3-4.

behind the development of public interest law rather than the private bar,[44] basing its ideas on the War on Poverty, the lessons from the Civil Rights movement and other changes from abroad.[45]

(2) Development in Ireland

Public interest law in Ireland, influenced by the changes in the United States, became driven by the non-profit sector[46] seeking to address issues of access to justice[47] and legal aid,[48] which in turn shaped the birth of the independent community law centre[49] and the way CED lawyering would eventually emerge.

Additionally, the inclination for the use of certain models of social change over others, such as the Fabian or Community Politics models over the Direct Action model[50], have also contributed to the development of public interest law in Ireland. According to Cranston, these three models use different tactics which in turn influence the way social change is achieved.[51]

Thus, while the Fabian Model "assumes that government responds when need is uncovered and the case for change is presented through reasoned argument, lobbying and publicity"[52], the Community Politics Model "is based on the belief that feasible proposals must be supported by developing the political strength of a community, mainly through organizing, to force change."[53] It differs from the Fabian model as it works with a

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[44] Having said that, however, the private bar did help with the formation of FLAC but it was a less "prominent role" and not as an "up-front" as the American Bar Association's resolution.

[45] *See* chapter four for more detail on this.

[46] Particularly the Free Legal Aid Centres (FLAC).

[47] Issues of access to justice were primarily concern with access to the courts and the enforcement of constitutional rights and in order to resolve issues of social exclusion.

[48] Drawing a parallel conclusion between the development of public interest law between the United States and the UK, the same conclusion arises – although in the UK legal aid was founded earlier, following the second war world, legal aid was also played a key role in the UK. Email correspondence from author to Rick Abel and from Rick Abel to author (February, 2011).

[49] A law centre that was also influenced by the developments in the UK as discussed in chapter four.

[50] Ross Cranston, *Legal Foundations of the Welfare State* (n 23) 277.

[51] ibid.

[52] ibid. 278.

[53] ibid.

geographical community seeking change by organising "politically"[54]. As Cranston explains, "[i]f Fabians are *for* the disadvantaged those seeking social change through community politics would claim to be *of* the disadvantaged".[55]

The Direct Action Model, in turn, "goes one step further, for it assumes conflict is necessary to consolidate support and to demonstrate that people are determined to secure change"[56]. For example, while a group may use the Fabian model to create a favourable opinion that supports its proposals for reform (by lobbying politicians, government and the media as well as educating the public about their issues);[57] other groups, rather than lobbying or using other traditional political tactics, adopt the Direct Action model by using "organization, publicity and confrontation"[58] which in turn creates public support and political consequences.[59] The confrontation may include sit-ins, picketing, boycotts or demonstrations.[60]

Nevertheless, even though certain tactics are related to each model there are also relationships among them, for example, an organisation seeking social change may use lobbying (Fabian Model) and a rent strike (which combines the community politics and direct action model).[61] Having said that, one of the differences between the Fabian Model and the Community Politics Model on the one hand and the Direct Action Model on the other, is that Direct Action does not see the legal system as one that could have "a positive role in achieving change" as change could be better achieve outside the courts.[62] However, groups employing the Direct Action Model can exploit loopholes and technicalities in the law[63], thus keeping direct action lawful. For example, the recent "Occupy Wall Street" movement uses legal observers (at least in the United States) to ensure police does not

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[54] Ross Cranston, *Legal Foundations of the Welfare State* (n 23) 278-280.

[55] ibid.280. (emphasis on the original).

[56] ibid.278.

[57] ibid.279.

[58] ibid. 283.

[59] ibid. 283

[60] ibid. 284.

[61] ibid. 278.

[62] ibid. 296.

[63] ibid.

over-use its powers, and more recently requested a court order to stop the removal of the protesters from the 'New York camp'.[64]

In Ireland, from the 1970s onwards, public interest lawyers have relied on the Fabian model for securing reform by using the courts to solve issues of social exclusion.[65] Moreover, given the activism on the Supreme Court of the time[66] and the American influence of the use of the test-case and class actions as an example of the use of the law to achieve social change, use of the courts to effect social change was quite acceptable to such lawyers. Besides, the use of the test-case was well suited to the Fabian Model as the courts would respond to a reasoned argument thus the focus of the action could be placed on the judiciary and not the government.[67] This is not to say that political lobbying was not used and in fact both FLAC and NCLC have also used political lobbying in their campaigns.[68]

As such, the practice of public interest law in Ireland has been influenced by tackling social exclusion through the courts via the use of public interest litigation.[69] However, this should not be overstated because given that class actions are not allowed in Ireland and given that the losing party has to pay all of the party costs (including the

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[64] Eventually, the protesters were removed (November 2011), but this protest movement became global. *See* for example BBC News, 'Occupy Wall Street: New York police clear Zuccotti Park', November 15, 2011 <http://www.bbc.co.uk/news/world-us-canada-15732661> [Accessed last 16 October, 2012] *see* also link to related articles at the bottom of the page. And for more information on the global movement go to: <http://occupywallst.org/> [Accessed last 16 October, 2012].

[65] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 4.

[66] ibid. 4. For the Chief Justice of the Supreme Court, The Hon. Mr. Justice Cearbhall Ó Dálaigh (1961-1972) and particularly one of its judges, The Hon. Mr. Justice Brian Walsh (1961-1990) saw the Irish Constitution as a living constitution akin to that of the United States thus influencing their judicial activism (RTE documentary "The Limits of Liberty" aired on 18 November 2011. Programme presented and co-written by historian Diarmaid Ferriter, UCD).

[67] Ross Cranston, *Legal Foundations of the Welfare State* (n 23), 294. Cranston explains that if more cases are brought to before the courts, government or private institutions would modify their behaviour.

[68] For a list of all the policy submissions to government from FLAC (2001 onwards), go to: <http://www.flac.ie/publications/category/policysubmissions/> [Accessed last 20 November, 2012]. In the 1990s, FLAC also made submissions to government on a variety of issues such as "social welfare payments for one parent-families, the Courts Service, the law on cohabitation, unfair dismissal and the treatment of Travellers" and in 1995 in particular, "was involved in the successful campaign for the removal of the constitutional ban on divorce".Padraig O'Morain, 'Access to Justice For All: The History of the Free Legal Advice Centres 1969-2003' (FLAC 2003) 16. And in relation to NCLC, *see* Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 332 particularly footnotes 215–219 on the same page. More recent submissions by NCLC can be obtained from its website at: <www.nclc.ie> [Accessed last 20 November, 2012].

[69] *See* for example, Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17).

winning side) the number of test cases taken by NGOs such as FLAC[70] hardly exceeds a dozen. So, despite the fact that public interest litigation has been a "useful mechanism for promoting social inclusion"[71] different approaches were needed.

In the United States, the understanding among poverty lawyers about the draw backs of litigation and the acceptance that litigation approaches were creating client dependency rather than changing the social fabric of the community helped to foster an incipient mode of CED lawyering, bringing non-litigation approaches to the fore and exploring alternative methods of client-lawyer relationships to achieve, for example, community-based political action in order to achieve economic justice.

In Ireland, despite the influences of the Fabian model towards the reliance on the courts as mechanism for engendering social change, access to justice and legal aid efforts also meant the use of the community politics model as a way of addressing issues of social exclusion. Thus, the establishment of an independent community law centre under which the Fabian and Community Politics models could be explored coupled with the external influences arising from the law centre movement, became synonymous with the practice of public interest law in Ireland. As a result, the practice of CED as a lawyering strategy became rooted within a community law centre approach to lawyering,[72] an approach which would have at its heart the concept known as "the strategic approach to legal aid"[73]. Yet

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[70] FLAC took a number of test cases, particularly in the 1980s (mainly on social welfare issues). The main landmark cases taken are *Airey v. Ireland* [1979] 2 E.H.R.R. 305; *Cotter and McDermott v. Minister for Social Welfare and Attorney General* [1991] ECR I-1155 and *Foy -v- An t-Ard Chlaraitheoir & Ors (No.2)* [2007] IEHC 470 <http://www.flac.ie/about/40yearsofflac/landmarkcases.html> [Accessed last 20 November, 2012]. Others include *Kavanagh v The Legal Aid Board & Ors.* (Unreported, High Court, Butler J., 24th October, 2001); *The State (Kershaw) -v- Eastern Health Board,* (1984) No. 263 S.S. (unreported) and *The State (McLoughlin) -v- Eastern Health Board,* (1986) 288 S.S. (unreported) and; *Hyland v Minister for Social Welfare* [1989] IR 624 (Padraig O'Morain, 'Access to Justice For All: The History of the Free Legal Advice Centres 1969-2003' (n 68) at pages 37;38 and 39 respectively. For a full list of the cases taken in the 1980s, *see* Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 312 particularly footnote 144 on the same page.

[71] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 5.

[72] Given that the NCLC was the only independent community law centre from 1975 to 2002 it has had a huge influence in shaping the way independent community law centres operate in Ireland. Its community liaison officer, Dave Ellis challenged community development workers to use "the law" to help communities (Conversation with his widow, Sarah Ellis, 16 November 2001, Community Development conference, Maynooth).

[73] *See* section 5.3.1.2 below for more information on the strategic approach.

the independent community law centres sector has struggled to find ways of empowering its client base.[74]

However, despite the above advantage, the questioning of how law and lawyers can help towards the alleviation of poverty and how they can contribute to the empowerment of communities under a non-litigious approach has been neglected.[75] Added to this, the emphasis from the general public/legal discourse[76] on social and economic rights[77] has not helped either, as, even with adequate enforcement of rights[78] (even in times of recession) if there are no economic opportunities or options for local communities to influence development, then having rights and no opportunities helps very little in the alleviation of poverty, making the work of the lawyer somewhat superfluous.

As a consequence, the development of public interest law in Ireland has nurtured a different environment for the development of CED lawyering, an environment that is heavily rooted in the concept of the community law centre[79], which has been influenced, in

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[74] For a discussion of these difficulties in relation to NCLC, *see* Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 333–335. Suffice is to say that the word "empowerment" is a contested issue as there are different interpretations. Daniel S. Shah indicates that different people have given it different meaning through the years, which is also dependent on the government policies of the time. *See* Daniel S Shah, 'Lawyering for Empowerment: Community Development and Social Change' [1999] 6 *Clinical L. Rev.* 217, 218–219, particularly footnote 6.

[75] For example, the recent PILS (Public Interest Litigation Support) and PILA joint annual conference held on November 11, 2011 focused on the use of the European Convention on Human Rights and litigation without focusing on non-litigious efforts. There was also a recent report published by PILA about the barriers to public interest litigation (*see* FLAC, 'Public Interest Litigation: The Costs Barriers & Protective Costs Orders' (FLAC, 2010) <http://pelorous.totallyplc.com/media_manager/public/138/flac_pila_report_final.pdf> [Accessed last 20 November, 2012] and also a seminar on the role of NGOs in public interest law litigation on 9 February, 2012 (*see* FLAC, 'Seminar on the role of NGOs in public interest law litigation', March 2012, Vol.22. No. 1 edition 12). A major past conference in 2005 also highlighted the use of public interest law litigation within the public interest law field (albeit some of the speakers recognised public interest law was composed of other areas such as law reform and community legal education. *See* FLAC, 'Public Interest Law in Ireland – the Reality and the Potential: Conference Proceedings' (FLAC 2006) <http://www.flac.ie/download/pdf/flac_pil_proceedings.pdf> [Accessed last 20 November, 2012]. It is interesting to note however that there has been a call by the private legal profession to use alternatives to litigation within civil society such as Alternative Dispute Resolution (ADR). Attendance at conference "Alternatives to Litigation in a Civil Society" October 11, 2011, Dublin.

[76] The International Covenant on Economic, Social and Cultural Rights (ICESCR); The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also places an emphasis on the socio-economic issues facing women.

[77] The Universal Declaration of Human Rights not only recognises 'the 'traditional' civil and political rights' but also 'economic, social and cultural rights'. See, Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Moral* (Second. Oxford University Press 2000) 237.

[78] "Rights without adequate enforcement procedures are equivalent to no rights at all". *See* Walter Walsh, 'Poor People and the Law' in *One Million Poor?* (Turoe Press 1981) 176.

[79] The community law centre, its origins and influences in Ireland is discussed in the previous chapter.

turn, by the way government-run civil legal aid services are provided in Ireland – a service that focuses on the individual and does not provide for community empowerment.[80]

5.3.1.1 The Involvement of the Legal Profession and their role in the furtherance of public interest law and legal aid

In relation to the professions, in the past, individual lawyers did assist NGOs by taking cases on a 'no-foal, no fee' basis but, in contrast to the situation in the United States, legal firms rarely had a pro-active pro bono policy. [81] However FLAC has recently launched the Public Interest Law Alliance (hereafter "PILA") as a way of connecting NGOs, practitioners, individuals, researchers, academics and others interested in public interest law in Ireland and as part of this project, PILA has started to work on a pro-bono referral scheme linking lawyers to individuals and community groups.[82] The Legal Aid Board also provides some legal services under their Private Practitioners scheme, linking private lawyers to individuals in need of legal representation.[83]

(1) The Law Society of Ireland

The Law Society of Ireland (hereafter "the Law Society"), other than referring to the Legal Aid Act 1962 (Criminal)[84] in their Annual Reports,[85] has followed the progress of legal aid from FLAC's reports on an intermittent basis.[86]

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[80] *See* chapter four at section 4.4.1 for more on this.

[81] It is interesting to note that Cousins, in writing about legal aid in Ireland, indicates that in the 1990s, when the government contacted the Law Society to discuss whether the Law Society would contribute *pro-bono* to the provision of legal aid the issue was considered and rejected. In contrast, when comparing pro-bono with its American counterparts, when the Legal Services Commission were to be shut-down, it was the American Bar Association that opposed to such change and enshrined the provision of *pro-bono* as part of the lawyer's duty. For Ireland *see* Mel Cousins, 'Legal Aid in France and the Republic of Ireland in the 1990s' in *The Transformation of Legal Aid: Comparative and Historical Studies* (Oxford University Press 1999) 162-164; 166-168. However, in contrast to what commentators have said about lawyers' lack of involvement with the issue of legal aid, their pro-bono work and financial contributions has helped towards the development of the independent community law centres yet their contribution is not often publicised. This ad-hoc approach is perhaps creating closer links with the community, aiding to nurture the role community law centres play within the community.

[82] For more information about PILA, go to: <http://www.pila.ie/> [Accessed last 1 August, 2012].

[83] The Private Practitioners Scheme consists of a panel of solicitors and barristers whom offer their services to people entitled to legal aid services (i.e.: people in receipt of a legal aid certificate) by the LAB as a way of complementing the services of the LAB's law centre (note their services are the same as to those available under the Legal Aid Act 1995 and nothing else, which is mostly in matters to do with family law). For more information go to: <http://www.legalaidboard.ie/lab/publishing.nsf/Content/Private_Practitioners> [Accessed last 1 August, 2012].

[84] Law Society of Ireland, 'Law Society of Ireland: Annual Report 1967/1968', (1968).

For example, in 1991, civil and criminal legal aid was a major issue during the year which led to the creation of a special committee on civil legal aid [87] that published a report towards the end of 1991.[88] The report highlighted the inadequacies of civil legal aid and urged that the original Pringle Report be implemented.[89] In 1993, a permanent Family and Civil Legal Aid Committee had been established, focusing to a large extent on the private practitioner's scheme which took family law cases on a six-month pilot basis.[90] It is interesting to note that this suggestion from the Family and Civil Legal Aid Committee to take family law "legal aid" cases on a six-month pilot basis was to coincide with the Government's white paper on marital breakdown.[91]

However, despite its success of helping to transform the legal system in relation to family matters in the subsequent years,[92] it seems that the Family and Civil Legal Aid Committee concentrated on family law matters more than reforming civil legal aid overall.[93] Thereafter, the Annual Reports never really mentioned the community law centres, except for the Report of the Committee on Civil Legal Aid in 1991.

Having said that, in 2000, a second report on civil legal aid was published[94], which looked at how the *Civil Legal Aid Act 1995* was operating covering the areas of cost, efficiency and access.[95] The 2000 Report indicated that they would want to see the

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[85] The Annual Reports were visited from 1963 onwards, after the passing of the Legal Aid Act 1962. The passing of the criminal legal aid scheme was on 1 April 1965.

[86] The Annual Report 1967/1968 contains a small paragraph quoting the progress of FLAC and the Annual Report 1990/1991 contains on its appendix a report on FLAC. See Law Society of Ireland, 'Law Society of Ireland: Annual Report 1967/1968' (n 84) and Law Society of Ireland, 'Law Society of Ireland: Annual Report 1990/1991', 1991.

[87] The Committee's Chairperson was Moya Quinlan, Solicitor.

[88] Law Society of Ireland, 'Report of Committee on Civil Legal Aid', November 1991.

[89] Law Society of Ireland, 'Law Society of Ireland: Annual Report 1991/1992', 1992, 7.

[90] The Law Society opposed this pilot project because the levels of remuneration were very low. *See*, Law Society of Ireland, 'Report on Civil Legal Aid in Ireland', February 8, 2000.

[91] Law Society of Ireland, 'Law Society of Ireland: Annual Report 1992/1993', 1993 30.

[92] Law Society of Ireland, 'Law Society of Ireland: Annual Report 1996/1997', 1997.

[93] In 1993, the Committee gave a presentation on the system of civil legal aid that operated in Ireland at the First International Symposium on legal aid in the EU, but focused on family law. *See* Law Society of Ireland, 'Law Society of Ireland: Annual Report 1993/1994', 1994 27.

[94] Law Society of Ireland, 'Report on Civil Legal Aid in Ireland' (n 90).

[95] In 1997, the then President of the Law Society, Mr. Laurence K. Shields asked the committee to review the operation of the Civil Legal Aid provision in Ireland based on the provisions of the Civil Legal Aid Act

"strategic" and "service" models used when administering civil legal aid.[96] The 2000 Report also criticised the way the scheme was operating, not the people working on it, as there was recognition they were doing a good job despite the shortcomings of the system.

Overall, both Reports (1991 and 2000) indicated they would want to see the Pringle Report implemented[97] but the main difference found was that the 1991 Report mentioned the recommendation of the Pringle Committee that the legal aid scheme employ social workers[98], but the 2000 Report did not. Since then, the only other Law Society publication pertaining to legal aid has been a booklet on civil legal aid for the profession which was launched in 2007.[99]

The role of solicitors within the advancement of CED lawyering or even questioning their lawyering approaches towards individuals and communities therefore has been ignored in practice and also in the literature. It is only recently, due to high-level of unemployment among the solicitors' profession, that solicitors have started to look outside the traditional areas of law and look for work on areas of policy or community development.[100]

(2) The Bar Council of Ireland

For many years, the Bar Council did not actively promote pro-bono work by its members. Then in 2004, it set up the Volunteer Assistance Scheme (hereafter "VAS"), which offers services to community groups or NGOs only and not to individual clients as all the work is mediated through these groups, should individual people need legal service or representation.[101] By providing legal services to the NGOs themselves, it could be

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1995. The objectives of the report were to look at issues of access, costs and quality of Civil Legal Aid provision in Ireland. See Law Society of Ireland, 'Law Society of Ireland: Annual Report: 1999/2000', 31.

[96] Law Society of Ireland, 'Report on Civil Legal Aid in Ireland' (n 90) 3 and 10–12.

[97] For information on the Pringle Report, *see* chapter four at section 4.4.1(a).

[98] Law Society of Ireland, 'Report of Committee on Civil Legal Aid', (November 1991) 2 at paragraph 5.

[99] Law Society of Ireland, 'Law Society of Ireland: Annual Report 2007/2008' .

[100] Hopefully, they will also start to look at the lack of literature. The Law Society Career Support Update is sent to their members every week. The list of jobs available range from the legal to the non-legal. On file with author.

[101] The launch of the first annual report of VAS took place in November 2011. <http://www.lawlibrary.ie/viewdoc.asp?DocID=3053&UserLang=EN&m=> [Accessed last May 16, 2012]. To view the full report go to: <http://www.lawlibrary.ie/documents/news_events/VASAnnualReport2011.pdf> [Accessed last May 16, 2012].

argued that this approach closely resembles the way CED law is offered in the United States, as most CED units offer their services to NGOs or community groups only.

Recently, the Bar Council has expressed concern about the effects the IMF/EU deal would have if the legal profession's structure were to be changed[102]. In short, their availability to pursue public interest and pro-bono work would be diminished which in turn, would affect the amount of volunteers the community law centres would have, thus affecting legal aid services significantly.

Barristers, particularly working through VAS, can help to expand the practice of CED law within communities. It is submitted that further research into this area would be needed to provide a proper assessment of how they are contributing towards CED.

5.3.1.2 The Strategic approach of legal aid

The strategic approach is said to be part of a spectrum as to the methodology used when providing legal aid services. This spectrum can vary from a "service" approach aimed at addressing purely the needs of an individual case to a more "strategic" approach concerned with addressing not only the needs of the individual case but also tackling the social problems faced by the client and its community.[103] It is important to highlight that the approach used does not depend on how legal services are funded as the spectrum can appear within the different models of legal aid services delivery. As a general proposition, State controlled legal aid services tend to be at the service end of the spectrum while non-State controlled schemes tend to be strategic in nature.

(1) Delivery models of legal aid services

There are a number of different delivery models of legal aid, namely, the charitable, judicare, salaried and mixed models.[104] The charitable model means, as the word suggests, services provided under a voluntary basis and free of charge. The judicare model entails the provision of legal services by private lawyers whose services are funded

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[102] *See* 'Interview with Roddy Maguire from the Bar Council of Ireland' (Newstalk 106 July 6, 2011). For a transcript of the interview go to: <http://www.lawlibrary.ie/documents/memberdocs/NewstalkBreakfastShow20110706.pdf> [Accessed last 19 November, 2012].

[103] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 284–285.

[104] Alan Paterson, 'Legal Aid at the Crossroads' [1991] *Civil Justice Quarterly* 124. Paterson, at footnote 2, cites Zemans for this description. *See* Frederick H. Zemans, 'Recent Trends in the Organization of Legal Services' [1985] *Queen's L.J.* 26–85.

by the State. In Ireland, the criminal legal aid scheme falls into this category.[105] The salaried model means that lawyers are employed either by non-State controlled or State-controlled law centres to provide legal services[106], such as the services provided under the Legal Aid Board[107] or the independent community law centres. And the mixed model may combine elements of the judicare and salaried models[108].

The interaction between the different delivery models and the methodology spectrum (service-strategic) can be demonstrated when analysing the salaried model. Within the salaried model, there are two distinct variants. On the one hand, one finds the "service orientation"[109] approach, an approach that is "reactive", "demand led", "individual oriented" and "routinized".[110] And on the other, one finds a "strategic" [111] orientation approach, an approach that is "pro-active", "controlled", "community oriented" and "reformist".[112] Public interest law and community-based law centres tend generally to favour the strategic approach.

(2) Background to the strategic approach used in the delivery of legal aid services

Albeit legal academics in Ireland[113] and the UK[114] have cited Zemans[115] when describing the strategic approach, it was Mark Galanter who first coined the term,[116]

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[105] <http://www.justice.ie/en/JELR/Pages/WP07000067> [Accessed last 30 July, 2012].

[106] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 286.

[107] <http://www.legalaidboard.ie/LAB/Publishing.nsf/Content/Home> [Accessed last 30 July, 2012].

[108] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 286.

[109] Alan Paterson, 'Legal Aid at the Crossroads' (n 104) 132.

[110] ibid.

[111] ibid. 133.

[112] ibid.

[113] *See* Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 280 at footnote 2 on the same page.

[114] Alan Paterson, 'Legal Aid at the Crossroads' (n 104).

[115] Frederick H. Zemans, 'Recent Trends in the Organization of Legal Services' (n 104).

[116] Zemans on footnote 24 indicates Marc Galanter's work as his source for the strategic approach. *See* Marc Galanter, 'Making Law Work for the Oppressed' (1983) III *The Other Side* 7, 11.

though Gary Bellow in the United States had already advocated the use of "strategic lawyering" among Harvard law students back in the 1970s.[117]

Galanter is mentioned because it is important to go back to Galanter's work in order to source the roots of his proposition and what he meant by "strategic". In his work, Galanter, speaking about the way law practice was organised in the United States – one servicing corporate clients, the other the individual, less well to do client - described the main features of each service. He saw that legal firms servicing corporate clients used a number of different lawyers with different specialities to better service their clients. They also created more long-lasting relationships in order to prevent their clients from getting into difficulties with the law by exploring different options and by using more "innovative tactics". The corporate law firm also represented the client not just in court but in different fora, negotiating with different parties. Moreover, Galanter noted that in this type of corporate law practice the lawyer was not just focused on the specific problems but also on wider ones. The lawyer could,

> "take a larger view and *try to use the law strategically to pursue the long range interest of the client*. The lawyer look[ed] at the total situation of the client and the opportunities and problems that surround him, not just at one isolated trouble. The lawyer participat[ed] in planning the operations of the client to take optimum advantage of the legal environment."[118]

In contrast, the services provided to individuals were more focused on the particular problem, had a sporadic nature and were "less comprehensive and less informed by considerations of long-term strategy."[119] Thus, "traditional legal aid" fell under this latter category as it was focused purely on ""service" work"" which focused on the particular issue at hand rather than looking at the bigger picture.[120]

As a result, Galanter transposed his analysis to the way legal aid services were delivered, comparing the legal services provided to the corporate client with those services

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[117] Jeanne Charn, 'Service and Learning: Reflections on Three Decades of the Lawyering Process at Harvard Law School' (2003-2004) 10 *Clinical Law Review* 75.

[118] Marc Galanter, 'Making Law Work for the Oppressed' (n 116) 10. (my italics).

[119] Marc Galanter, 'Making Law Work for the Oppressed' (n 116) 10.

[120] ibid.

provided under traditional legal aid services. Thus, he created the distinction between a pure service approach and a fully strategic approach. He found public interest law could be better served by the strategic approach as by using the corporate law firm style, public interest lawyers could also pursue long-term strategies and coordinate efforts among others for the benefit of the poor and other causes.[121]

Galanter also indicated that although these two approaches were complete opposites, in reality, there were many instances where there was a combination of both service and strategic approaches, but he did not mention any cases. However, he differentiated the two approaches based on the fact there was a tendency for these approaches to "cluster" on one side or the other. Moreover, he indicated that the distinction did not mean these approaches "were mutually exclusive", particularly when it came to the strategic approach – as concentrating exclusively on test-cases and law reform, for example, made the interest of the client subservient "to the reform goals of the professional",[122] noting that one of the "classical problems of strategic lawyering"[123] was that the lawyer and not the client was the one that informed the legal strategy.[124] Thus, lawyering attitudes and the way law was practiced within the strategic approach were an important element for its success. Thus, if the strategic approach used under public interest law litigation were to be successful, it could not replicate the "atomistic" style of lawyering.[125] This, however, is an ever-present risk for despite the fact that public interest litigation is,

> "broader in scope than typical legal aid schemes … [it] is too initiated and controlled by elites and is responsive to their sense of priorities. It carries no accountability to a specific client constituency nor does imply a sustained commitment to such constituency. Typically, it is an episodic response to a

[121] ibid.

[122] ibid. 11.

[123] ibid. 12.

[124] ibid. 11–12.

[125] An style in which the lawyer, "addresses discrete problems in isolation from the whole situation of the client; there is very little planning or preventive work. Relations with clients tend to be episodic. The range of services offered is narrow. There is little specialisation and little professional collaboration. Lawyers contend with a constant struggle to mobilize a clientele". *See*, Marc Galanter, 'Making Law Work for the Oppressed' (n 116) 12.

particular outrage. It does not mobilize victims nor help them develop capabilities for sustain effective use of law."[126]

(3) Evolution of the concept in the United States

In the United States, the use of the term "strategic approach" did not become embedded into the public interest vocabulary in the same way as it did in Ireland. If our understanding of the term were to be juxtaposed into the American context, their use of the strategic approach towards the delivery of legal aid services simply reflects the view of how American public interest law and policy is practiced under a multi-faceted approach. For example, in the United States, public interest law and policy approach combines lobbying, community legal education, the use of media and the building of coalitions.

On the other hand, however, the "American" concept of the strategic approach (as introduced by Zemans) has evolved, resembling our concept of the strategic approach[127] although it is unknown under that name. Back in the 1970s, Gary Bellow saw the potential of lawyering approaches to help marginalised clients, and promoted the use of strategic thinking and approaches to his students.[128] Later, in 1996, analysing his public interest law career and that of others, Bellow found that when drawing from examples between 1962-1989, an interesting pattern emerged.

> "Even when pursuing litigation, [public interest lawyers] often placed far greater emphasis on mobilizing and educating clients, or strengthening the entities and organizations that represented them, than on judicial outcomes. And always, [they] employed the lawsuit, whether pushed to conclusion or not, as a vehicle for gathering information, positioning adversaries, asserting bargaining- leverage, and adding to the continuing process of definition and designation that occurs in any conflict."[129]

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[126] ibid. 12.

[127] The similarities are mostly based on the fact that both seek to address issues of inequality rather than democracy or racial justice. However, these approaches are not the same.

[128] Jeanne Charn, 'Service and Learning: Reflections on Three Decades of the Lawyering Process at Harvard Law School' (n 117).

[129] Gary Bellow, 'Steady Work: A Practitioner's Reflection on Political Lawyering' (1996) 31 *Harv. C.R.-C.L. L. Rev.* 297.

Thus, he labelled those efforts and approach as "political lawyering"[130] as they included not only efforts to solve legal issues but also collective efforts addressing issues of equality, democracy and racial justice.[131] These efforts also re-configured the balance of "power" between the client and lawyer as now the relationship would become an alliance based on respect and mutuality rather than client-lawyer thus producing a change in lawyering attitudes. For Bellow, the word "alliance" was a good word that described the relationship as,

> "alliance generates bonds and dependencies and is grounded, at least in aspiration, in forms of respect and mutuality that are far more personal and compelling, for many of us who do political legal work, than the demands of some notion of client-centered lawyering."[132]

Others, such as Professor Lopez, labelled these new lawyering approaches that changed the power structure of the traditional client-lawyer relationship "rebellious lawyering".[133] Professor Lucie White called it "collaborative lawyering"[134] and others coined the term "facilitative lawyering". The term "integrative lawyering"[135] has also appeared in the vocabulary. Over time, these types of lawyering - the political (Bellow), rebellious (Gerald Lopez), collaborative (Lucie White), facilitative[136] or integrative[137] -

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[130] ibid. *See* also Susan R. Jones and Dorcas Gilmore, 'Community Lawyering' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009) 236–237 and Jeanne Charn, 'Service and Learning: Reflections on Three Decades of the Lawyering Process at Harvard Law School' (n 117).

[131] Gary Bellow, 'Steady Work: A Practitioner's Reflection on Political Lawyering' (n 129) 300.

[132] ibid. 303.

[133] It is interesting to point out that other academics have equated the term 'rebellious lawyering' with that of 'critical lawyering' indicating it is a strategy which "aims to provide subordinated groups with greater access to legal representation and better promote social change" (footnote omitted). *See* Louise G. Trubek and M. Elizabeth Kransberger, 'Critical Lawyers: Social Justice and the Structures of Private Practice' in *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press 1998) 203 Note also that in the UK there is a group called "the National Critical Lawyer's Group" (NCLG) but their definition differs from that of its American counterparts. The NCLG indicates they use the critical legal approach (critical theory), to overcome class, gender and racial oppression, focusing more on legal practice and legal education. For more information on the NCLG go to: <http://nclg.org.uk/> [Accessed last 28 August, 2012].

[134] Susan R. Jones and Dorcas Gilmore, 'Community Lawyering' (n 130) 237.

[135] ibid. 236–237.

[136] Richard Marisco, 'Working for Social Change and Preserving Client Autonomy: Is There a Role for 'Facilitative' Lawyering?' (1995) 1 *Clinical L. Rev.* 639.

became part of the roots of what scholars, nowadays, call "community lawyering".[138] Recently, scholars have also indicated that the practice of CED law is part of community lawyering.[139]

It could be argued that the reason for the evolution of our concept of the strategic approach vis-à-vis the United States is because, since the 1970s, the practice of public interest law in the United States has been driven by private lawyers rather than by the need for legal aid, whereas in Ireland public interest law has been driven and dominated by legal aid, omitting to look at the power structures found within public interest lawyering practices (in the way it has been done in the United States).[140] These differences in lawyering approaches between the United States and Ireland are also an indication that the strategic approach will always encounter problems, an issue also stressed by Galanter as discussed earlier on: lawyering attitudes and how the legal aid system is organised also need to change for the strategic model to become effective.[141] Essentially, this is where CED lawyering can make a contribution as it can become more involved with the political system via its aims of bringing social inclusion through a combination of community development, law and social policy which change the power structure of the client-lawyer relationship by promoting collaborative answers to solve the client-community issues.

As Whyte has indicated, one of the criticisms of FLAC is that it,

> "has always been controlled by lawyers, albeit by more radical members of the profession. This may have implications for the ability of the organisation to respond imaginatively to the needs of its clients, as there

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[137] Sheila Foster and Brian Glick, 'Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment' (2007) 95 *Cal. L. Rev.* 1999–2072.

[138] *See* Susan R. Jones and Dorcas Gilmore, 'Community Lawyering' (n 130) 236–237. The authors indicate that community lawyering is also known by other names "poverty lawyering", "reconstructive poverty lawyering", "co-production", "holistic", "multidisciplinary", and the scholarship is still emerging.

[139] ibid. 237.

[140] For example, to my knowledge, there is no literature on the lawyering approaches used by public interest lawyers in Ireland, including barristers and solicitors performing pro-bono work, not to mention the research of how power structures work among lawyers vis-à-vis clients, particularly among disadvantaged communities. It could be argued that the implication of the divergence of the approaches between the United States and Ireland need to be teased out; however, these are outside the scope of this research.

[141] Richard Abel, 'Law without Politics' [1984-1985] 32 *UCLA Law Review* 474. Abel indicates that "[m]uch of the writing on legal aid is flawed by its insistence on divorcing law from politics", at page 476. From the point of view of politics, in Ireland at the moment are calling for new ways, new approaches to solve economic issues. In the UK, the British Prime Minister has called for localism, for giving the power back to the communities. But very little is mentioned on how that power is to be realised at the practical level.

may be a tendency to analyse problems using legal frames of reference, and it also perpetuates the dependency of those clients on middle-class professionals."[142]

5.3.1.3 Application of the Strategic Approach in a CED Lawyering Context – the influence of legal aid

Paterson, back in 1991, indicated that none of the law centres in the UK had adopted "a wholeheartedly strategic approach"[143] and that despite the advantages a strategic approach would bring, such as "focus, flexibility and cost-effectiveness",[144] the strategic approach has "always attracted more attention and criticism (*since its version of preventive lawyering is often seen as being too akin to political activity*)".[145] Similarly, in Ireland, despite the numerous calls from FLAC[146] and NCLC[147] on the government to provide a strategic model of legal aid, no progress has been made.[148]

According to Whyte, FLAC, the CCLC (now NCLC) and the Family Law and Civil Legal Aid Committee of the Law Society of Ireland have "called repeatedly for the State provision of a strategic model of legal aid"[149] yet it has not taken place.

However, by changing the dynamics of power and using regeneration and the auspices of sustainable development[150] as a way of combating poverty and attaining social

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[142] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 321 .

[143] Alan Paterson, 'Legal Aid at the Crossroads' (n 104) 134, quoting "C. Grace and P. Lefevre "Draining the Swamp" (1985) 7 *Law and Policy* 97".

[144] ibid.

[145] ibid (my emphasis).

[146] Back in 1974, FLAC, when calling for the establishment of community law centres based in the United State model, also indicated that, a "strategic model of legal aid similar to that operating in the United States", which could act a "blue-print" for the government in the establishment of community law centres. *See*, Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 320.

[147] ibid.336.

[148] For example, writing in 2005, Whyte recalls that the Pringle Committee on Civil Legal Aid was aware of the difference in methodology between the strategic model of legal aid delivery and the purely service-model and that it recommended, *inter alia,* that government-provision of legal aid should include efforts to make the public aware of their rights and to provide for law reform. See Gerard Whyte, 'The Future of Civil Legal Aid in Ireland' (2005) Vol. 10 *The Bar Review* 111–114, 114.

[149] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 302.

[150] For a discussion on the concept of sustainable development and its links to CED, *see* chapter six at section 6.3.2 (1).

inclusion (concept of CED), the government has "unknowingly" succumbed to the idea of using a strategic approach to the delivery of legal services as now lawyers are not the drivers of change but rather they become part of the development process.

Based on the way legal aid services are currently delivered, developing the strategic approach within the framework of social inclusion and development becomes a better alternative.

The State-controlled law centres' aim is to offer access to the court, while the non-State controlled law centres (or what is commonly referred to as the independent community law centres) is to tackle poverty and combat social exclusion. Their centre of gravity therefore cannot be joined. While FLAC and NCLC started as part of an effort to offer access to the courts, the very fact that their call is to have a strategic model of legal aid places them under the Department of Social Protection side of legal services delivery[151] rather than under the Department of Justice. Similarly, the fact that BCLC was born out of a regeneration scheme rather than a campaign for legal aid also adds weight to this proposition. Table 5.3.1.3 below represent this proposition.

Table 5.3.1.3: State-controlled versus non-State controlled law centres

State-controlled versus non-State controlled law centres

Legal Aid Service delivered by	State-controlled law centres	Non-State controlled law centres
Source of Funding	Funded by Dept. of Justice	Funded by other than the Dept. of Justice and other bodies
Model of delivery	Purely Service Based	Strategic based model Service based model use as well
Means tested or open to all?	Means-tested	Open to anyone in their catchment area or constituency of interest
Main goal	Goal is access to courts/access to justice	Goal is social inclusion under which access to justice is part thereof.

[151] While the NCLC is funded by the Department of Social Protection due to a "historical mishap" FLAC has been funded in the past by the Department of Justice. *See* chapter six at section 6.2.3 (c) for further insight into this.

It is submitted that because of the difference in objectives/methodology between State funded and non-State funded community law centres coupled with the English view that "[m]ost law centres never contemplated doing conveyancing and probate work or commercial cases" as they were not part of what law centres did (law centres were supposed to be concerned with social needs such as welfare or housing)[152] and the lack of awareness and disregard as to the type of non-litigation work and the role transactional law could play in helping to create economic wealth within the community, the potential for Irish public interest lawyers to expand public interest law into other areas was truncated.[153] At present, the way local development is been streamlined and "submerged" into local authority may offer room for comparison, but it is early days still.

However, the work carried out by the NCLC and BCLC through the years[154] has, in many ways, mirrored the approach and work CED lawyers were doing in the United States. It could also be argued that community groups have helped to inform NCLC's and BCLC's lawyers about the strategy to pursue and this is a further reason why CED lawyering can contribute to the attainment of a strategic approach and thus be included in the provision of civil legal aid services.

As Whyte indicates,

> "for lawyers to be most effective in combating social exclusion, they need to look beyond the individual client; they need to be able to engage with the political process and to represent the needs of the group of which the individual client is a representative; in short, they need to embrace the approach encapsulated in what are referred to as "strategic" models of legal aid... In particular, the strategic model does not confine itself to the conventional methods of lawyers in private practice as a means of

[152] Walter Merricks, 'The Aims and Goals of the Law Centre Movement' in *Welfare Law & Policy: Studies in Teaching, Practice and Research* (Frances Pinter Ltd 1979) 235-236.

[153] The extent of such expansion when compared to the advancement of CED in the United and how public interest lawyers became involved with it would also involve further research looking to see if any of their social policies/schemes has had any influence in Ireland. However, due to the remit of this research it would have to be part of future research. It should be pointed out that there is some research into CED policy formation between the UK and the United States. Back in 1993, David Fasenfest, an American sociologist edited a book containing a number of policy comparisons and noted that there might be some potential within them. *See* David Fasenfest, *Community Economic Development: Policy Formation in the US and UK* (The Macmillan Press 1993).

[154] *See* chapter six for a case study of each of these law centres.

advancing the interests of marginalised clients but also embraces such tactics as political lobbying, public education and community action."[155]

Perhaps, rather than looking as to why the strategic approach has not been effective, lawyers should also look at the lawyering attitudes present within the professions.

5.3.1.4 Application of the Strategic Approach in a CED Lawyering Context – comparisons of objectives/methodologies

If one were to compare the objectives and methodology of the strategic model vis-à-vis CED one finds that they both use different tools and not just legal ones. They both are also community oriented but their agendas and aims differ. While the strategic model is more concerned with access to justice, CED is more concerned with development yet they both tackle the different roots of a common problem (social inclusion). Table 5.3.1.4 below represents this assertion.

[155] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 279–280.

Table 5.3.1.4: Comparison of the objectives and methodology of the strategic model vis-à-vis CED

Comparison of the objectives and methodology of the strategic model vis-à-vis CED

Strategic Model's objectives and methodology		**CED Lawyering Model's objectives and methodology**
	Similarities/Commonalities	
	Use of different tools not just legal ones (e.g.: lobbying, the media, demonstrations)	
	Community oriented	
	Social Inclusion	
	Legal education, law reform, research	
		Combines law, social policy and community development tools
Use of constitutional and human rights law more prominent		Use of transactional law (i.e.: business, tax, housing) more prominent
Addresses poverty as part of a legal aid agenda/access to justice thus uses a more militant approach (less collaborative/more litigious).		**Addresses poverty as part of a development agenda** thus uses a collaborative approach (litigation as a last resort)
Aim is access to legal services/courts	Use the law and the legal system to bring about social reform	Aim is work creation, protection of children, citizen participation, access to services and not just legal aid, etc.
NCLC (BCLC to a certain extent)	NCLC/BCLC	BCLC (NCLC more recently)

Thus, within Irish CED one finds CED lawyering developing along a spectrum. At one end of the spectrum, BCLC was born out of a development/poverty agenda and not directly by access to justice calls. At the other end, NCLC originated in the move to improve access to legal service but, has always had components of a CED lawyering

model. The problem is that it has never been looked at from this angle but always as part of the strategic model of seeking access to justice/legal aid. Thus, the NCLC and BCLC reflect the process of CED's story in Ireland – as a consequence, CED lawyering can help with the strategic model of legal aid/social inclusion by expanding the role of law and the legal system in bringing about social change via the combination of law, social policy and community development and changing lawyering attitudes by a re-balance of power thus achieving empowerment.

The non-State controlled legal aid sector in Ireland has always been committed to a strategic approach but it has struggled to achieve community empowerment. In the United States, poverty lawyers[156] saw that they were part of the problem of client disempowerment, as their legal approach was creating dependency rather than tangible solutions to address the root causes of poverty among their clients. In Ireland, the legal approaches offered by "poverty lawyers"[157] have not been studied in detail thus lawyering attitudes and their influences on the strategic approach remain unanswered.

5.3.2 Poverty and Social Inclusion in a CED lawyering context

Since CED seeks to address issues of poverty and disempowerment within communities, it was deemed appropriate to place poverty and social exclusion in a CED lawyering context before any discussion about community development and social policy as applied to CED lawyering could ensue. However, given that the field of poverty research is vast, the issue of poverty and social exclusion will only be covered in general outline in order to set the necessary background.

5.3.2.1 Defining Poverty and social exclusion

(1) Poverty

The definition of poverty is a contested issue as much depends on how it is perceived.[158] The most widely known definition of poverty (Townsend's definition of relative poverty) indicates that,

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[156] Social welfare and housing for example.

[157] For matters of comparison, the term poverty lawyer is also used in the same context as that of the United States, the term which describes the practice of social welfare law, housing law, and other law pertaining issues that relate to the poor.

[158] It could be objective or subjective. For example, Townsend's definition is seen under an objective rather than subjective angle.

> "[i]ndividuals, families and groups in the population can be said to be in poverty when they lack the resources to obtain the type of diet, participate in the activities, and have the living conditions and the amenities which are customary, or at least widely encouraged or approved in the societies to which they belong. Their resources are so seriously below those commanded by the average family that they are in effect excluded from the ordinary living patterns, customs, and activities."[159]

At the international level, general agreement as to a single definition of poverty was reached relatively recently. In 1995, after the UN World Summit on Social Development[160], 117 countries adopted the Copenhagen Declaration[161], a declaration that included a programme of action and number of commitments to eradicate absolute poverty and reduce overall poverty around the world.[162] Absolute poverty was defined as

> "a condition characterised by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to services".[163]

Overall poverty included,

> "lack of income and productive resources to ensure sustainable livelihoods, hunger and malnutrition; ill health; limited or lack of access to education and other services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments and social discrimination and exclusion [and ...] lack of participation in decision-making and in civil, social and cultural life."[164]

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[159] Peter Townsend, *Poverty in the United Kingdom: A survey of household resources and standards of living* (Penguin 1979) 31.

[160] A/CONF.166/9 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N95/116/51/PDF/N9511651.pdf?OpenElement> [Accessed last 26 April, 2012].

[161] United Nations, 'The Copenhagen Declaration and programme of action: world summit for social development, 6-12 March 1995' (New York: United Nations Department of Publications 1995).

[162] Peter Townsend and David Gordon (eds), *World Poverty: New Policies to Defeat an Old Enemy* (Policy Press 2002) 58-59.

[163] A/CONF.166/9 (n 162) at chapter 2, paragraph 19, page 41.

[164] ibid.

At the EU level, there is also a definition of poverty which includes absolute and overall poverty but it also recognises the fact that poverty may differ from country to country.[165] Thus, when Ireland adopted its national anti-poverty strategy (hereafter "NAPS"), it indicated that

> "[p]eople are living in poverty if their income and resources (material, cultural and social) are so inadequate as to preclude them from having a standard of living which is regarded as acceptable by Irish society generally. As a result of inadequate income and resources people may be excluded and marginalised from participating in activities which are considered the norm for other people in society.[166]

(2) Social Exclusion

Social exclusion is multidimensional and depending on the point of view, social exclusion can be viewed through i) a redistributive model, ii) an integrationist approach and iii) a moral underclass discourse.[167] The redistributive model indicates that social exclusion can be best targeted by addressing the lack of material resources. This view is more closely related to Townsend's definition. The integrationist approach addresses social exclusion via the offering of access to social services, access to the labour market and the

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[165] The EU definition of poverty was established in 1981 and extended in 1984. *See* Peter Townsend and David Gordon, *World Poverty: New Policies to Defeat an Old Enemy* (n 164). Currently, the Council of the European Union indicates that:

> "People are said to be living in poverty if their income and resources are so inadequate as to preclude them from having a standard of living considered acceptable in the society in which they live. Because of their poverty they may experience multiple disadvantage through unemployment, low income, poor housing, inadequate health care and barriers to lifelong learning, culture, sport and recreation. They are often excluded and marginalised from participating in activities (economic, social and cultural) that are the norm for other people and their access to fundamental rights may be restricted".

Council of the European Union (Employment, Social Policy, Health and Consumer Affairs), 'Joint report by the Commission and the Council on social inclusion' (7101/04) (March 5, 2004) 8. Available at: <http://ec.europa.eu/employment_social/soc-prot/soc-incl/final_joint_inclusion_report_2003_en.pdf> [Accessed last 26 July, 2012].

[166] <http://www.socialinclusion.ie/poverty.html#whatis> [Accessed last 26 July, 2012].

[167] UCD Summer School: Frontiers in Poverty Research. Presentation given by Brian Nolan and Chris Whelan, 'Perspectives on Poverty and Social Exclusion and Implications for Poverty Measurement in Ireland', September 26, 2011. *See* also Ruth Levitas, 'Defining and Measuring Social Exclusion: A Critical Overview of Current Proposals' [1999] Radical Statistics 71 (Summer 1999). Available at <http://www.radstats.org.uk/no071/article2.htm> [Accessed last 26 July, 2012].

opportunity for social participation. The moral underclass discourse focuses on the characteristics on attitude and behaviour of those experiencing social exclusion.[168]

Although social exclusion and poverty are sometimes used interchangeably, in Ireland, social exclusion is defined by the Department of Social Protection as

> "being unable to participate in society because of a lack of resources that are normally available to the general population. It can refer to both individuals, and communities in a broader framework, with linked problems such as low incomes, poor housing, high crime environments and family problems."[169]

(3) Measuring Poverty

The debate about poverty measurement is broad. Suffice it to say that there needs to be an understanding of the different methodologies used in the measurement of poverty as, depending on the measure used, the level of poverty may differ. Sometimes the measurement of poverty also becomes a very subjective task that depends on the individual's perception of poverty.[170]

Ireland uses the consistent poverty measure, a measure that is at times at odds with the way poverty is measured in the EU. In the 1970s and 1980s, the measurement of poverty in Ireland was done in a straight forward fashion (i.e. income only); however, by the late 1980s quantitative research started by way of a household survey[171] brought about the concept of "consistent poverty" - a measure that combines the level of income[172] with that of deprivation.[173]

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[168] Brian Nolan and Chris Whelan, 'Perspectives on Poverty and Social Exclusion and Implications for Poverty Measurement in Ireland' (n 169).

[169] <http://www.socialinclusion.ie/poverty.html> [Accessed last 26 July, 2012].

[170] Colin Menton, *An Investigation of the Measurement of Poverty in Ireland* (Institute of Public Administration 2007) 23. Menton refers to this subjectivity by indicating that the measure used is by using the views from people as to how they perceive poverty.

[171] Research was carried out by the ESRI (Economic and Social Research Institute) in 1987. For more information on ESRI, go to: <http://esri.ie/> [Accessed last 20 November, 2012].

[172] Ireland uses 60% of the median income.

[173] The deprivation measure in Ireland was originally done by using a deprivation scale consisting of 8 "basic deprivation" items. A person would experience more deprivation if they were unable to afford one or some of the items. These items were: new (not second-hand) clothes; two pairs of strong shoes; a meal with meat, chicken, fish every second day; warm overcoat; a roast once a week; went without substantial

At the EU level, in 2010, a new target for measuring poverty was adopted, aimed at lifting 20 million people across Europe[174] (hereafter "Europe 2020") out of poverty. Although the EU poverty measure[175] differs from how Ireland measures poverty, the implications of how poverty is perceived and measured as well as the implementation of Europe 2020 means that the construction of social policy in Ireland is affected.[176]

5.3.2.2 Linking poverty and social exclusion to CED and CED lawyering

The approach to tackling poverty and social exclusion has influenced how CED lawyering has developed in Ireland. For example, the fact that Ireland's NAPS not only looks at income but also at resources (including material, social and cultural) facilitates the advancement of CED lawyering as it allows for a multifaceted approach to poverty by which lawyers can have an input. Likewise, the way poverty is measured facilitates the development of CED (as a whole) and how it can make a contribution towards the realisation of Irish and EU poverty targets. This is because the different approaches used to combat social exclusion such as ensuring there is adequate access to services, the labour market and social participation seems to go hand-in-hand with the idea of CED. In relation to CED lawyering, the key factor is that by understanding the disempowering effect poverty has on individual and communities as well as the different ways poverty is measured (as it affects policy formation), lawyers can then attempt to counteract this

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meal; went without heating during the last 12 months through lack of money ; debt problems in relation to ordinary living expenses. However, in the second-half of 1990s, the levels of income increased rapidly, making the levels of deprivation to fell sharply. Thus, the deprivation scale was modified and now there are 11 items of deprivation (6 items from the earlier measure plus 5 new items that relate to family and social life). Going without a substantial meal and debt problems in relation to ordinary living expenses were dropped. The new items are: able to afford to give presents to family or friends at least once a year; keep the home adequately warm; replace any worn out furniture; have family or friends for a drink or meal once a month; have a morning, afternoon or evening out in the last fortnight, for entertainment. Consistent poverty in Ireland is now measured at the 60% below the median equivalised income plus lack of at least two items from 11-item deprivation scale.

[174] Europe 2020.

[175] The EU uses the "at risk of poverty" indicator, an indicator that identifies the individuals who fall below 60 per cent of the national median of disposable income, adjusted to the household composition. The notion of poverty in the EU (as a whole) is thus based on an income thresholds as applied to each country (for example, country A may have a higher income threshold than country B). For a detailed explanation and the paradoxes that result in using different poverty measures between Ireland and the EU, *see* Chris Whelan and Bertrand Maitre, 'Poverty in Ireland in Comparative Perspective' (2010) 95 *Social Indicators Research* 99-110Chris Whelan and Bertrand Maitre, 'Poverty in Ireland in Comparative Perspective' (2010) 95 Social Indicators Research 99–110; Chris Whelan and Bertrand Maitre, 'Comparing Poverty Indicators in an Enlarged European Union' (2010) 26 European Sociological Review 713–730.

[176] This in turn, presents further opportunities of how CED can develop overall.

disempowerment, for example by helping to ensure there are adequate services, that there is enough social participation in policy formation.

Moreover, the difference in the approach to tackling poverty between the United States and Ireland also helps to explain how CED has developed in Ireland vis-à-vis the United States. Anti-poverty policies in these two countries differ: Ireland (as part of the EU) has focused on "social inclusion and social quality" while the United States has followed the same path as the Bretton Woods Agreement[177] (IMF-World Bank) focusing on "broad-based economic growth"[178], "development of human capital" via education[179] and through the creation of "minimum safety nets"[180] for vulnerable groups.[181] This difference of approach may also help to explain why market-based CED has not been as prominent in an Irish CED context.

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[177] In 1944, western countries met in Bretton Woods, New Hampshire to establish two instruments aimed at setting up financial and monetary control at an international level. One was the International Bank of Reconstruction and Development (now known as the World Bank) which was set up to provide loans to aid in the reconstruction of Europe and Japan. The other was the International Monetary Fund targeted specifically to third world countries as "the regulator of currencies, providing stable exchange rates and providing liquidity for the free flow of trade". See, Alan Walker, David Gordon, Ruth Levitas, Peter Phillimore, Chris Phillipson, Margot E. Salomon, and Nicola Yeates (eds), *The Peter Townsend Reader* (The Policy Press 2010) 69-70.

[178] Broad-based economic growth means that policies for economic growth include different sectors (broad-based) in society and not just "the poor". It also focuses on absolute poverty rather than relative poverty. There is also diversification of the economy, which also includes privatisation and liberalisation. Peter Townsend and David Gordon, *World Poverty: New Policies to Defeat an Old Enemy* (n 164).

[179] The development of human capital via education means that government invests on the education of its citizens. However, if governments cut down on spending on education, human capital cannot grow, and those who want an education have to pay for the costs it, widening the gap between the rich and poor.

[180] The creation of minimum safety nets means the use of means tests to provide social assistance for the most vulnerable. However, it leaves behind a large group of people that still need social assistance but because of the means-tests, they are not provided for (the "almost poor" are not covered). Townsend indicates for example that the IMF's loan conditions require lower expenditure by government on social programmes such as health and education. Thus, any safety nets that provide for people under social programmes (education, health, housing, social security or welfare) are reduced. Peter Townsend, 'Poverty, Social Exclusion and Polarisation: the need to construct an international welfare state' in *World Poverty: New Policies to Defeat an Old Enemy* (Policy Press 2002) 15.

[181] ibid. 3. David Gordon, in writing also about anti-poverty policies indicates that these policies have not been successful as the number of poor people in the world has increased rather than decreased and they have failed "partly to a rigid adherence to a neo-liberal economic orthodoxy" (Gordon cites Stiglitz 1998, 2000 as the source for this orthodoxy). This orthodoxy comprises privatization (prices are increased affecting the poor), capital market liberalisation (speculators destabilise the economy of countries), market-based pricing (the prices of basic foods and fuel rise so the poor cannot afford it) and the use of free trade (which, despite its advantages creates further poverty). David Gordon, 'The international measurement of poverty and anti-poverty policies' in *World Poverty: New Policies to Defeat an Old Enemy* (Policy Press 2003) 54-24.

CED is applied at local level which means it can address specific poverty issues within communities, for example, by ensuring there is access to services within the community.[182] Thus, the way anti-poverty policies work in a country, it is submitted, affects the way CED develops in that particular country. Yet, the core definition of CED can still be applied no matter the jurisdiction. CED law itself may be geared towards one way or another (e.g.: more or less use of housing law, disability law, charity law, etc.) but is still able to embrace all the efforts aimed at the economic well-being of communities as well as allowing for other initiatives. This is why the combat poverty approach of each country and the nuances it entails needs to be understood if we want to get to the core as to how CED, CED law and CED lawyering develops.

Therefore, the role of CED lawyering as part of a multidimensional approach to poverty can help towards the implementation of a strategic model of legal aid, highlighting the role of law and lawyers in combating social exclusion.[183]

5.3.3 Community Development and Social Policy in a CED lawyering context

In Ireland, the concept of development is nothing new, particularly since the publication of T.K. Whitaker's famous *Economic Development Report* of 1958.[184] From then on, terms such as "industrial development", "sustainable development", "community development" and "local development" have become part of our everyday vocabulary[185]. Moreover, the creation and establishment of bodies such as the Industrial Development Agency (hereafter "IDA")[186], the National Development Plan (hereafter "NDP")[187],

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[182] It is interesting to point out that the United Nations Legal Empowerment of the Poor (UN LEP) also links poverty, exclusion and law and indicates that expanding access to justice can help to break the cycle of poverty and social exclusion <http://www.undp.org/legalempowerment/> [Accessed last 25 July, 2012].

[183] Given the three different views social exclusion can be viewed under, CED sits well within the integrationist and moral underclass discourse.

[184] Economic Development in Ireland can also be traced back to 1899, when the *Agriculture and Technical Instruction (Ireland) Act, 1899* sought to stimulate local development in Ireland. <http://www.tara.tcd.ie/bitstream/2262/7854/1/jssisiVolX548_567.pdf> [Accessed last 30 July, 2012] but because Ireland was not a sovereign country, we start from 1937.

[185] 2008 marked 50 years since the publication of Whitaker's Report. A conference , organised by the Institute of Public Administration, also took place to commemorate the 50 years <http://www.ipa.ie/upload/documents/50yearsonsmall.pdf> [Accessed last 20 August 2010].

[186] <http://www.idaireland.com/ida-ireland/> [Accessed last 30 July, 2012].

[187] <http://www.ndp.ie/docs/NDP_Homepage/1131.htm> [Accessed last 20 August 2010]. The first NDP took place from 2000-2006. The second NDP goes from 2007-2013. To access the NDO 2000-2006 go to: <http://ppp.gov.ie/wp/files/documents/miscellaneous/national_development_plan/national-development-

Comhar (Sustainable Development Council),[188] Department of the Environment, Heritage and Local Government[189] (now Department of Environment) and more recently, the Department of Community, Equality and Gaeltacht Affairs[190] (now dismantled and its responsibilities distributed among different departments) have also contributed to our concept of development.

In the international sphere, the Rio Declaration on Environment and Development[191] which was re-affirmed in the World Summit on Sustainable Development (Earth Summit 2002),[192] the United Nations Development Programme (hereafter "UNDP") and the Millennium Development Goals (hereafter "MDG")[193], have also made economic development a world-wide priority.

However, the legal dimension to the concept of community economic development as part of the Irish public interest law and policy has received very little if no attention at all.

Many times government policies affect how community development is practiced which at the same time affect how certain legal services are also developed. Although community development and social policy would, in their own right, provide excellent topics for research for anyone wanting to expand the field of CED within Ireland, detailed explanations are not offered in this research. It is envisaged that by having a background understanding of them, the development of CED as a lawyering strategy can ensue.

5.3.3.1 Ireland's Programme for Development (Economic Expansion)

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plan-2000-2006.pdf> [Accessed last 30 July, 2012]. To access the NDP 2007-2013, go to: <http://www2.ul.ie/pdf/932500843.pdf> [Accessed last 30 July, 2012].

[188] <http://www.comharsdc.ie/> [Accessed last 30 July, 2012].

[189] <http://www.environ.ie/en/> [Accessed last 30 July, 2012].

[190] <http://www.pobail.ie/en/AboutUs/> [Accessed last 20 August 2010]. The Department was established in March 2010 and it has, as part of its responsibilities, the specific responsibility of looking after community and local development programmes; social inclusion; equality, human rights and integration among others.

[191] <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm> [Accessed last 30 July, 2012]. (A/CONF.151/26 (Vol. I).

[192] <http://www.earthsummit2002.org/> [Accessed last 30 July, 2012].

[193] The role of UNDP and MDG within an international CED context are discussed in chapter one at section 1.1.

It is proposed that in understanding how CED in Ireland or "modern Ireland" developed, influenced to a large extent by government policy, one has to look back to 1958, to T.K. Whitaker's *First Programme for Economic Expansion*, and use 1958 at the start of a time-line.[194]

This first Programme for Economic Expansion was launched[195] with the aim of restoring public confidence and end protectionist barriers.[196] The economic strategy was implemented via the IDA[197] and by the 1960's there was an increase in urbanisation, industrialisation and economic development.[198] The country was divided into nine development areas (economic planning regions), namely, the East, Northeast, Southwest, Southeast, Midwest, Donegal, Midlands, West and Northwest. This division was made by using the following measurements: regional population change, unemployment, personal income, and percentage of labour force engaged in industry.[199] Industrial estates were also created, for example Shannon Industrial Estate.[200]

Kearns, in writing about industrialisation and regional development in Ireland, saw that as a whole, the IDA effort of attracting industry and promoting regional balance was successful.[201] However, there was no mention of how communities were affected, other than saying that the economic development was good as it created jobs, despite the fact that in 1958, 60,000 people emigrated and that the average annual figure for emigration between 1950-1960 was 40,000.[202]

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[194] Note that a few years after, in the mid-1960s, that calls for access to justice started to take place.

[195] Kevin C. Kearns, 'Industralization and Regional Development in Ireland, 1958-72' *American Journal of Economics and Sociology* (July, 1974) Vol. 33, No.3 299–316.

[196] ibid. 302.

[197] ibid.

[198] Piaras Mac Éinrí, 'Some recent demographic developments in Ireland' (1997) *Études Irlandaises* No.22-1 Spring,145–164. Available at: <http://migration.ucc.ie/etudesirlandaises.htm> [Accessed last 30 July, 2012].

[199] Kevin C. Kearns, 'Industralization and Regional Development in Ireland, 1958-72' (n 195) 306.

[200] ibid. 309.

[201] ibid. 312.

[202] ibid. 301–302 (Table 1), quoting CSO, Census of Population in Ireland, 1971.

The division of the country into nine development areas also contributed to the development of rural and urban areas, affecting also the way CED lawyering would develop. This is because community development in rural areas seems to be largely linked to the teachings of Catholic social policy[203] as it was, mainly, through the works of priests that economic development came to the small town and villages rather than straight-forward calls from students, the unemployed or others.

5.3.3.2 The role of Fr. McDyer – father of community development in Ireland

At the recent Mac Gill Summer School, Co. Donegal, Fr. James McDyer was called a "pioneering champion of community development…one of Ireland's most prominent social activists in the twentieth century"[204] and his model of community development greatly helped to shape the development of many communities.[205]

Back in the 1960s, in Ireland, there was high unemployment and increased emigration. The 1960s also saw the creation and success of co-operatives in rural Ireland, such as the one initiated by Fr. McDyer in Glencolumbkille[206], County Donegal, aimed at retaining the work-force and giving economic subsistence to the local population.

Fr. McDyer's strategy for the area in Donegal was,

> "to build a chain of small industries funded by the shareholding of the local people; the profits of the first two industries would prime the creation of other small factories, until a cordon enclosed the community to trap emigration and farm redundancy at its source".[207]

Fr. McDyer was even concerned with the development of young people[208] stating that:

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[203] For an anthropological view about Irish Catholics, *see* Lawrence J. Taylor, *Occasions of Faith: An Anthropology of Irish Catholics* (Dublin, Lilliput Press 1995).

[204] Liam Ó Cuinneagáin, 'Fr. McDyer - A Pioneering Champion of Community Development', Paper presented at the Mac Gill Summer School, 24 July 2010. (Sourced via private email correspondence 18 August, 2010, on file).

[205] ibid.

[206] Glencolumbkille is also known as Glencolmcille. Its Irish name is Gleann Cholm Cille.

[207] James McDyer, *Fr. McDyer of Glencolumbkille: An Autobiography* (Brandon 1997) 75.

[208] This could be considered under today's term the building of 'social capital'.

> "[o]ur young people cannot develop unless, at an early age, they have a sense of making a useful contribution and contact with a good range of people. Children have little opportunity to develop real self-respect and self-sufficiency if they are shut out of community activity, and herded within their own age groups too much at the time, or cut off from stimulus, alone with one beleagured parent in a dormitory suburb, watching the endless soul-destroying repetition of maintenance tasks."[209]

Fr. McDyer was determined to tackle the issues that faced the community[210], and acting in a very similar way as to how international NGOs work, he identified the issues that needed priority such as infrastructure development and public amenities and also enlisted the public figures of the time to help him to promote them. In 1961, one of those invitees was Charles J. Haughey, the then Minister for Justice who is said to have provided support for his projects. Unfortunately, there are no records as to the type of support provided.[211]

It is interesting to point out that the government policy of 1965, as expressed by the "Inter-departmental Committee on the Problems of Small Western Farms,"[212] contained the following passage:

> "'In our present circumstances, with virtually the whole country underdeveloped, it seems wasteful to subsidise remote areas especially by providing more extensive grants. Special subsidisation of this kind entails additional burdens on the community as a whole and retards progress in the more suitable areas where concentrated efforts could give better results'."[213]

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[209] James McDyer, *Fr. McDyer of Glencolumbkille: An Autobiography* (n 207) 111. His comments could also be used to ensure there is free education, low child-care costs, and any other topic related to children and CED.

[210] It is submitted that when compared with the United States, Fr. McDyer can be compared to the United Farm Workers and the leadership of Cesar Chavez, a labour leader and civil rights activist. Although he wanted labour union and struggle for national support for farm workers, his work can be compared to that of Fr. McDyer in wanting to give power to the people, developing their full potential.

[211] Liam Ó Cuinneagáin, 'Fr. McDyer - A Pioneering Champion of Community Development' (n 204).

[212] Liam Ó Cuinneagáin quoting the Report on Pilot Area Development - Dublin 1965. ibid. (The Report reiterated a statement from T.K. Whitaker's famous *Economic Development Report of 1958* at p.160).

[213] ibid. It is also important to highlight that Liam Ó Cuinneagáin, referring to this passage also says that "in State papers disclosed thirty years later a Department of Finance memo to all Government Departments expressed concern about 'The Glencolmcille Experiment'. It emphasised that, were it to be successful, it

The option for Fr. McDyer was then to pilot the use of different cooperatives and he participated in different projects[214] such as "a housing co-operative" (aimed at attracting emigrants back from England[215]); a Fresh-Produce Cooperative (the aim was to sell the fresh-produce of the local farmers and although it received local and governmental support the Minister for Agriculture at the time closed it down[216]); a visitor and tourist attraction (The Glencolmcille Folk Village[217]) and a cooperative to sell fish (known as Errigal Fish Ltd).[218] This last initiative attracted much attention across the West and Fr. McDyer was invited to many meetings so he could share his ideas about self-help within communities.[219] Note that Knock Airport[220] is also an example of a similar idea that

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could have detrimental consequences for state finances, as other rural communities would demand parity of investment."

[214] Yoshifumi Shimizu, *A Study of Community Development in Ireland: A Case Study of Glencolumbkille in Co. Donegal* (St. Andrews University 1999) vi. The case-study also mentions that Fr. McDyer participated in the following projects: Introduction of electricity (1952); Building of a community hall (1954); Outdoor recreational facilities (1959); the road of districts tarred (1954-1960); first piped water supply (1956); plan of vegetable processing factory (1961); first co-operative factory [vegetable processing factory] (1962); Hand-knitting co-operative started (1964); knitting factory opened (1966); hand craft centre; folk museum opened (1967); holiday village opened (1968); craft shop opened in Dublin (1970); Glencolumbkille Development Association formed (1970); Glenbay Hotel opened (1972); Errigal co-operative factory [fish-processing factory] (1973); Hotel cottage Built (1979); decision taken to sell assets and create Fr. McDyer Trust fund (1980).

[215] Liam Ó Cuinneagáin, 'Fr. McDyer - A Pioneering Champion of Community Development' (n 204) 12.

[216] James McDyer, Fr., *The Glencolumbkille Story by Father McDyer* (Dochas Cooperative Society 1963) 5. He recalls the market would be created among the locality for "fodder, beet, barley, potatoes and oats by setting up a large, central piggery and fowl farm, with co-operatively owned farm machinery... The scheme was approved and encouraged by many departmental officials, but the then Minister for Agriculture shot it down." Its closure of some of the cooperatives begs the question if the community had had legal support at the time, would things have worked differently?

[217] <http://www.glenfolkvillage.com/frmcdyer.htm> [Accessed last 30 July, 2012].

[218] Errigal Fish Ltd (now trading as Errigal Seafood) improved the local infrastructure and provided employment opportunities for the residents. It was initially created as Errigal Co-Operative Society and was demutualised in the 1970's, becoming *Earagil Eisc Teorana* (Errigal Fish Ltd.) At present it employs around 120 people. <http://www.errigalfish.com/home.html> [Accessed last August 17, 2010]. Information also obtained from private email correspondence with Aodh O Domhnaill, Managing Director, Errigal Fish Ltd (August, 2010). For a recent article on the company and Fr. McDyer's ideals, *see* 'Father McDyer's Dream Continues to Flourish', *DonegalDaily.com* April 10, 2012 available at: <http://www.donegaldaily.com/2012/04/10/father-mcdyers-dream-continues-to-flourish/> [Accessed last 30 July, 2012] and also Joanne Hunt, 'Focus on costs steers seafood exporter into calmer waters', *The Irish Times* April 10, 2012.
Available at: http://www.irishtimes.com/newspaper/finance/2012/0410/1224314564729.html> [Accessed last 30 July, 2012].

[219] Liam Ó Cuinneagáin, 'Fr. McDyer - A Pioneering Champion of Community Development' (n 204). *See* also, James McDyer, *Fr. McDyer of Glencolumbkille: An Autobiography* (n 207) *see* particularly chapter 14.

[220] Yoshifumi Shimizu, *A Study of Community Development in Ireland: A Case Studyof Glencolumbkille in Co. Donegal* (n 214) 2. His interview with F. Cunningham, a teacher involved in Glencolumbkille projects, narrates that the six people at the committee, including Fr. McDyer "spent a lot of time down the west of

accelerated the development of "the West" and was made possible by the work of Monsignor James Horan[221]. The "Committee for the Defence of the West" also aimed to set-up "12 'bridgeheads of hope' or 12 'Glencolumbkilles'"[222] and to have a voice in the development of their own areas.

It could be argued that Fr. McDyer's approach was an example of CED as he emphasised the fact that development should benefit the local community as well as providing for accountability when development takes place.

5.3.3.3 The Current Definition of Community Development

The *Budapest Declaration* of 2004[223] which aims to build the European civil society via community development by addressing matters of community development policy and legislation at the European, national and local levels defines what is meant by community development.[224] The *Budapest Declaration* indicates that:

> "Community development is a way of strengthening civil society by prioritising the actions of communities, and their perspectives in the development of social, economic and environmental policy. It seeks the empowerment of local communities, taken to mean both geographical communities, communities of interest or identity and communities organising around specific themes or policy initiatives. It strengthens the capacity of people as active citizens through their community groups,

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Ireland, in different communities, giving talks to them so that they could follow a similar pattern, and similar type of development, and right down to Knock [County Mayo], where they set up the international airport there...It was from the Glencolumbkille idea that the local priest, Fr. Horan, so followed with the airport idea."

[221] <http://www.irelandwestairport.com/utility/james_horan.aspx> [Accessed last 30 July, 2012].

[222] James McDyer, Fr., *The Glencolumbkille Story by Father McDyer* (n 216) 13.

[223] *See* also Gary Craig, Margo Gorman, and Ilona Vercseg, 'The Budapest Declaration: Building European Civil Society Through Community Development' [2004] *Community Development Journal* 423–429.

[224] It covers different community development issues such as:

> "Community development training; Community development theory and research; Community development and rural issues; Community development and urban regeneration; Community development, sustainable development and the environment; Community development, lifelong learning and cultural development; Community development, local economic development and the social economy; and Community development, minorities, migration, racism and discrimination."

'The Budapest Declaration: Building European civil society through community development', April 2004. The full wording of the declaration can be obtained in a number of websites. To mention one, go to: <http://www.iacdglobal.org/files/budapestdeclaration4683d.pdf> [Accessed last 30 July, 2012].

organisations and networks; and the capacity of institutions and agencies (public, private and non-governmental) to work in dialogue with citizens to shape and determine change in their communities. It plays a crucial role in supporting active democratic life by promoting the autonomous voice of disadvantaged and vulnerable communities."[225]

Under the definition of community development of the *Budapest Declaration*, community development possesses the three main components of CED, as described under the American definition.[226] The definition given by the *Budapest Declaration* presupposes that community development means "locally accountable development". However, it is a broad definition that does not explain how the strengthening of communities or locally accountable development is to be accomplished. It is a very aspirational definition which does not mention lawyers. Even the community development definition used by the majority in Ireland, such as *Pobal*[227] - a definition which includes social exclusion - does not include lawyers or attempt to indicate how the law can play a role in its development.

(1) Community development and the types of communities found within CED

Simon argues that for CED to take place, having contact with the local community either by face-to face encounters or by being part of a geographical focus as well as

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[225] Dr. Brian Motherway, *The Role of Community Development in Tackling Poverty in Ireland: A literary review for the Combat Poverty Agency* (n 16) 3. Available at: <http://www.cpa.ie/publications/TheRoleOfCommunityDevelopment-LiteratureReview_2006.pdf> [Accessed last 30 July, 2012].

[226] *See* chapter two at sections 2.2.1; 2.3.4 and 2.5 for the respective definitions of CED, CED law and CED lawyering.

[227] Pobal was established in 1992 under the name Area Development Management (ADM). It changed its name to Pobal in 2005. Its purpose, until recently was to "work on behalf of the Irish Government and the EU to support local communities in promoting social and economic inclusion, reconciliation and equality". <https://www.pobal.ie/Pages/Home.aspx> [Accessed last 20 August 2010]. Now, with a new government, its purpose has slighted changed indicating that

> "Pobal is a not-for-profit company with charitable status that manages programmes on behalf of the Irish Government and the EU. We are an intermediary that works on behalf of Government to support communities and local agencies toward achieving social inclusion, reconciliation and equality. We support Partnership approaches to decision-making in order to engage communities in the development process at local level, and promote co-ordination between communities, State agencies and other stakeholders. Pobal encourages the piloting of new initiatives and we are committed to contributing to policy development through the lessons learnt from the programmes we manage."

<https://www.pobal.ie/AboutUs/Pages/Home.aspx> [Accessed last 30 July, 2012].

making the community the recipients of development is essential.[228] Although he presupposed that the community had to be local for CED to take place, there has been a move on the part of academics and researchers, including Simon, to interpret the word "community" to cover communities of interests.[229] Communities of interests may not necessarily share the same geographical focus, thus there is an argument that community development among communities of interests cannot be part of CED. However, there are calls to move away from the thinking that CED means to work on "local initiatives only".[230] In Ireland, it could be argued that communities of interest are also part of CED[231], albeit independent community law centres who serve specific communities such as travellers or immigrants have not explicitly adopted CED strategies yet.[232]

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[228] William H. Simon, *The Community Economic Development Movement: Law, Business, and the New Social Policy* (2nd edn, Duke University Press 2001) 41-42.

[229] Wiliam H. Simon, 'Introduction: Lawyers and Community Economic Development' (2007) 95 *Cal. L. Rev.* 1821. *See also* Carmen Huertas-Noble, 'Promoting working-owned cooperatives as a CED empowerment strategy: A case study of *Colors* and lawyering in support of participatory decision making and meaningful social change' (2010) 17 *Clinical L. Rev.* 255, 262–264.

[230] John A. Powell and Jason Reece, 'Perspectives on CED in a Global Economy' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009) 36. *See* also Carmen Huertas-Noble, 'Promoting working-owned cooperatives as a CED empowerment strategy: A case study of Colors and lawyering in support of participatory decision making and meaningful social change' (n 232).

[231] *See* for example, Anastasia Crickley and Oonagh McArdle, 'Community Work, Community Development: Ireland 2011' (2011) 1 *The Irish Review of CED Law & Policy* 47, 48–49.

[232] Since CED was "unknown" in Ireland, independent community law centres servicing communities of interest have tended to focus on court representation. However they also offer community legal education to individuals and community groups depending on the need. In Ireland, at present, there are seven independent community law centres and two are in the process of establishment (Limerick Community Law and Mediation Centre and the Children Law Centre). Out of these, four service communities of interest (homeless, travelers, immigrant and asylum seekers respectively– *see* numbers 4-7 below).

The independent community law centres currently operating in Ireland are 1)Free Legal Advice Centres, 2)Ballymun Community Law Centre, 3) Northside Community Law and Mediation Centre (ex- NCLC), 4) Mercy Law Resource Centre, 5) Irish Traveller Movement Independent Law Centre, 6) Immigrant Council of Ireland and 7) Irish Refugee Council Independent Law Centre.

In relation to the work done by those servicing communities of interest, the Mercy Law Resource Centre, which services the homeless, provides focus groups to homeless organisations to assess and discuss how to address the type of issues/cases they face. Interview (including questionnaire) with Rose Wall, solicitor at the Mercy Law Resource Centre (19 July, 2011). The Immigrant Council of Ireland also provides legal education to individuals as well as service providers on Irish immigration law, trafficking and employment permits legislation. Interview (including questionnaire) with Catherine Cosgrave, Senior Solicitor at the Immigrant Council of Ireland (19 July, 2011). The Irish Traveller Movement Independent Law Centre offers legal aid and advice to approximately 30,000 Travellers. They also provide legal education either for Travellers or to community development workers. Interview (including questionnaire) with Siobhan Cummiskey, ex-Managing Solicitor (20 September 2011). The Irish Refugee Council Independent Law Centre (officially opened on 17 February 2012) provides legal advice to asylum seekers or refers them to other organisations. They also hope to offer advice clinic and support practitioners and voluntary

5.3.3.4 The Role of Government and its Agencies in the creation of social policies[233]

The role played by the government and its agencies in the advancement of CED as a whole is also of importance when looking at how CED lawyering developed in Ireland. Tools for the promotion of infrastructure development such as the National Development Plan (hereafter "NDP")[234] or for social inclusion such as the National Action Plan for Social Inclusion (hereafter "NAP Inclusion") or growth strategy such as EU 2020, as well as local development companies or community partnerships bringing about changes in the social, political and economic landscape, create and make the expansion of the portfolios of CED lawyers (their "antipoverty arsenal") possible, allowing CED lawyers to use their transactional skills towards helping the alleviation of poverty. Government investment in the regeneration of Ballymun is a good example, which will be discussed in the following chapter.

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organisations working on behalf of refugees and those working with asylum seekers <http://www.irishrefugeecouncil.ie/law-centre> [Accessed last 1 August, 2012]. Unfortunately, they are in their early stages so not interview was possible. Note however that due to the creation of the *Irish Review of Community Economic Development Law and Policy* in 2011 by Maria Antonieta Nestor and the NCLC, there is an awareness of CED lawyering in Ireland. The most recent issue of the Review contains an brief article indicating that in fact the Mercy Law Resource Centre practices CED lawyering. *See* Brian Barry, 'Bridging the Gap Between Legal Rights and Homelessness - The Work of the Mercy Law Resource Centre' (2012) 1(4) *The Irish Review of CED Law & Policy* 49, 50.

The other two independent community law centres in the process of establishment will service specific communities, namely, children and a local community, namely the regenerated areas within Limerick City. The Children Law Centre is currently in the process of hiring a full time director/lawyer). *See* Noeline Blackwell, 'Law centre for children to open in Ireland', *The Irish Times* (June 11, 2012) available at <http://www.irishtimes.com/newspaper/finance/2012/0611/1224317672077.html> [Accessed last 1 August, 2012] and the Limerick Community Law and Mediation Centre has recently hired a solicitor. *See* 'New Community Law & Mediation Service for Limerick', *PILA Bulletin,* June 27, 2012. Available at: <http://www.pila.ie/bulletin/june-2012/27-june-2012/new-community-law-mediation-service-for-limerick/> [Accessed last 1 August, 2012] and also 'New Community Law and Mediation Centre to open in Limerick', *PILA Bulletin*, 12 December, 2012. Available at: <http://www.pila.ie/bulletin/december-2012/12-december-2012/new-community-law-and-mediation-centre-to-open-in-limerick/> [Accessed last 15 December, 2012].

[233] For more information about social policy in Ireland *see* Gabriel Kiely, Anne O'Donnell, Patricia Kennedy, and Suzanne Quin (eds), *Irish social policy in context* (UCD Press 1999) and Suzanne Quin, Patricia Kennedy, Anne Matthews, and Gabriel Kiely (eds), *Contemporary Irish social policy* (UCD Press 2005). For a Celtic tiger period analysis *see* Tony Fahey, Helen Russell, and Christopher T. Whelan (eds), *Best of times? : the social impact of the Celtic tiger* (Institute of Public Administration 2007) and for a post-celtic tiger analysis *see* Peadar Kirby and Mary Murphy, *Towards a second republic - Irish politics after the celtic tiger* (Pluto Press 2011). I would like to thank Brian Harvey for his helpful guidance as to the core texts any person interested in Irish social policy should read.

[234] For example: NDP 2006-2013 and Towards 2016.

In *Local Partnerships for Social Inclusion*[235] it is indicated that the Combat Poverty Agency was "at the forefront in developing and assessing the potential of local partnerships as a tool for tackling social inclusion".[236] It indicates that Ireland was a country in which the model of local partnership was the strongest. The model was defined as:

> "a formal organisations framework for policy making and implementation, which mobilises coalition of interests and the commitment of a range of partners, around a common agenda and multi-dimensional action programme, to combat social exclusion and promote social inclusion".[237]

This model was used in tackling social exclusion, focusing on the local issues when creating policy.[238] It also gave rise to the Local Development Programme (a joint EU Community Support Framework-government programme aimed at the allocation of EU Structural Funds[239]). This policy approach saw the creation of a large number of local partnerships across Ireland divided into four broad areas: local development partnerships; urban regeneration partnerships; local employment & enterprise partnerships and local service partnerships.[240] Community organisations also interacted with them.

5.3.3.5 The Welfare State and Access to Services

The role of the Welfare State post-second world war helps towards an understanding of how the citizen relates to the State. At the same time, it helps to explain why the private market has influenced CED lawyering in the United States much more than in Ireland.

Access to services and entitlements in such areas as welfare, health, housing and education are an important element of the legal aid, advice and representation offered by

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[235] Jim Walsh, Sarah Craig, and Des McCafferty, *Local Partnerships for Social Inclusion?* (Oak Tree Press 1998).

[236] ibid. *Preface.*

[237] ibid. xiii *Executive Summary.*

[238] ibid. xiv The creation of this policy centered on three main themes: 1) "local multi-agency institutions"; 2) "targeting and involvement of socially excluded groups in designated areas of disadvantage" and; 3) "local integrated plans combining enterprise initiatives and welfare measures".

[239] ibid.

[240] ibid.

independent community law centres in Ireland. As such, the development of policies entitling individuals to certain services has contributed to the work-load of public interest lawyers over the years.

An important element has been the issue of housing, and given housing plays a vital part in CED- as the provision of shelter is one of the basic necessities of people – issues relating to housing legislation, housing conditions[241], regeneration, and local planning shaped how CED lawyering has developed. It could be argued that because an important part of the work community law centres do in Ireland relates to housing[242], housing has also played an important role in CED in the same way it has done in the United States.[243] It is submitted that further research on this particular topic is needed, specifically looking at the role of housing in the development of CED law and its impact on CED lawyering in Ireland.

5.4 Applicability of CED within the Irish context[244]

The applicability of CED, CED law and CED lawyering in Ireland starts from the premise that although there is no exact definition of what is meant by these concepts there is a general understanding of what they imply.

To recap, when we speak of CED, three different definitions need to be understood, namely, CED, CED law and CED lawyering. CED, in short, is addressed at the local (although now calls to expand the definition of local are starting to emerge as different type of communities such as immigrants, gay and others are also using CED), it has a specific geographical focus, makes the community the recipients of development and

[241] *See* for example, Irish Human Rights Commission Press Release 25 May 2010 'Local Residents in Rialto Highlight Poor Housing Conditions as a Human Rights Issue' <http://www.ihrc.ie/newsevents/press/2010/05/25/local-residents-in-rialto-highlight-poor-housing-c/> [Accessed last 3 August, 2010]

[242] For example, a number of law centres together with a number of housing agencies recently launched a 'know your rights" booklet. The booklet is available on the each of the CLCs and also on their websites (publication sections). *See* for example <http://www.mercylaw.ie/publications/httpwwwmercylawiepublicationshttpwwwmercylawiepublicationshttpwwwmercylawiepublicationshttpwwwmercylawiepublications10html158html158html158html.158.htm> [Accessed last 16 October, 2012].

[243] For an up-to- date and overall view of housing law and policy in Ireland, *see* Padraic Kenna, *Housing Law, Rights and Policy* (Clarus Press 2011).

[244] An earlier version of this section formed part of an article published on the *Irish Review of CED Law & Policy*. *See* footnote (n 2) at section 5.1 in this same chapter.

makes that development accountable to the community it serves. CED law in turn, embraces the efforts made by that local community at developing jobs, housing, combating drug-abuse and the creation of businesses for low-income people among others – efforts which many times are supported by non-profit organisations and community groups. CED lawyering therefore acts as a facilitator by using different legal tools and approaches all of which are geared towards the socio-economic improvement and empowerment of the community.[245]

Consequently, these understandings or "definitions" give enough latitude to embrace the different welfare traditions and investment approaches of Ireland and the United States and explain how CED lawyering in Ireland developed vis-à-vis the United States.

The different approaches used towards the financing of development between the United States, on the one hand, and Ireland on the other, offer an initial platform from which to understand the development of Irish CED law and CED lawyering. In the United States, the private market has greatly influenced contemporary CED law and CED lawyering, as "innovative financial tools"[246] had to be created in order to channel capital to poor areas and more recently, the critique of the market-based approach of CED has ensured more community involvement geared towards a wider movement for economic justice.[247]

Furthermore, poverty lawyers had to add market techniques to their "antipoverty arsenal", changing the landscape in the delivery of legal services to the poor.[248]

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[245] For detailed definitions, *see* Maria Antonieta Nestor, 'The Research of CED Lawyering in Ireland: An Overview' (n 2) 6–10.

[246] For example, New Market Tax Credits (NMTC) and Tax Increment Financing (TIF). It is interesting to point out that recently there was a proposal in a journal article to use a similar tool akin TIFs, known in Ireland and the UK as Special Impact Bonds, to finance social economic enterprises. *See* Stephen Kirwan, 'Financing Social Value and Community Economic Development - 'The Potential and Pitfalls of Utilising Social Impact Bonds in Ireland'' (2012) 1(3) *The Irish Review of CED Law & Policy* 42–52.

[247] For example, community benefits agreements and different immigrant initiatives. *See* chapter three at sections 3.3.2.2 and 3.3.2.3 respectively.

[248] Scott Cummings describes the role played by the market-based strategies in CED, indicating that "[a]t the national policy level, a private sector approach has defined the federal government's response to poverty issues, as support programs have yielded to market-based antipoverty initiatives, such as the Empowerment Zone Program and the New Markets Tax Credit." See Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (2002) 54 *Stanford Law Review* 400–493, 402-403.

> "In an effort to improve the physical infrastructure and strengthen the economic fabric of distressed communities, practitioners have provided transactional legal assistance in the areas of real estate, tax, and corporate law to community-based organizations engaged in neighbourhood revitalization initiatives."[249]

In Ireland, in contrast, the government's approach of funding development in poor areas, including, for instance, the regeneration of social housing[250] has meant that market-based techniques have played less of a role in the development of CED law and CED lawyering.[251] Instead, poverty lawyers, inspired by the CLC movement, have used transactional legal assistance[252] on an *ad-hoc* basis and focused more on innovative tools to gain access to justice such as efforts and initiatives that provide legal (and non-legal) services to the poor[253] which in turn facilitate the building and empowering of communities.

A further feature, not found in the United States but present in Ireland, is the role of governmental departments and government structures in overseeing development at a national and local levels. For example, at the Federal level in the United States, there is no equivalent to the recently created Local and Community Development Programme[254] in

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[249] ibid 403.

[250] The Limerick Regeneration Agencies for example do not have private funding to regenerate the area rather it is the government the one that has committed funding as there is a lack of private investment. Conversation with Brendan Kenny, CEO, Limerick Regeneration Agencies (Limerick, 23 November, 2010).

[251] In Ireland, for example, the aim of the Local and Community Development Programme is "to tackle poverty and social exclusion via the formation of partnerships and constructive engagement between Government, its agencies and people in disadvantaged communities". <http://www.pobail.ie/Funding%20Programmes/LCDP/Pages/Background.aspx> [Accessed last 5 October, 2011].

[252] Transactional law is broadly defined as the body of legal knowledge and skills use in business and commercial transactions such as tax law, property, contract law, mergers and acquisitions and corporate finance among others.

[253] For example, community legal education on housing law and policy or consumer law and group work enabling women to have a voice (Women's group).

[254] Under the Department of Community, Equality and Gaeltacht Affairs, there was a re-design of two programmes, namely, Local Development Social Inclusion and the Community Development Programme. They came to an end on December 31, 2009. The Local and Community Development Programme superseded. See <http://www.pobail.ie> accessed 5 October 2011. Note however with the advent of the new government in 2011, the Department of Community, Equality and Gaeltach Affairs was abolished and the different functions placed under different government departments. The role of community and rural development was transferred to the Department of the Environment, Community and Local Government <http://www.environ.ie/en/Community/> [Accessed last 26 April, 2012].

Ireland, a feature which may explain the important role played by poverty lawyers in the process of development in the United States– a role that made CED as a legal practice and as a lawyering strategy, since the 1990s, a *"significant new area of public interest law"*[255] in their jurisdiction. In contrast, CED as an area of public interest law in Ireland has not yet been explored (until now).

Moreover, the dearth of research into public interest law and the alternatives it can offer[256] is another factor that, when compared to the United States, seems to have lessened the use of non-litigious approaches to public interest law in Ireland – approaches in which lawyers, for example, can use their experiences of transactional lawyering techniques in tackling urban poverty and promoting a better urban economy[257] as well as producing a shift from a confrontational[258] to a collaborative method of law.[259] As a result, the development of CED as a lawyering concept, in Ireland, has gone largely unnoticed.

5.5 Conclusion

In general, CED in Ireland has been shaped by social and community economic policies: matters such as urban development, regeneration and the economic realities originated by market forces are realities that have no national boundaries. The use of public interest law as a tool in ensuring civil legal claims concerning the individual such as social welfare claims, housing, consumer and debt have also shaped the way law is

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[255] Brian Glick and Matthew Rossman, 'Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice' (1997) 23 *N.Y.U. Rev. L. & Soc. Change* 105–133, 110.

[256] For example, research into law and community action.

[257] Nona Liegeois, Francisca Baxa, and Barbara Corkrey, 'Helping Low-Income People Get Decent Jobs: One Legal Services Program's Approach' (1999) 33 *Clearinghouse Rev.* 279.

[258] The term "confrontational" is meant to indicate the process of 'going to court' and winning whatever dispute was at issue (adversarial system). *See* for example, William Van Zyverden, 'Holistic Lawyering: A comprehensive approach to dispute resolution' (1993) 3 Boston University Public Interest Law Journal 5, 3 and also David Margolick, 'At the Bar; Beyond confrontational law: the feel-good approach', *The New York Times* April 10, 1992, Friday, Late Edition, sec. B.

[259] The term "collaborative method" is also known as "rebellious lawyering" or "community lawyering" and it is understood to be the different lawyering techniques used within CED law and public interest law such as facilitative lawyering, integrative lawyering and others. The collaborative method does not equate with ADR or mediation although it may use them as part of its technique. Note that the term community lawyering is not used in this research as it creates confusion. In Ireland, community lawyering is equated with EU law.

practiced, but it has not been enough to bring CED lawyering to the fore. Yet, the economic and political realities are making CED an emerging area of law.

Overreliance on the Fabian model of social change, together with focusing too much on legal needs rather than focusing on alternative "collaborative" ways of how to tackle poverty and social inclusion has restricted the scope of research into public interest law in Ireland, ignoring alternative routes that can aid in its development. A lack of analysis of the role of the lawyer in the legal aid process has not helped either.

As Whyte has indicated, if we are to defend legal aid, it should be based on its capability of how it can promote reform "within a capitalist society rather than on any claim that it is capable of changing the essential nature of society".[260] Although the strategic approach does allow for that space of promoting reform, there is something still lacking and this is where the acknowledgement and awareness of the practice of CED as a lawyering strategy or what is referred to as CED lawyering may offer the widening of that space by creating channels of communication and collaboration with other areas not necessarily law but areas which are also of fundamental importance in the process of reform. Moreover, because the practice of CED also requires different types of lawyering, such as facilitative, integrative or collaborative[261] it may also make a further contribution to the further development of public interest law in Ireland.

To date, in Ireland, there are several government/non-government sponsored community law centres offering legal services to individuals and their communities. Likewise, barristers and solicitors also offer pro-bono legal assistance.

The research of CED lawyering in Ireland, therefore, implies the acknowledgement of the role played by the independent community law centre which has acted as the main catalyst as to how this field of law has developed in Ireland (as evinced by the case studies that follow), despite the fact that it may not be known by that name or be a completely foreign concept that no-one has heard of before.[262]

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[260] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 17) 337.

[261] *See* chapter three at section 3.2 for an explanation as to what these lawyering approaches imply.

[262] In my numerous introductions to community law centres and lawyers in Ireland the term is a completely new concept.

Chapter Six Case Studies: Public Interest Law, the Strategic Model of Legal Aid and CED

6.1 Introduction

Public interest law and access to justice issues have had a long history in Ireland, starting in the 1960s with the establishment of the Free Legal Advice Centres (hereafter "FLAC") and continuing with the publication of the Pringle Report, the opening of a local community law centre and the decision in the *Airey*[1] case in the1970s.[2] However, due to the dearth of research in the public interest law area, little is known about the everyday impact of public interest law within Irish society. Moreover, developments in other jurisdictions seem not to be present in the Irish public interest law landscape.

The development of public interest law in the United States in recent years, particularly in the field of community economic development (hereafter "CED"), offers a platform for comparison in which to assess the evolution of public interest law in Ireland. Although these case studies do not provide for detailed evaluations and country comparisons, suffice it to say that in the United States, the involvement of public interest lawyers in urban revitalisation efforts such as regeneration and urban renewal became the main catalyst for the rise of community economic development law and lawyering (hereafter "CED law" and "CED lawyering" respectively)[3], an area of law that since the 1990s has become a *"significant new area of public interest law"*[4], contributing to the narrowing of the gap in accessing civil justice and civil legal aid as well as helping to create sustainable communities.

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[1] *Airey v Ireland* [1979] 2 E.H.R.R. 305.

[2] For more information on the Pringle Report and the *Airey* case *see* chapter four at section 4.4.1.

[3] It is important to highlight that CED as a movement can be traced much further back - its roots and genesis can be found within the pre-Civil Rights Era. *See* chapter two at section 2.3.1.

[4] Brian Glick and Matthew Rossman, 'Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice' (1997) 23 *N.Y.U. Rev. L. & Soc. Change* 105, 110.

As indicated in chapter two, CED in the United States developed out of a social movement[5] that tried to "revitalize low-income communities" and in which affordable housing development played a central role.[6] The goal of having a "decent home and a suitable living environment for every American family" was set on a statutory footing as far back as 1949, with the enactment of the Housing Act of 1949[7]. Since then, efforts to develop and redevelop communities has shaped the evolution of CED as a whole[8], making it into the composite of legal, social and community development that it is today.

In Ireland, although the development of CED, particularly CED lawyering, has been influenced by the community law centre movement (as discussed in chapter four) and the search for alternative options to the statutory civil legal aid scheme, urban revitalisation efforts such as the regeneration of social housing, particularly in Ballymun, has also meant that the revitalisation of low-income communities is taking a central stage in the development of an Irish style of CED lawyering.[9]

While market-based techniques such as the channelling of capital via tax financing and investment options (e.g.: Low Income Housing Tax Credits[10], New Markets Tax Credits[11], or

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[5] The community economic development movement originated in the 1960s but it has its roots in the early 1900s when Booker T. Washington and W.E.B. DuBois looked at African-American emancipation. For the origins of CED, *see* chapter two at section 2.3.1.

[6] Roger A. Clay Jr. and Susan R. Jones (eds), *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009).

[7] 42 U.S.C.A. § 1441.

[8] Note however that the practice of CED law/CED lawyering came about much later in the late 1980s /early 1990s with the realisation that poverty lawyers were part of the problem of client disempowerment rather than the solution to it. *See* chapter two at section 2.3.4; 2.4 and 2.5 and also Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (2002) 54 *Stanford Law Review* 400, 432–435 and Daniel S Shah, 'Lawyering for Empowerment: Community Development and Social Change' [1999] 6 *Clinical L. Rev.* 217, 231.

[9] However, an incipient form of CED lawyering made its appearance at the NCLC from the outset but because the origins of the NCLC were founded on access to justice efforts rather than development, the role and development of CED within the NCLC has been overshadowed by the strategic approach's efforts. The strategic approach and CED have many elements in common, such as legal education and group work but their key difference is about what they seek to achieve/outcome. While the strategic approach seeks to achieve access to justice, CED seeks to create sustainable communities. For CED access to justice is part of the outcome but not the outcome itself as it is the case with the strategic approach. For a detailed comparison table, *see* chapter five at section 5.3.1.4.

[10] Low-Income Housing Tax Credits (LIHTCs) started in 1986 during the Reagan Administration under the Tax Reform Act of 1986 (100 Stat. 2085, 26 U.S.C.A. §§ 47, 1042.) LIHTCs seek to leverage investment by obtaining

the creation of Empowerment Zones[12]) have played more of a role in the practice of CED law in the United States, public interest lawyers in Ireland, in contrast, have focused more on innovative tools to gain access to justice such as efforts and initiatives that provide legal (and non-legal) services to the poor[13] - which in turn facilitate the building and empowering of communities - rather than on market-based techniques.[14]

The emergence of CED lawyering in Ireland, therefore, can be described as one rooted in the development of two independent community law centres (hereafter "CLCs"), namely, the Northside Community Law Centre (recently renamed Northside Community Law and

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funding from the private market. LIHTCs have been successful in building housing units, whose numbers are well over 1 million. However, how effective the LIHTC has been is hard to tell. For more information about LIHTCs, *see* for example Bill Lockyer, Treasurer, State of California, 'Annual Report 2011: Report on the Allocation of Federal and State Low Income Housing Tax Credits in California' (California Tax Credit Allocation Committee, April 2012) 1 <http://www.treasurer.ca.gov/ctcac/2011/annualreport.pdf> [Accessed last 21 November, 2012].

[11] In 2000, the Clinton Administration started the use of New Markets Tax Credits (NMTCs) which were set under the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554, §1(a)(7) [H.R. 5662], Dec. 21, 2000, 114 Stat. 2763, 2763A–587 , Short title, see 26 U.S.C. 1, available at: <http://www.hud.gov/offices/cpd/economicdevelopment/lawsandregs/laws/actof2000.pdf> [Accessed last 21 November, 2012]) in order to stimulate business development. In short, the NMTCs were designed to give a jump-start to low income communities by encouraging investment. However, in order to stimulate business development. In short, the NMTC were designed to give a jump-start to low income communities by encouraging investment. For more information, *see* Rapoza Associates, 'The New Markets Tax Credit: Progress Report 2012' (New Markets Tax Credit Coalition June 2012) 1, 5.

[12] Empowerment Zones (EZs) were created by the Clinton Administration as a way of following some of the themes of the "War on Poverty" of President Johnson and revert back to the Model Cities Programmes. The EZs provided a number of federal benefits over a ten-year period. Some of the benefits included in the EZs were an increase of grants for social services and economic development, the waiver of certain regulatory matters and tax benefits among others. For more information on EZs, *see* William H. Simon, 'The Community Economic Development Movement' [2002] *Wis. L. Rev.* 377-436, 389 and also chapter two at section 2.3.3.1 (1).

[13] For example, community legal education on housing law and policy or consumer law and group work enabling women to have a voice (Women's group).

[14] Market-based techniques such the use of tax incentives have been used in regeneration efforts and other types of development in Ireland but public interest lawyers seem not to appear on the landscape. For example, when the regeneration of Dolphin's Barn via a Public-Private Partnership (PPPs) took place, there were no lawyers representing the community interests and to date, there is no record of lawyers representing community interests in relation to social housing regeneration under PPPs schemes. Email correspondence with Dr. Rory Hearne. February, 2012. For an account of the type of policies and legislation in relation to fiscal incentives, *see* Dr. Brendan Williams, 'Fiscal Incentives and Urban Regeneration in Dublin' (University College Dublin 2006)Working Papers Series, Planning and Environmental Policies Research Series.

Mediation Centre[15]) (hereafter "NCLC") and the Ballymun Community Law Centre (hereafter "BCLC"). While the latter was borne out of regeneration, the first has been transformed throughout the years, embracing the concept of CED lawyering within its practice (although CED was unknown to both law centres and there was no conscious attempt to imitate precedents from the United States in this regard).

Research about NCLC has taken place on a number of prior occasions. In 1986, Dillon wrote a report about its state of affairs[16] and in 2002, Whyte also offered his views about the workings of NCLC. The NCLC has also featured in articles and reports written by FLAC[17], by Dave Ellis[18] and by the media[19]. The current research into NCLC as a case-study hopes it can build upon this body of knowledge and complement those existing studies.

In relation to BCLC, some research has also been carried out from a legal stance. For example, an assessment of the legal needs in Ballymun was published in 2005[20] and in 2008, Whyte also wrote about the establishment of BCLC[21]. However, given the focus of this research, it was felt that the research of BCLC to date did not answer the question as to how BCLC came to be part of a regeneration scheme. Thus, the research of BCLC as a case-study

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[15] In July 2012, NCLC changed its name to Northside Community Law & Mediation Centre. However, its website still has its previous name <http://www.nclc.ie/default.asp> [Accessed last 10 January, 2013]. For the sake of simplicity and to avoid confusion, the name NCLC will be used throughout.

[16] Coolock Community Law Centre (CCLC) changed its name to NCLC in 2002. For ease of convenience and to avoid misunderstandings, when referring to NCLC prior 2002, the word NCLC will still be used.

[17] *See* for example, Free Legal Advice Centres, 'Access to Justice: A Right or a Privilege? A Blueprint for Civil Legal Aid in Ireland' (Free Legal Advice Centres July 2005)<http://www.flac.ie/download/pdf/access_to_justice_final.pdf> [Accessed last 10 August, 2012] ; FLAC & Coolock Community Law Centre, 'Free Legal Advice Centres- The first eighteen years' in *The Closed Door: Report on Civil Legal Aid Services in Ireland*, 1987 20–21; Padraig O'Morain, 'Access to Justice For All: The History of the Free Legal Advice Centres 1969-2003' (FLAC 2003) <http://www.flac.ie/download/pdf/access_to_justice_for_all.pdf>[Accessed last 10 August, 2012].

[18] David Ellis, 'A Law Centre Within A Community - The Coolock Experience and Lessons' in *The Closed Door: Report on Civil Legal Aid Services in Ireland* (Dublin. Free Legal Advice Centres [and] Coolock Community Law Centres 1989) 22–26.

[19] <http://www.nclc.ie/publications/default.asp> [Accessed last 21 November, 2012].

[20] Susan Gogan, *Law from a Community Perspective* (Ballymum Community Law Centre 2005).

[21] Gerry Whyte, 'Providing Effective Access to Legal Services: The experience of the Ballymun Community Law Centre' in *Memories Milestones and New Horizons: Reflections on the Regeneration of Ballymun* (Blackstaff Press 2008).

starts by giving an overview of regeneration in Ireland and how it influenced the establishment of BCLC prior to discussing BCLC in detail.

The aim of this chapter therefore is to present NCLC and BCLC as examples of how CED lawyering has developed in Ireland and how its use can benefit the promotion and implementation of the strategic model of legal aid.

The structure of the chapter is divided into three sections. Section one deals with the NCLC, section two with BCLC and section three provides for a discussion of the comparisons and contrasts between the two case studies while at the same time, by looking at the main characteristics of CED, linking these two law centres to CED.[22] It was felt that structuring the chapter in this way would offer a complete understanding of how these two CLCs have developed in Ireland and the influences CED has had for the past ten years on these community law centres' landscape (including the sprouting of the seeds of CED and how the CED paradox, as discussed in chapter four, took place). It was not until ten years ago that NCLC's nature started to change; introducing a more pronounced CED angle into its practice, transforming it into what it is today.[23] It was also about ten years ago that Dave Ellis prepared a feasibility study for the establishment of the community law centre in Ballymun, which unknown to him and others, integrated fully the concept of CED lawyering as part of his definition as to what a community law centre was. Although these two law centres emanate from theoretically different perspectives[24], in practice they resemble each other but only to a limited extent as they also reflect the different communities they represent.

The methodology used in the case-studies, as discussed in detail in chapter one, comprises empirical legal research with a focus on socio-legal research and also interdisciplinary research, particularly in relation to the issue of regeneration.[25]

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[22] Note that the impact of CED on the Irish legal landscape will be assessed on the concluding chapter.

[23] NCLC's Strategic Plan from 1998-2000 starts to show signs of this change, however, it not only until their 2004-2007 and 2008-2010 Plans that denote the difference (although CED was never mentioned as indicated previously, there was no knowledge of the term in Ireland) . The changes will be further examined in section 6.2.4 of this chapter.

[24] One is under an access to justice angle, the other under regeneration.

[25] For the detailed discussion on the methodology, *see* chapter one at section 1.5.

6.2 Section One: Public Interest Law and Access to Justice: The case of NCLC – the planting and sprouting of the seeds of CED

6.2.1 Introduction

Although NCLC was established in order to improve the unmet legal need of a north-Dublin city community, its experiences demonstrate that for the past decade, the seeds of CED have started to sprout within the legal aid sphere, as NCLC has embraced the practice of CED lawyering and CED law (albeit an incipient mode[26]). That said, the seeds of the development of CED lawyering were present almost from the inception of the centre, and grew more defined and prominent with the passage of time thus acting as an example of how an embryonic form of CED lawyering developed in Ireland and how it is helping to promote and implement a strategic model of legal aid.[27] Moreover, NCLC also shows that CED lawyering forms part of the definition and perception of how CLCs operate in Ireland, confirming the existence of the CED paradox as discussed in chapter four.

Section one offers a general background about the history of NCLC, from 1975 to the present day. Section two focuses on the most salient aspects of its existence that gives rise to the progression from having CED components under a more traditional community law centre setting to the confirmation of the CED paradox by the increasing role played by CED lawyering. Section three describes and discusses the past ten years, and how the seeds of CED have started to sprout, reflecting on how NCLC can further develop and move forward.

6.2.2 Section One - General Background - from 1975 to the present

(1) Overview

Originally known as the Coolock Community Law Centre (hereafter "CCLC"), NCLC has been operating continuously since 1975, servicing a catchment area that covers the

[26] I refer to as an "incipient mode" of CED law as NCLC offers advice to community groups in relation to corporate governance mostly but it is nothing like when compared to CED law in the United States, such as the example given in chapter one.

[27] At present, the Mission and Mandate of NCLC include elements of social policy, community development and law. *See* section 6.2.5 (1) (c) in this chapter for a detailed discussion on this.

electoral constituencies of Dublin North Central and Dublin North East.[28] Located in the Northside Civic Centre since 2003[29], NCLC offers free legal information, advice and in some cases representation to people who cannot afford the services of a private solicitor.[30] Its areas of practice are social welfare, debt, consumer, employment & equality, housing, education, community care and family law (only in emergency cases[31]), serving mostly individuals but also community groups when necessary.[32] NCLC also provides community legal education via community groups within its catchment areas[33] and offers free legal advice and support via the telephone to its members.[34]

NCLC is managed by a voluntary Board of Directors and employs a number of staff, including three solicitors.[35] NCLC is also assisted by a large number of volunteers including

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[28] According to the last Census (2011), the total combined population is 156,061. Census data from 2011 show Dublin North-East had a population of 81,560 and Dublin North-Central 74,501. <http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/Define.asp?maintable=CDD03&PLanguage=0> [Accessed last 12 August, 2012].

[29] CCLC occupied premises at the Northside Shopping Centre for 24 consecutive years, until it moved to its current premises at the Northside Civic Centre in April 2003, the same year it changed its name to NCLC. As indicated previously, however, NCLC recently changed its name to Northside Community Law and Mediation Centre but its website does not reflect this change <http://www.nclc.ie> [Accessed last 12 August, 2012].

[30] NCLC information brochure. In file, with author.

[31] Family Law is an area covered by the government funded legal aid services under the Legal Aid Board. *See* <http://www.legalaidboard.ie/lab/publishing.nsf/Content/Home>[Accessed last 12 August, 2012].

[32] NCLC has offered training about corporate governance to community groups but its policy had to be changed, as in their experience, community and voluntary groups more often than not had employment issues within their employees. Also, with development of Voluntary Assistance Scheme (VAS) by the Bar Council of Ireland, which focuses on helping groups, the need for helping community groups has decreased, so the casework of the NCLC currently is focused on helping individuals.

[33] It also offers community legal education courses at a national level but they are usually targeted to its paying members only.

[34] As a way of bringing revenue, NCLC established a paid membership scheme open to all. In June 2011, the total number of members was 30. There are three types of membership: Associate (students, unwaged, pensioners or individuals), Full (Not-for-profit organisations or representatives from similar organisations) and Supporting (businesses, law firms, etc.). The full membership offers entitles the holder to avail of a 20% discount on the NCLC's community education courses. For further details, *see* <www.nclc.ie> [Accessed last 12 August, 2012].

[35] This number dates from June 2011. Uncertain if the numbers will increase or decline. At present, the numbers remain the same.

barristers, solicitors, mediators and students, who in 2010, recorded over 5,000 volunteer hours.[36]

Although NCLC is funded, to a large extent, by the Department of Social Protection, it also obtains funding from other statutory and private bodies in the form of grants and donations. And, despite receiving income from income-generating schemes, its funding situation is and has constantly been precarious.

(2) Detailed Background

NCLC was initially set up by FLAC after consultation with various community organisations in the Coolock area[37] and in an attempt to show the government, firstly, how a comprehensive model of legal aid and advice would look[38] and secondly, in order to explore its potential as an alternative method of providing legal aid services.[39] In other words, it wanted to show the government that the establishment of community law centres should be part of the strategic legal aid scheme to be implemented in Ireland.[40]

From the time of its foundation (1975) as a project of FLAC until it became a "registered company limited by guarantee" (1979), management of the centre was the responsibility of FLAC. Thereafter, a community-based management committee (formed during the three year period) took full control of the running of the centre.[41]

Taking full control meant that one of the responsibilities of the management committee was to ensure NCLC was properly funded. As a consequence, most of the management

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[36] Conversation with Colin Daly, NCLC's former Solicitor-in-Charge, June 2011.

[37] General Meeting Report 1978. In file, with author.

[38] Brian Dillon, 'A Review and History of the Coolock Community Law Centre' (Combat Poverty Agency 1989), Report Series No.3 12. Recall that the Pringle Report indicated a comprehensive model of legal advice and advice should be implemented by government but it never took place. *See* chapter four at section 4.4.1.

[39] ibid. 6.

[40] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (Institute of Public Administration 2002) 307.

[41] ibid. 327.

committee's time and effort went onto addressing issues of funding[42] rather than on developing its strategic work thus affecting its "long-term planning".[43] It was not until 1997, once "permanent funding"[44] had been established, that the management committee could concentrate on their long-term plans such as ensuring its strategic approach to legal aid did not lag behind.

Nevertheless, services were able to be provided for the community mostly by offering individual casework and strategic work when possible. Individual casework did take the most of the centre's time as, with the restriction on the type of cases the state civil legal aid scheme covered[45], there was a big need for individual services and this adversely affected the centre's ability to pursue strategic work. As such, with the passage of time it was decided that NCLC would concentrate in servicing two Dáil constituencies only and that matters to do with wills and personal injuries would not be addressed, as they could be served by private practitioners.[46] A decade later, by the late 1990s, and after the first evaluation process (strategic planning) had taken place, it was decided that NCLC would concentrate on areas of law not covered by the State civil legal aid scheme which had been in place since August 1980.[47] The areas NCLC would concentrate on were: "employment law, social welfare law, debt collection, housing and anti-discrimination law".[48]

In relation to the strategic work, throughout the years, NCLC published reports and made submissions on a number of areas of law concerning its clients. It organised or supported different campaigns aimed at law reform, particularly in relation to access to legal

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[42] From 1979 onwards, funding became a yearly issue. Only between the periods of 1986-1991 two three-years funding were obtained. ibid.

[43] ibid. 328.

[44] Despite assurances after 1997 that it would be permanent, NCLC has always had to "fight its corner" to ensure it is given appropriate funds.

[45] For the first five years of the life of NCLC, there was no civil legal aid scheme, and when civil legal aid was established (1980), there were still many areas which the civil legal aid scheme does not cover representation before Tribunals and others. For a complete list of what is not covered, *see* chapter four at section 4.4.1 (2).

[46] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) 328.

[47] ibid. 246–255 .

[48] ibid. 329. This decision was taken after an "extensive evaluation process during 1998-99".

services, family law, social welfare law, consumer credit and debt and poverty.[49] Elements of this strategic work, particularly its involvement with campaigns and law reform, would also play an important part in the development of CED lawyering as it placed issues of community development and social policy within the centre's remit.

6.2.3 Section Two – The planting of the seeds of CED within a CLC

In its attempt to show government how a community law centre should work, and as a way of exploring an alternative comprehensive method of providing legal aid services, NCLC went through a process of transformation, increasing the role CED lawyering would have in promoting a strategic approach to legal aid.

It can be argued that a number of factors played an important role in that process, namely, a) international influences prevalent at the time of its foundation, b) location and community spirit, c) how its relationship with the Department of Social Welfare (now Social Protection) as its main source of funding came about and d) the importance of the link between poverty and social change.

Moreover, in exploring that alternative method of providing legal aid services, CED lawyering areas also started to appear, particularly, i) community legal education, ii) group work, iii) emphasis on local management and control, iv) emphasis on community empowerment, and v) the use of pro-bono and volunteer work. Links with the UK and other jurisdictions also made an impact.

It is envisaged that by understanding the increasing role CED lawyering would play in promoting a strategic approach to legal aid as observed in NCLC's changing nature, we can get a better insight into NCLC's current state of affairs and its experiences of the last ten years.

(1) Factors that played an important role in the changing nature of NCLC

(a) International Influences Prevalent at the Time

[49] For a detail account of the reforms, *see* ibid. 331–332 and accompanying footnotes on the same pages.

The international influences that acted as a background for the establishment of a community law centre model for Ireland derive directly from the experiences of the United States, England and Canada.[50] FLAC noted that although the community law centres established in these three jurisdictions differed in their approach and methods, they shared the main goals of "making legal services more accessible to the poor and adapting the service to deal effectively with their needs".[51] Developments in England, however, were much more influential than the United States and Canada, particularly because the model proposed by the Society of Labour Lawyers' Report in 1968[52] and the recognition of the importance of law centres as a way to provide legal advice[53] were more suited to the Irish context.[54] Thus, the establishment of a community law centre in Ireland, as envisaged by FLAC, was based on the Neighbourhood Law Centres model of the War on Poverty of the 1960s,[55] yet seen through English eyes - a view under which community education, law reform, community action and participation of the poor were professed as the main pillars of this community law centre model.[56] This view would influence the way in which NCLC would develop, as it based its work around these pillars – pillars that efficiently combined community development, social policy and law in the same way they would facilitate the development of CED as a lawyering strategy in the United States.

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[50] FLAC, 'Submission by FLAC to the Committee on Free Legal Aid and Advice' in *FLAC Report 1974*, 1974 26. *See* also chapter four at section 4.3.

[51] ibid.

[52] Society of Labour Lawyers, *Justice for All: Society of Labour Lawyers Report* (Fabian Society 1968).

[53] FLAC refers to the English Legal Advice and Assistance Bill of 1972, which mentions the role of law centres in providing legal advice. *See* FLAC, 'Submission by FLAC to the Committee on Free Legal Aid and Advice' (n 50) 26.

[54] Although the submission by FLAC to the Committee on Free Legal Aid and Advice indicates that the model proposed by FLAC was "modeled" on the CLCs from the United States, Canada and England, most of their description is based on the English experience, especially in relation to the management style of the CLC. ibid. 26–32.

[55] ibid. 26. *See* also chapter four at section 4.3.

[56] The 1968 Report of the Society of Labour Lawyers titled "Justice for All" contains an appendix that describes the Neighbourhood Law Firms. The appendix to the report, which was written by an English academic, indicates that these law centres have two functions. Firstly, to do what law offices do everywhere such as representing claims, drafting legal documents and others. Secondly, and most importantly, he said these centres embraced "a broader conception of legal services", that is, the attempted "to help the whole community of the poor". He indicated that there were four main ways to do this. They were community education, law reform, community action and participation of the poor. *See* Society of Labour Lawyers, *Justice for All: Society of Labour Lawyers Report* (n 52).

(b) Location and Community Spirit

The Coolock area and its community, unlike the location of the English law centre on which it was modelled[57], was comprised of newly-built public housing, set as part of a mixture of "Corporation and private housing estates with the North Side Shopping Centre as a focal point"[58] aimed at re-housing families who were living in poor conditions in inner-city Dublin.[59] Yet it lacked basic services such as health and community centres and a large part of its population was unemployed and experiencing deprivation.[60]

Thus, after a number of possible locations for the establishment of a CLC were explored, it was decided that the CLC should be established in Coolock, as offices could be found at "reasonable rent" in the Northside Shopping Centre.[61] According to FLAC, the international experienced showed that community law centres were more "physically accessible by establishing themselves in strategic focal points in poor communities such as the main shopping centre".[62]

In addition to the choice of location, two particular factors that influenced the decision to set up the law centre in Coolock were the community spirit and the close-knit relationships of the inner-city families rehoused in the area, which allowed for local groups to be created in order to address local needs. The groups varied from tenants' and residents' associations, to unemployment centres, youth and community development associations, advice and resource centres and others.[63] This was an ideal environment, therefore, in which to realise FLAC's idea to have a law centre that kept its links with local organisations and that had a locally

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[57] This was the North Kensington Law Centre. *See* chapter four at section 4.3.2 (2)(a).

[58] Brian Dillon, 'A Review and History of the Coolock Community Law Centre' (n 38) 17.

[59] ibid. 19. *See* also Andrew MacLaran, *Dublin: The Shaping of a Capital* (Belhaven Press 1993) chap. 10, where the author talks about the "slum-city clearance" took place in the inner-suburbs areas of Dublin at the time.

[60] ibid.

[61] Free Legal Advice Centres, 'FLAC Report 1974', 1974 9.

[62] FLAC, 'Submission by FLAC to the Committee on Free Legal Aid and Advice' (n 50) 26.

[63] Brian Dillon, 'A Review and History of the Coolock Community Law Centre' (n 38) 19.

based management committtee that would take over the running of the centre as well as exploring and demonstrating the community law centres' potential.[64]

The community spirit was also kept alive by communicating the progress of the law centre through newsletters. Originally, these newsletters were typed with hand-written covers, published four times a year and distributed free to all people from the Coolock area. Their aim was to inform the community as to what was happening and how the law centre was responding to the needs of the community. Thus, throughout the years, responding to the needs of the community has always been a priority.

(c) Relationship with the Department of Social Welfare as a main source of funding

Two years after the opening of NCLC, FLAC received a grant from the National Committee for Pilot Schemes to Combat Poverty in order to develop the community aspect of NCLC[65] through the employment of a community law officer (hereafter "CLO"), a position that started in April 1977.[66] The primary task of the CLO was to develop links between the centre and the community thus facilitating community control of the centre[67] and asserting the legal needs of the community.[68] Inadvertently, this initial funding played a key role in the development of future links between NCLC and the Department of Social Welfare (now the Department of Social Protection) rather than the Department of Justice. Thus, the Department

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[64] The proposed model of community law centres advocated by FLAC can be found at FLAC, 'Submission by FLAC to the Committee on Free Legal Aid and Advice' (n 50) 29–31.

[65] Free Legal Advice Centres, 'FLAC Report 1974' (n 61) 7-8.The community aspect of the CCLC was to "contribute to the development of the community in which they are situated through organizing programs of education in legal rights, advising and assisting community groups and organisations and conducting research into the legal and social problems of the community". This type of community involvement is how the English Law Centres were operating at the time, albeit later on, community involvement was seen as too "radical" and only three experimental law centres became fully involved with the community. For FLAC's community involvement *see*FLAC, 'Submission by FLAC to the Committee on Free Legal Aid and Advice' (n 50) 27 and for the English Law Centres *see* chapter four at section 4.3.2 (2).

[66] Dave Ellis was the first CLO, having prior experience of working at the Harlesden Advice Centre in London it certain shaped the way the NCLC developed. *See* Dave Ellis Obituary <http://www.flac.ie/download/pdf/piln_bulletin_7_march_2007.pdf> [Accessed last 10, June 2011].

[67] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) 327.

[68] At the beginning, the CCLC had two staff :one solicitor and one administrator plus the assistance of senior law students who worked on a voluntary basis. These roles were financed by a grant from the Exchequer to FLAC in order to set up the law centre. Brian Dillon, 'A Review and History of the Coolock Community Law Centre' (n 38) 19.

of Social Welfare via the Combat Poverty Agency became its main source of funding, although for more political than strategic reasons.[69] The significance of this anomaly is that it would influence how NCLC would seek funding in the future (particularly in a post-Celtic tiger economy), as its services would also highlight the role played by NCLC as part of the social inclusion agenda of this particular government Department.

(d) Poverty and social change

Whyte indicates that throughout its existence, NCLC has been successful in improving access to legal services in the local area and in achieving other types of reforms in different areas of law such as "family law, social welfare law, consumer credit and debt and the general issue of poverty."[70] Dillon also indicates that in bringing about law reform, NCLC saw campaign work as an important tool[71] in complementing and influencing reforming legislation.[72] More importantly, however, the links created between poverty and social change in bringing about law reform further reinforced the idea that community development was also needed if the alleviation of poverty and social change were to take place within the local community.[73]

As observed in chapter five, poverty is a contested concept and although the approach as to how to tackle poverty varies depending on how it is measured, the use of a multi-faceted approach to the combating of poverty has helped cement the links between poverty and social change, nurturing at the same time, the seeds of CED lawyering.

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[69] At the time, Charles Haughey was the local TD of Dublin North East (he was first elected in 1957 and continuously re-elected until 1992) and coincidentally, he was also the Minister for Health and Social Welfare between 1977-1979.

[70] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) 332 (footnotes omitted).

[71] Brian Dillon, 'A Review and History of the Coolock Community Law Centre' (n 38) 23.Dillon also indicates that the campaigns were not always successful. For a list of campaigns and outcomes, also refer to pages 23-24. For example, by writing letters of support, media statements, representations, seminars, submissions to the Ministers, research, setting up groups and picketing.

[72] ibid. 23–26. Dillon also cites *McConnell v. Eastern Health Board* (1981); *The State (Hoolahan) v. Minister for Social Welfare* (July 1986) High Court; *Murphy v. Minister for Social Welfare* (High Court, 9 July 1987) as examples.

[73] For more information on poverty and social inclusion, *see* chapter five at section 5.3.2.

(2) Exploring that alternative method of providing legal aid services

As previously mentioned, NCLC was heavily influenced by the English experience that saw community education, law reform, community action and participation of the poor as key elements of the community law centre model.[74] The result was the creation of a model adapted to the needs of the community which, in conjunction with community empowerment, pro-bono and volunteer work as well as the links with the UK and other jurisdictions such as the United States, facilitated the emergence of an Irish style of CED lawyering and the creation of the CED paradox as explained in chapter four. The following is thus a description of the Irish experiment with these pillars and how they have influenced the growth of CED lawyering in Ireland.[75]

(a) Group work as part of community action, law reform and participation of the poor pillars

By organising or collaborating with different community groups as a way of bringing people together to share their experiences and work on common projects, community action, law reform and participation of the poor in campaigning and decision-making were allowed to take place. This "group work" or group action, it is argued, has been an important element in creating lasting relationships with the community and community groups, initially from Coolock and now from the electoral districts of Dublin North Central and Dublin North East.

The use of group work was perceived to be an essential element in ensuring the integration of a community development model within the remit of NCLC, as it shaped the idea of what a community law centre was supposed to do and how it should interact with the community.[76]

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[74] The 1968 Report of the Society of Labour Lawyers contains an appendix that describes the Neighbourhood Law Firms. The appendix to the report, which was written by an English academic, indicates that these law centres have two functions. Firstly, to do what law offices do everywhere such as representing claims, drafting legal documents and others. Secondly, and most importantly, he said these centres embraced "a broader conception of legal services", that is, the attempted "to help the whole community of the poor". He indicated that there were four main ways to do this. They were community education, law reform, community action and participation of the poor. *See* Society of Labour Lawyers, *Justice for All: Society of Labour Lawyers Report* (n 52).

[75] For a further discussion on this, *see* section 6.2.4 of this chapter.

[76] On its poster "Information" "CCLC 30 years" at the entrance of the office, it indicates "CCLC also used community development models to bring together people with similar issues to allow them to support one

Groups such as the Coolock Women's Group[77] and the Dublin Welfare Rights Group[78] were formed to "give support to deserted/separated wives, or women with marital problems,"[79] and to act as a venue "for the exchange experiences, information and ideas" and to work on "joint projects of mutual interest"[80] respectively. However, in a review of the first ten years[81] of NCLC, it was recognised that "only a small amount of work of this nature" had been done due to the limited resources NCLC had at hand.[82] As indicated previously, most of the efforts of the management committee were devoted to the funding issue rather than developing the strategic aspects of the centre. Yet, throughout the years, group work efforts were constantly being developed.

For example, in 1983, NCLC became part of a joint care group whose aim was to discuss areas of common interests and to seek improvements for amenities and services.[83] And in 1984, after a number of discussions, the centre established the Dublin Welfare Rights Group to provide "some form of self-help group for social welfare recipients"[84]. Moreover, in 1989, NCLC together with the Dublin Welfare Rights Group, the Irish National Organisation of the Unemployed and the Catholic Social Services Conference started a pilot training project

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another and discuss common issues. So, for example, an early development was the Coolock Women's Group which allowed women facing family breakdown, including very often domestic violence to come together".

[77] The women's group was established in 1977 but by 1984, due to the pressure of the law centre's work, the "vital link between the Centre and the group" was difficult to maintain. *See* CCLC, 'CCLC Annual Report 1984', 1984.

[78] The group was formed in 1984.

[79] CCLC, 'Coolock Women's group note - CCLC Newsletter N.7', August 1979.

[80] CCLC, 'CCLC Annual Report 1995', 1995.

[81] 1975-1985.

[82] CCLC, 'CCLC Annual Report 1986', c1987 "Review of Work Excluding Casework 1975-1985) On file with author.

[83] The group was composed of "various social services agencies, local schools, youth workers, juvenile liaison officers and others. The aim of the group was "to provide a meeting place for groups working in the area, discussion of general matters of common interest, and to seek the improvements to amenities and services in general". CCLC, 'CCLC Annual Report 1983', 1983.

[84] CCLC, 'CCLC Annual Report 1984' (n 77). It is important to note however that the account of the Annual Report differs from the experience of those involved in the group. Gerry Whyte, who was a member of the group, indicates that this was a coalition of activists campaigning on social welfare issues and not a support group for welfare claimants. Such a group was established by CCLC but it did not last very long. Email correspondence with Gerry Whyte (9 January, 2013).

on welfare rights.[85] Thus, by 1990, the group work participation had extended to the National Campaign for the Homeless, the Family Lawyers Association, the Consumer Association, Action on Poverty and the National Campaign for Welfare Reform.[86]

The group work also informed the decision to form alliances with other groups[87] in order to tackle common social problems and strengthen their campaigns such as that for civil legal aid.[88] In 1992, for example, the Alliance for Civil Legal Aid (hereafter "the Alliance"), a group composed of many groups "working in the voluntary sector" was formed, and although the majority of the member groups were not involved with legal aid, they saw how the system funding for legal aid was affecting individual groups and their members.[89] The Alliance launched a Charter for Civil Legal Aid in October of the same year, under which civil legal aid was said to be a right.[90]

By the late 1990s, NCLC was working with groups such as the Coolock Library, the Northside Partnership[91], the Social Welfare local office, the Ballymun Community Law Centre Campaign, to name a few. And in 1999, it created the Community Liaison Council in order to obtain feedback from the community as well as to develop ideas for future work.[92]

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[85] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) 333.

[86] CCLC, 'CCLC Annual Report 1990', 1990. There is arguably a difference between client groups, such as the women's group and the claimants' group, and other NGOs. Working with the latter does not necessarily promote community empowerment. For example, the Family Lawyers Association is not disadvantaged.

[87] The strategy of group work with community organisations and group work with national organisations that may not necessarily have any community representation is discussed in section three of this chapter.

[88] Note that CCLC and other organisations had already come together to organize the pilot training course on welfare rights back in 1989.

[89] CCLC, 'CCLC Annual Report 1992', 1992.

[90] The Charter also indicated that civil legal aid should not be denied because of "poverty, sex, geographical location, disability or ethnic origin." *See,* CCLC, 'CCLC Annual Report 1993', 1993 "A Charter for Civil Legal Aid".

[91] The 1996/1997 CCLC Annual Report indicates that the Northside Partnership has a number of committees and subgroups and that an area of particular interest to them is the local development committee. *See* CCLC, 'CCLC Annual Report 1996-1997', c1997 19.

[92] CCLC, 'CCLC Annual Report 1999', 1999. The Community Liaison Council however ceased to exist after a few years (the exact date is uncertain). Email correspondence with Ros Palmer, Community Education and Volunteer Coordinator, NCLC (1 November, 2012].

Thus, by 2003, NCLC's role in group work had expanded and now it was also involved in the management of different groups, namely, the Northside Citizens Information Centre; Dublin North East MABS; Community Homemakers; Discover Centre and it also supported a number of community groups.[93]

Currently, NCLC is also part of a housing group composed of a number of community law centres (i.e.: BCLC, NCLC, Mercy Law Resource Centre) and other NGOs.[94]

Thus, by allowing its group work approach to flourish and by ensuring that community development was part of the remit of NCLC, inadvertently, the concept or seeds of CED became part of what CLCs do in Ireland. In other words, the group approach that flourished and the emphasis on community empowerment allowed for an Irish concept of CED lawyering to develop despite the fact that the concept of CED lawyering had not been heard of in Ireland at that time.

(b) Local Management and Control as part of participation of the poor

The Management Committee of NCLC was established in June 1978.[95] One of the purposes of setting up a Management Committee was "to prevent the Department of Justice from obtaining control" [96] of the centre and to ensure community control of the organisation. Thus, the initial approach taken by NCLC was to have a Management Committee consisting of some staff members as well as a maximum of twenty community representatives organised

[93] Community Groups supported in 2003 were: TARGET, CARE, DBI, Edenmore Community Project, DNE Drugs Awareness Group, Daldale/Belcamp Drugs Awareness Group, Fingal Sports Partnership and Doras Bui. *See* NCLC, 'NCLC Annual Report 2003', 14–15. Also in 2003, the Council of the Bar of Ireland sponsored a research onto NCLC and commissioned Rory Whyte BL to do it. One of the recommendations made were that NCLC should become involved in submitting *amicus curiae* briefs as a way of influencing legal development that affect the community as part of its strategic approach. For more information *see* Rory Whyte BL, 'Northside Community Law Centre - Its Place in the Legal Landscape' (2003) Vol.8 *The Bar Review* 263, 265.

[94] Note that this type of work, not working with the general public, it is also known as second-tier work. First-tier work is the "direct provision services" work, that is, working with the general public. Second-tier work refers to the work done with local and national groups which in turn work with the general public.

[95] Between 1978-1979 the management of the centre was shared with FLAC in order to get off its feet. In 1979, management of the centre was passed fully to the committee.

[96] Minutes from meeting, 27th July, 1978, NCLC's Archives.

under a two-people quota for each community group that was/wanted to become involved with NCLC (though no party political representation was permitted).[97]

Although there was awareness that other models of community representation were used in the UK[98], this "representative system"[99] was seen as one that "would help towards ensuring that the work of the centre, particularly its wider work, would as far as possible reflect the needs and views of the community it serves."[100]

Although NCLC also recognised that the representative system was not perfect, it nevertheless was observed that, because community groups had a "right to argue that they act on behalf of the community",[101] the representative system could be defended as a means of securing community control of the centre's activities.[102]

Consequently, in the mid-1990s, the Management Committee decided that in order to involve the community more in the running of the centre, the Management Committee would be replaced by a Board of Directors "containing an in-built majority of community representatives".[103] Also, in order to improve the contribution of the law centre in the

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[97] There were ten local groups with a maximum of two members each. There were four different Tenant's association, one resident associton, two ladies club, one youth club, one community council and one trades council. *Source:* Constitution of the Management Committee c.1977, NCLC's archives.

[98] The other models indicated in the report were models under which individuals are elected from a "larger law centre membership", others include representatives from Statutory Bodies, professional bodies or other or a mixture of different models. *See* NCLC, 'CCLC Annual Report 1975-1985 'Review of Work Excluding Casework'', c1986.

[99] ibid.

[100] ibid.

[101] ibid.

[102] ibid.

[103] CCLC, 'CCLC Annual Report 1996-1997' (n 91), *see* specifically the "Chairperson Report". Although this approach may not have substantially changed the approach to empowerment, it provided for future community law centres to be established using the same governance structure. It is important to highlight that the current Articles of Association do not specify how many Board members should be "community representatives" and do not specify what is means to be a "community representative" (the only requirement is that he/she has to be nominated by a local organisation). At present there are seven board members, three of which are community representatives. Tom Brennan P.C, Bill Galgey and Marian Vickers (Chief Executive of the Northside Partnership). Email correspondence with Ros Palmer (n 92).

community, the centre would contribute towards initiatives for local development.[104] This desire of wanting to involve the community to a greater extent in the management of NCLC as well as contributing in initiatives for local development are also examples of how the paradox of the development of CED started to take place in Ireland and how the seeds of CED lawyering started to appear in the every-day work of NCLC.

Yet, local management and control was and still is a very challenging process and perhaps it is seen as a weak area.[105] Back in 2002, Whyte argued that NCLC should do more in trying to promote community control of its activities:

> "[w]hile not wishing to underestimate the extent of these problems, at the same time, CCLC [NCLC] needs to be more active in tackling them by, for example, strengthening its links with other community organisations and putting on induction courses about the centre, its objectives and methods for new members of the management committee".[106]

As a response, NCLC has striven for the further integration of group work and community involvement as one way of overcoming the challenges of achieving local management and control. This is because group work puts an emphasis on community involvement and as such, the community can demand better integrated approaches ensuring NCLC not only delivers legal services but it also empowers the community.[107] (Albeit, it seems that NCLC appears to have abandoned its formal commitment to community control of the organisation[108]).

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[104] For example, it created the Community Liaison Council by the late 1990s. *See* "group work" above.

[105] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) 336. Whyte indicates that "despite its commitment to the concept, it has to be said that CCLC has experienced difficulty in achieving community control of its activities."

[106] ibid.

[107] For example, as part of its law reform efforts, in 2009, the NCLC was part of the land-mark case of *McCann v The Judge of Monaghan District Court & Ors*, [2009] IEHC 276 (2009) that resulted in the change of the law in relation to personal debt (*Enforcement of Court Orders (Amendment) Act 2009*). The judgment struck down Section 6 of the *Enforcement of Court Orders Acts 1926 & 1940*, as it was repugnant to the Constitution. (NCLC, 'NCLC Annual Report 2009', c2010 7.

[108] *See* footnote 105 above and also section 6.4.1(2)(b)(ii)(2) of this chapter for a further discussion on this point.

(c) Community Legal Education as part of Community Education

Originally, NCLC provided "know your rights" courses[109] for the community (first-tier work), pioneering the deployment of information but as other support groups emerged, it was able to focus more on second-tier work, i.e. providing legal education and training to community groups which in turn would educate their communities in an array of different areas such as employment law, housing law and practical advocacy to name a few.[110]

Community legal education is also directly linked to the type of group work performed by NCLC. For example, in 2003, different courses were taking place in conjunction with different NGOs and community groups, such as Consumer Law and Property Right courses held at BCLC; Legal Obligations and Record Keeping at the Northside Counselling Services; Family, Consumer and Employment Law at different local libraries; Introduction to the Irish Legal System and Case-Study Day at Comhairle.[111]

The approach taken in selecting topics of legal education can be classified under a "top-down and bottom-up approach". The top-down approach anticipates what type of legal education the community may need in the future and the bottom-up approach responds to what the community wants at a particular time. Recently, for example, one of NCLC's solicitors was training social workers on a range of issues for people dealing with terminally ill clients.[112]

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[109] Initially, the idea of "knowing your rights" courses arose from the idea of having Welfare Rights Centres – a FLAC initiative- aimed at providing legal services to the community as a "unit". Under this FLAC initiative, Rights Centres were seen as a way of tackling the lack of information in relation to rights and entitlements within specific areas of welfare matters such as public housing, social welfare and employment matters, and were set up in areas with good community links and where the Government Civil Legal Aid Scheme (the Civil Legal Aid Scheme was introduced in 1980, following the decision of *Airey v. Ireland* [1979] 2 EHRR 305) did not have a presence. *See* FLAC & Coolock Community Law Centre, 'Free Legal Advice Centres- The first eighteen years' (n 17). The idea behind the Rights Centres was that they would put pressure on the government-run civil legal aid centres which would highlight their inadequacy thus forcing government to open more community law centres. (ibid. 21.) However, the result was that the casework handled by FLAC changed from purely family law cases to social welfare and employment law cases (*see* Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) 311. Consequently, these types of Welfare Rights Centres did not educate people but represented them thus a different format was needed.

[110] For a full list of the current courses, see <http://www.nclc.ie/community-education/course-descriptions.pdf> [Accessed last 21 November, 2012].

[111] NCLC, 'NCLC Annual Report 2003' (n 93) 13.

[112] This was a request from the community to have this type of course.

Formal accreditation for the community legal education courses is also important, as it helps in the recognition of the students' skills by the outside world. Until a few years ago, the National College of Ireland was the recognising body offering accreditation from the Further Education and Training Awards Council (hereafter "FETAC"[113]) for some of the NCLC's courses, but it became too expensive. Now, the Northside Centre for the Unemployed[114] offers accreditation from FETAC.

(d) Community Empowerment

Because empowerment is an intangible asset, determining the level of empowerment within a community becomes extremely difficult. If one were to measure how much a community law centre does within a community, the results of empowerment may become more tangible.[115] Whyte has argued that empowering the community was an essential component to the anti-poverty strategy of NCLC,[116] yet it has been difficult to achieve.[117] It can be argued that their work in respect to community legal education is directly linked to community empowerment, but the results are unknown.[118]

Empowerment of the community is also an essential element of the CED lawyering approach. Thus, by emphasising throughout the years the importance of group work, local management and control, community participation and the implementation of legal education courses, in the same way CED lawyering does, the promotion/implementation of a strategic model of legal aid is brought forward.

(e) Pro-bono and volunteer work

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[113] FETAC "is the statutory awarding body for further education and training in Ireland. FETAC makes quality assured awards that are part of the National Framework of Qualifications (NFQ) levels 1-6." <www.fetac.ie> [Accessed last 13 August, 2012].

[114] <www.ncutraining.ie> [Accessed last 13 August, 2012].

[115] *See* also chapter seven at section 7.5 for a discussion of how CED lawyering can help in the measurement of outcomes when it comes to legal aid and access to justice.

[116] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) 333.

[117] ibid. 336.

[118] To discuss this in further detail, a thorough research would be needed, and as indicated in chapter one, it is not possible to do so in this thesis.

Pro-bono and volunteer work has always been part of the "bread and butter" of NCLC. From the outset, there was a panel of volunteer solicitors and law students ready to assist the full-time solicitor.[119] Throughout the years, volunteers have made their mark in a number of ways such as working in the Advice Clinic; in the Mediation Service; in the Ellis Internship and on an ad-hoc basis in relation to graduate and undergraduate students, creating a space for the law to interact not only with lawyers but also with those involved in policy, community development and other areas. Although not all the volunteer work is related to CED, the type of service provided by volunteers has helped with the development of an incipient mode of CED law, as for example, a volunteer may offer advice and assistance to a group or NGO with issues pertaining to corporate governance. It has also strengthened the role played by CED lawyering in relation to the strategic model of legal aid as it offers the opportunity to interact and develop solutions which do not involve access to the courts or may require the lawyer to engage in different types of activities which may not reflect the "traditional" view of what a lawyer is supposed to do. Understanding what the volunteers do is also important in finding ways as to how CED lawyering and CED law can further be developed in Ireland.[120]

The Advice Clinic: It has been present since the opening of NCLC, running every Thursday evening. It is staffed by volunteer barristers and solicitors doing pro-bono work. However, because of the differing demands of the two branches of the profession, newly qualified solicitors do not have the opportunity to volunteer as much, given their 60 hours plus of work per week whereas newly qualified barristers are much more available to volunteer.[121]

The Mediation Services: the Mediation services, which were established in 2004,[122] are almost entirely run by volunteers (it has some half-time paid staff). It works under a co-mediation model by which there is a trainee and a qualified mediator in each session. Once the trainee becomes a qualified mediator, a new trainee comes along and receives his/her training

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[119] Mr. George Gill was the first solicitor. *See* Free Legal Advice Centres, 'FLAC Report 1974' (n 61) 9.

[120] *See* chapter seven at section 7.3(2) for a discussion as to how the use of volunteers may help to further develop CED in Ireland.

[121] Mary Robinson (ex-president of Ireland) and Catherine McGuinness (former Justice of the Supreme Court) both volunteered their time representing NCLC's clients at court.

[122] NCLC, 'NCLC Newsletter Issue 10', December 2006 1. Available at: <http://www.nclc.ie/documents/NCLC-News-Issue-10.pdf> [Accessed last 20 November, 2012].

from the newly qualified mediator.[123] A conservative estimate for the total amount of volunteer hours under the Mediation Services - if there was a charge (€200 an hour) - would amount to a €1 million euro investment in the community.[124] Recently[125], the mediation services were actually incorporated into the official remit of the NCLC, with NCLC changing its name to reflect this.

The Ellis Internship: the internship was set up in 2008, in memory of Dave Ellis, the first CLO of NCLC.[126] It is a volunteer position that runs for nine months and it is open to undergraduate and graduate students from law, advocacy or social science.[127]

Students: Depending on office-space, students volunteer at NCLC but on a more ad-hoc basis. For example, it has had summer interns on "a student approach basis"[128] from different universities. NCLC also has informal links with other universities.[129]

However, there is recognition that NCLC needs to develop links with more students, not necessary from the legal field. For example, students with an economic background could work on data analysis and show the economic benefit of the law centre to the community, particularly in the current environment to justify government investment.[130]

Nevertheless, for the year 2010, over 5,000 volunteer hours (including pro-bono work) had been recorded at NCLC. Changes within the community have also brought different types

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[123] In order to qualify as a Mediator, the trainee needs to have a certain amount of hours of practice. By volunteering at the Mediation Services, the trainee can obtain all of his/her practice hours. However, he/she must make a commitment to train the newcomers the same way he/she was trained.

[124] 'NCLC Interview with former Solicitor-in-Charge, Colin Daly', June 2011. In file, with author.

[125] The decision was taken by the Board of Directors around May/June 2012. Unfortunately, the minutes of the meeting were not available.

[126] *See* NCLC, 'NCLC News, Issue 12', February 2008 <http://www.nclc.ie/documents/NCLC-News-Issue-12.pdf> [Accessed last 20 November, 2012].

[127] <http://www.lawsociety.ie/Documents/recruitment/Internship%20with%20NCLC.pdf> [Accessed last 12 June, 2011].

[128] This means the student would make contact with NCLC and if it so happens there is desk space and for the student, volunteer hours are arranged.

[129] Trinity College Dublin, National University of Ireland Galway, Dublin City University and University College Dublin.

[130] 'NCLC Interview with former Solicitor-in-Charge, Colin Daly' (n 124).

of demand in relation to pro-bono work. For example, at present, there is a shortage of barristers and solicitors with employment law knowledge to meet the increased demand in this area of law among the community.

(f) Links with the UK and other jurisdictions

Given the influence of the "English view" about the four pillars of the American law centre model, one of the earliest examples of the links with the UK (other than the initial influences) is in relation to the development of group work. The first group work established by NCLC was the Women's Group back in 1977[131], the same year the role of the CLO started. One can argue that the initial group work approach was based on the group work the law centres were doing in England as at the time[132]. Moreover, it can be argued that the further development of group work was a direct influence of the English CLCs in Ireland, as observed by the visits to the annual conferences in the UK.[133]Attending the annual conference of the British Law Centres Federation in 1983, Ellis indicated that the conference "was a very enlightening conference and again gave us ideas for projects which could be undertaken by the Law Centre."[134] However, in 1986, the Management Committee decided they "would not become full members of the British Law Centre Federations because of the impossibility of attending meetings".[135]

More recently, staff from NCLC visited a number of law centres in England[136] in order to get the sense of how they were organised, the type of work they were doing and how they

[131] CCLC, 'CCLC Annual Report 1984' (n 77).

[132] *See* chapter four at section 4.3.2 (2).

[133] Annual Reports from 1979 to 1986 all indicate visits to the UK. For a number of years, starting in 1979, members of the Management Committee attended the UK Law centre conferences. Attending these conferences may be an indication that developments in the UK may have influenced how the NCLC may have developed but it is only an assumption as there is no report found to see exactly if the members were influenced if at all. For example, there were visits to Belfast 1979l Warwick in 1982; Sheffield 1981; England in 1983 (no specific location but in the annual report of 1984, it indicates that attendance to the "British Law Centre Conference" which took place in Coventry was attended by D. Ellis). There were also a couple of visits to the law Centres Federation's Conference in 1991 and 1993.

[134] CCLC, 'CCLC Annual Report 1984' (n 77).

[135] CCLC, 'CCLC Annual Report 1986' (n 82).

[136] North Kensington, Camden and Islington. Unfortunately, they did not visit the alternative law centres that closely resembled NCLC, namely, Brent, Newham and Adamsdown.

were funded. They observed that legal aid funding contaminated the work of the law centres in England. This was because the law centres in England had to tender for legal aid work in order to get funding which meant they were under constant pressure to get more cases in order to obtain more funding. As such, the volume of cases needed to keep their centres opened affected their strategic work. They also observed that the type of work was also more focused in certain areas such as housing and social welfare. However, if there was something outside their area of expertise, the law centre did not have the flexibility to take it on.

The problem with these visits, says NCLC's former Solicitor-in-Charge, was that these "comparative observations" were not based on the same amount of population and rather than visiting London they should have gone to Birmingham or a smaller city with a population about one million.[137] It can be argued, however, that no matter what the population amount is, community law centres in England, because of their obligation to tender for government legal aid funding, have focused mostly on representing individuals under the umbrella of "Social Welfare Law"[138] and only a small number of law centres, such as the Brent Community Law Centre in London, work in similar areas akin to those in which NCLC[139].

6.2.4 Section Three - The past ten years: the growth of CED as a lawyering strategy

It can be argued that NCLC's search for alternative ways of providing legal aid services as well as by learning from the experiences of how a comprehensive legal aid and advice system should function[140] and the vision of what CLCs were supposed to do (a vision that included the seeds of CED, as observed in chapter four) resulted in the formation of an understanding or traditional view of what an independent community law centre is supposed to do. Moreover, it acted inadvertently as a fertiliser, helping the seeds of CED to germinate

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[137] 'NCLC Interview with former Solicitor-in-Charge, Colin Daly' (n 124).

[138] Social Welfare Law in England covers: welfare rights, disability rights, immigration and asylum, housing and homelessness, employment rights, community care, and discrimination. Depending on the locality, other areas of law are also covered, such as public law, mental health, education rights, young people and children rights. <www.lawcentres.org.uk> [Accessed last 30 August, 2011].

[139] <www.brentlaw.org> [Accessed last 13 August, 2012]. Coincidentally, the Brent Community Law Centre was one of the first community law centres to be established in England and the first publicly funded law centre. *See* chapter four at section 4.3.2 (2) for more information on the origins of community law centres in England and Wales.

[140] As indicated earlier, NCLC was the 'brainchild' of FLAC as a way to show the government how a comprehensive scheme of legal advice and representation should work.

and enabling CED as a lawyering strategy to grow. As observed, from its beginnings, NCLC had started to practice an incipient mode of CED lawyering– a move that was done without reference to the American practice. Although this argument will be further analysed in a later section[141], suffice is to say that NCLC has become an example of how CED lawyering started to develop in Ireland,[142] particularly when analysed from the point of view of its strategic plans.

(a) NCLC's strategic plans

The inclusion of NCLC's Strategic Plans[143] into the case study is aimed at highlighting how the influences and development of CED lawyering started to show in its work. Because of the influences of CED lawyering, the use of the concept of sustainable development as an underlying reason underpinning the work NCLC has also made an appearance. Although the sustainable development approach will be examined in more detail in a later section of this chapter, it was deemed appropriate to mention it in passing.[144]

In 1997, NCLC carried out its first "extensive planning exercise" in order to evaluate "all aspects of its administration and work".[145] This first planning exercise culminated in the production of an in-house Strategic Plan for the years 1998-2000 (hereinafter "the 1998-2000 Plan"). The 1998-2000 Plan also indicated that strategic planning was an on-going process[146] and as such, two further strategic planning sessions, together with their in-house publication, have taken place, one in 2004 covering the periods between 2004 and 2007 (hereinafter "the 2004-2007 Plan") and the other in 2008 covering the periods between 2008 and 2010 (hereinafter "the 2008-2010 Statement").

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[141] *See* section 6.4 in this same chapter.

[142] The other example is BCLC.

[143] The production of Strategic Plans was part of an internal exercise within CCLC, targeted towards the development of the centre as a whole. However, permission to quote from them has kindly been given to me in the course of my research (obtained from Colin Daly, former Solicitor-in-Charge, NCLC, June 2011).

[144] It is interesting to notice that the concept of sustainable development also played an important role in BCLC. For more information on sustainable development *see* section 6.3.2 (1).

[145] R. Burtenshaw, 'The Coolock Community Law Centre Strategic Plan 1998-2000', January 1998 3.

[146] R. Burtenshaw, 'The Coolock Community Law Centre Strategic Plan 1998-2000' (n 145).

(1) The 1998-2000 Plan

The 1998-2000 Plan responded to a number of different needs, namely, the need to attend certain key areas of work, the need to develop more effective structures and the need to organise the workload in order to become more efficient.

In response, it was recognised that the tripartite arrangement of Casework (including the Advice Clinic and Information)[147], Education[148] and Campaigning[149] under which NCLC operated could be improved by summarising its service model "as a quality legal service run by the community for the community". Consequently, its legal service model was divided into three categories: casework, provision of advice and law reform.[150] This probably reflected the reality of what was already happening. Moreover, this legal service model also served the community, making the role of NCLC in the community a vital component of its model. As such, there was a proposal for improving this "community role" including involvement in local development.[151]

Consequently, the 1998-2000 Plan produced a Mission Statement and a set of values, which would influence how NCLC was to develop in the future. Part of its Mission included a commitment "to working with communities for the creation of a just and equitable society" by placing the empowerment of the people and the community it served as part of its values[152], re-asserting part of the original vision for NCLC back in the 1970s – a vision that through the years has been hard to achieve. The 1998-2000 Plan also proposed changes in the structure of NCLC, via the creation of a Community Liaison Council which would have the role of

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[147] Casework included debt, consumer, family, social welfare and employment. ibid. 8–9.

[148] Education included project and training work under a national and local focus. National focus included work in the areas of maternity rights, debt management and social welfare appeals and local focus included "know your rights" courses, production of newsletters and leaflets, among others. ibid. 9–10.

[149] The 1998-2000 Plan indicates that one of the key objectives of the CCLC is to influence legislation via campaign work aimed at law reform. It cites examples of campaigns such as Domestic Violence, Employment Equality and Social Welfare Reform under which the CCLC was involved. ibid. 10

[150] ibid. 25.

[151] ibid. 35. For NCLC, local development included interactions with local government and community development. This is because local government had started to work in partnership with the community and the voluntary sector and as a consequence NCLC could have a direct input in policy formation such as housing.

[152] ibid. 7.

allowing for consultation with the wider community in relation to issues that were of interest to them as well as having an input on the overall direction and policy of NCLC.[153] The external environment was also analysed and it was perceived that a number of areas "might significantly affect" NCLC in the years ahead, namely the changes in the political, economic, social and technological arenas. Political changes could bring changes in funding policies, in the applicable legislation and in the type of interactions at EU level,[154] while economic changes could mean control on public spending and reduction of funding grants. Similarly, social changes resulted in changes in the demographic composition of the catchment area, with an increase in the number of elderly people as well as in the number of one parent families. But most importantly, Local Area Based Initiatives (including Partnerships) were changing and had started to offer resources to communities. Therefore, the view of NCLC was that it was "increasingly important" to cooperate with other agencies and be part of this development.[155]

It is submitted that the changes in its external environment, particularly in relation to social change, are of particular importance to the development of CED law within NCLC, as it meant NCLC could be part of and influence the work of the Partnerships and/or Local Area Based Initiatives,[156] which would in turn allow for the practice of CED law to flourish.

The 1998-2000 Plan also noticed that the centre had not adopted a "test case approach to challenging legislation" and although it was a possibility for the future, it was recognised it included a number of pitfalls as the law could be changed to avoid challenges in court.[157] It could be argued that by not adopting the test case approach, thus having a more pragmatic

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[153] ibid. 31.

[154] In relation to EU, the 1998-2000 felt that the development of EU law could offer opportunities such as the use of EU legislation and practice to put pressure for change in the Irish legal context, to use EU as a potential source of funding, networking and campaigns at EU level. ibid. 13.

[155] It was becoming the norm that the community sector was developing partnerships with the not for profit sector which was affecting the external environment in the area but not in all of the catchment area. For example, a part of the catchment area, namely Coolock, had a flourishing community sector while others such as Darndale and Kilbarrack did not. Therefore the CCLC indicated that it needed to develop outreach activities in those areas, specifically around education and community development. ibid. 6.

[156] ibid. 14.

[157] ibid. 40.

position towards test cases[158], NCLC was able to focus on working under a more collaborative approach, an essential aspect of how CED lawyering is practiced. This collaborative approach would be reflected in its future strategic plans. It is important to highlight that a test case strategy is not incompatible with CED but rather it is part of a much wider strategy which at times may not be the best way to solve a problem.

(2) The 2004-2007 Plan

Changes to NCLC's external environment, such as funding constraints (funding caps), the lack of legal aid in representation before tribunals, the costs of access to legal services and the changing nature of the community meant that the work of NCLC needed to be refocused. Because funding played a key role into what types of the services NCLC could delivered, in the event of "unforeseen cutbacks" and the increase in "financial constraints",[159] the 2004-2007 Plan gave a greater emphasis to NCLC's strategic and "developmental work".[160] Given this greater emphasis and renewed focus, a new Mission Statement was agreed which reflected the range of services and work carried out within the organisation, as well as updating its language and terminology.[161] The 2004-2007 Plan, therefore, contained three strategic aims:

1. To provide free information, advice and representation,
2. To protect and develop the human, social and economic rights of individuals and groups, and
3. To empower the community through education, research and campaigns.[162]

As well as having these strategic aims, a number of underlying values were found to underpin the work and manner in which the staff of the centre deals with individuals. These values are: *Independence*, confidentiality, *community based*, equality, *human social and*

[158] Although a case could be won in court, the positive outcome may be short-lived as by changing legislation, for example, could revert any advancement made in court. Prior to the *McCann* case (n 107), *Foley v Moulton* [1989] ILRM 169 was the only other case that had any profile.

[159] NCLC, 'NCLC Strategic Plan 2004-2007', 9. In file, with author.

[160] ibid.

[161] ibid. 12.

[162] NCLC, 'NCLC Strategic Plan 2004-2007' (n 159).

economic rights, and *empowerment*. (The italicised values show how CED is reflected in the strategic aims).

Reflecting on the three strategic aims, the ethos and values (which arguably are also part of how NCLC has fostered the development of CED as a lawyering strategy) it can also be argued that NCLC has further paved the way for sustainable development to come to the fore. But it was not until the end of 2008, when a new planning exercise took place, that sustainable development really made its mark. The plan for 2008-2010 built on the previous 2004-2007 Plan, but produced a Strategic Statement rather than a plan - a Statement that emphasised the role sustainable development played for the NCLC.

(3) The 2008-2010 Statement

The 2008-2010 Statement became even more focused, bringing the practice of CED lawyering and NCLC's goals closer to the concept of sustainable development than ever before. This is because NCLC also saw that the Government Development Plans, under the National Development Plan 2007-2013,[163] were aligned to what NCLC was seeking to achieve. Thus, the 2008-2010 Statement indicated that:

> "[o]ur [NCLC] main objective is to work to represent our community's interests in the social inclusion and community development programmes of the Department of Social & Family Affairs, the Department of Justice Equality & Law Reform and the Department of Community, Rural and Gaeltacht Affairs."[164]

Similarly, in the words of its former Solicitor-in-Charge,

> "Community Law Centres help to overcome the financial, physical, environmental, social, educational and psychological obstacles faced by people

[163] The 2008-2010 Statement observed that the National Development Plan 2007-2013 was entitled *'Transforming Ireland – A Better Quality of Life for All'* and that during this time, Government would invest around €50 billion to address issues of social inclusion, which included local community development initiatives. NCLC, 'NCLC Strategic Statement 2008-2010', c2007 4. In file, with author.

[164] ibid.

who need access to the legal system. In doing this we improve and facilitate the participation of our community in democratic society."[165]

Now, NCLC "draws its mandate and mission from the communities of the Dublin North Central and Dublin North East electoral areas" as well as from the Mission Statements of three government departments pertaining to social inclusion, justice and local community development. In other words, social policy, legal and community economic development tools (i.e.: CED) play a central role in the Mandate and Mission of NCLC. These departments are: the Department of Social and Family Affairs[166] (now Department of Social Protection[167]); Department of Justice, Equality & Law Reform[168] (now Department of Justice and Equality[169]) and the then Department of Community, Rural and Gaeltacht Affairs[170] (in 2010 it became the Department of Community, Equality and Gaeltacht Affairs[171] and later, in 2011, it

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[165] ibid.

[166] "Our mission is to promote a caring society through ensuring access to income support and other services, enabling active participation, promoting social inclusion and supporting families."

[167] Its Mission in 2011 was changed to: "to promote active participation in society through the provision of income supports, employment services and other services" <http://www.welfare.ie/EN/Pages/default.aspx> [Accessed last 8 June, 2011]. Although neither social inclusion nor enabling active participation are mentioned, there is a Social Inclusion Division mentioned and a person can complete a form for same.

[168] "Our collective mission is to help make Ireland a safer and fairer place in which to live and work, visit and do business. The remit of the Justice family of agencies and services stretches across a range of human concerns. It touches on every aspect of national life from child protection and involvement in inquiries and tribunals to all elements involved in crime and punishment and the courts system, from the buying and selling of property to a range of immigration services and the areas of disability and diversity". NCLC, 'NCLC Strategic Statement 2008-2010' (n 163).

[169] In 2011, its Mission was changed to: "To maintain and enhance community security and promote a fairer society through the development of a range of policies and high quality services which underpin: the protection of human rights and fundamental freedoms consistent with the common good; the security of the State; an effective and balanced approach to tackling crime." <http://www.justice.ie/en/JELR/Pages/Our_mission_and_values> [Accessed last 9 June, 2011]. It seems that this mission statement offers more than the previous one.

[170] "To promote and support the sustainable and inclusive development of communities, both urban and rural, including Gaeltacht and island communities, thereby fostering better regional balance and alleviating disadvantage, and to advance the use of the Irish language". NCLC, 'NCLC Strategic Statement 2008-2010' (n 163).

[171] In 2011, its Mission has remained the same: "[t]o promote and support the sustainable and inclusive development of communities, both urban and rural, including Gaeltacht and island communities, thereby fostering better regional balance and alleviating disadvantage, and to advance the use of the Irish language". <http://www.pobail.ie/en/AboutUs/StrategyStatement/2003-2005/StrategyStatement/MandateandMission/index.html> [Accessed last June 8, 2011].

was dismantled, having its different functions transferred to different government departments[172]). It is important to highlight that its functions pertaining to "Community" were transferred to the Department of Environment, Community and Local Government. Although the Mission Statement of this Department is not the same as what the then Department of Community, Rural and Gaeltacht Affairs had stipulated, its website indicates that their mission is "to pursue sustainable development" and in order to achieve this, their mandate, amongst others, is to "ensure that our regions and communities are planned and built to respect sustainable and balanced regional development' and to "ensure good quality housing in sustainable communities".[173]

Thus, NCLC's Mission is to,

> "Identify and unlock the legalities, regulations, policies and procedures that manifest as barriers and obstacles to a fair and better life for all individuals in the Northside Community... [and] work with the community to advance sustainable Social Inclusion, equality and justice and local community development, in cooperation with the National Action Plan for Social Inclusion."[174]

Its Vision, according to the Strategic Statement, is to believe that a *Community Law Centre,* grounded within the community, is a fundamental way to provide sustainable social inclusion and, its Goal is to encourage, support and facilitate the Northside community to achieve justice and equality and thereby bring about sustainable social inclusion for all.

Therefore, for NCLC this renewed strategy aims to:

1.1 Assist the disadvantaged to participate fully in society.

1.2 Protect and develop the human, social and economic rights of individuals and groups in the community.

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[172] In 2011, the functions of the Department of Community, Equality and Gaeltacht Affairs were transferred to different Departments and by Ministerial Order it became the Department of Children and Youth Affairs (S.I. No. 214/2011). Equality was moved to the Department of Justice and Community to the Department of Environment, Community and Local Government.

[173] <http://www.environ.ie/en/AboutUs/> [Accessed last 22 March, 2012].

[174] NCLC, 'NCLC Strategic Statement 2008-2010' (n 163) 3.

1.3 Improve delivery of local and community development and welfare services across the range of local and community development structures, processes and schemes, and

1.4 Facilitate integrated development in the Northside Community area.

It can be argued, therefore, that not only CED lawyering and CED law but also CED as a whole can help NCLC to further achieve its strategic aims. By mixing social policy, law and community development, CED can add a further option as to how NCLC can accomplish it goals.

This emphasis on community development, it is submitted, can affected the work NCLC does in the future yet because of the lack of awareness of what CED lawyering and CED law can achieve, the community development emphasis of its 2008-2010 statement has not been fully explored. Perhaps with the appointment of its new Solicitor-in-Charge[175] and economic situation in Ireland, reliance on CED will grow,[176] thus allowing for a further exploration of how CED lawyering and CED law can further develop and impact their work.

6.2.5 Challenges currently facing the NCLC - an opportunity for the advancement of CED?

At present, most of the work of NCLC relates to the goals of the Department of Social Protection and Department of Environment rather than to the Department of Justice, which further support the argument of how CED lawyering has influenced the strategic approach of the NCLC. As explained previously[177], although at first it may seem an anomaly that funding does not come from the Department of Justice but rather from the Department of Social Protection, it fits perfectly with the goals of tackling poverty and social exclusion, such as providing for people with disabilities, retired persons and the elderly, the unemployed and children and families by offering information, advice, advocacy, conflict resolution, education and work experience. It also provides policy work, on creating responses to personal debts (by

[175] Colin Daly, its former Solicitor-in-Charge was appointed as a judge of the District Court in May, 2012. In the interim, Moya de Payor has taken the role until a new person is appointed to the post. As of November, 2012, the name and background of its new Solicitor-in-Charge is not known.

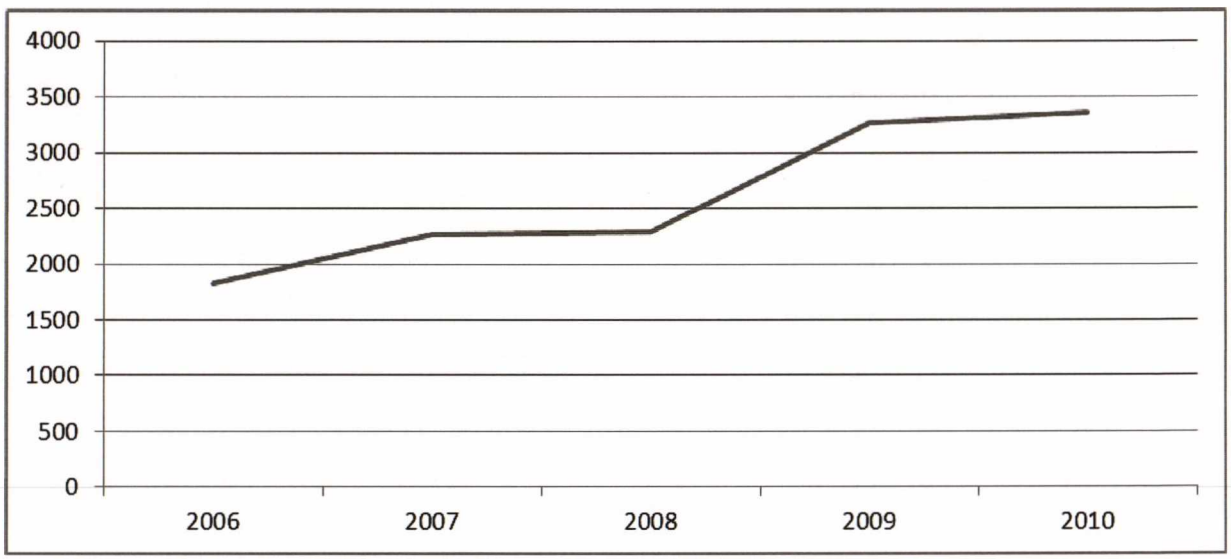
[176] The centre's publication of the *Irish Review of CED Law & Policy* journal may be a harbinger of this approach. The journal is available at <http://www.nclc.ie/overview/default.asp> [Accessed last 1 November, 2012].

[177] *See* section 6.2.3 (1) (c).

working with the Money Advice Budgeting & Service (hereafter "MABS") and others). It also keeps an online database of cases from the Social Welfare Appeals Tribunal.[178]

With the economic crisis, the work of NCLC has become more and more important. This is evidenced by the type of work done such as policy submissions, debt management, and training courses, and the 5,000 hours of volunteer work done by lawyers, solicitors, barrister, mediators and students. In 2010, a large number of individuals and communities were helped, a figure that has been constantly rising for the past few years. The table and chart below represent the figures for the past five years (Figure 6.2.5 and Table 6.2.5).

Figure 6.2.5: Number of people seeking assistance from the NCLC from 2006 to 2010



(source: NCLC Annual Reports 2007-2009. For 2010, information was obtained from Colin Daly, former Solicitor-in-Charge)

[178] It is called the "Social Welfare Casebase" <http://www.nclc.ie/casebase/default.asp>[Accessed last 13 August, 2012].

Table 6.2.5: Population served by NCLC 2006-2010

Year	*Number of Population Served*
2006	1,829
2007	2,2,60
2008	2,291
2009	3,267
2010	3,362

These numbers show that in a four year period the numbers increased by 1,533, most noticeably, between 2008 and 2009 when there were almost 1,000 extra people (976) seeking help compared to the previous year. Most of the 2010 numbers were dependent on welfare or groups working with people experiencing social exclusion and poverty.[179]

6.2.6 Conclusion

The history and development of NCLC over the years, particularly with the implementation of its vision statements and strategy, are a tangible example of the development of how CED lawyering has evolved to date. Throughout the decades calls have been made to ensure there is a comprehensive scheme to legal aid and advice, yet the correct formula has never been discovered.

Issues in relation to funding have also played a role as to how NCLC has developed, particularly in its later years as it has had to adapt itself to the political, economic and social landscape in which it operates. Moreover, it has had to use its resources imaginatively and

[179] NCLC Annual Reports 2007-2009. For 2010, information was obtained from Colin Daly, former Solicitor-in-Charge.

now, under a new upgraded website and re-branding[180], it not only considers itself a local service but also a national resource.

The NCLC has also shown that the social context of time and place where CLCs are created are important elements, as they offer the basis for the types of differences a community law centre can make within a community. New social housing (in the same way as regeneration has played a part in the creation of the BCLC) played an important part on how NCLC progressed, particularly due to the close-community links and untapped raw social capital (people wanting to do something). Moreover, because of the intrinsic relationship between the concept of CLCs in Ireland and that of CED, the advancement of a strategic model of legal aid has also been possible yet there is much more to do. Although it might be too early to say how NCLCs' recent emphasis on community development has affected the way NCLC operates, suffice it to say that it does allow for CED to further develop in Ireland. Lessons as to what Ireland can learn from the United States experience in relation to CED will be discussed in a later chapter.

6.3 Section Two: Public Interest Law and Regeneration: The case of BCLC - Connecting the Dots through CED[181]

6.3.1 Introduction

In Ireland, the tackling of urban poverty and the creation of a better urban economy has meant the government has played much more of a role in funding the development of social housing regeneration schemes[182] when compared to the United States, giving the Irish

[180] Website launch date not available yet. Re-branding now is noticeable in the email signatures which contains NCLC's logo. Under the logo the word "local service – national resource" appear. Prior their logo contained the words "working for a just and tolerant society".

[181] An adapted version of this case study is due to be published in the book series "Law, Property & Society" published by Ashgate and edited by Dr. Padraic Kenna (date of publication is not yet available).

[182] Regeneration of social housing in Ireland has taken place under different schemes and under an array of government department. Data from 2006 indicate that there were eighteen separate schemes been administered by five different government departments and agencies. These schemes can be divided into three different types according to the way they are funded, namely local authority led; multi-agency led and public-private partnerships. For more detail on this matter, *see* Kasey Treadwell Shine and Michelle Norris, *Regenerating Local Authority Housing Estates: Review of Policy and Practice* (Centre for Housing Research 2006), Housing Policy Discussion Series , particularly pages 15-30.

public interest lawyer a certain advantage and disadvantage when it comes to regeneration efforts[183]: the advantage in Ireland is based on government reaching out to community groups, NGOs and service providers with the aim of engendering collaborative efforts in order to achieve specific regeneration goals whereas in the United States there has been much more private market intervention. By the same token, this approach has created a disadvantage for Irish public interest lawyers as it has made them indifferent when private market intervention in regeneration efforts is concerned. Anecdotal evidence shows that when public-private partnerships (hereafter "PPPs")[184] were used in regeneration efforts, local communities were at a great disadvantage as there were no lawyers representing community interests.[185]

Regeneration efforts in Ireland and the involvement of public interest law are best exemplified by the regeneration efforts of Ballymun and most recently Limerick as it is possible to find that because of regeneration, access to legal aid services has become part of the development/regeneration agenda rather than existing in splendid isolation.

This fortuitous change of approach that placed legal aid services within a regeneration framework did not look at access to justice and the provision of legal aid services from an

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[183] The role of housing associations has also aided government efforts. Their role in CED would require further research which is outside the remit of this research.

[184] PPPs were first introduced in Ireland on a pilot basis in June 1999. For more information on PPPs *see* Rory Hearne, 'Origins, Development and Outcomes of Public Private Partnerships in Ireland: The case of PPPs in social housing regeneration' (Combat Poverty Agency November 2009), Working Paper Series 09/07 and Rory Hearne, *Public Private Partnerships in Ireland: Failed Experiment or the Way Forward?* (Manchester University Press 2011).

[185] Dr. Rory Hearne, in the course of conducting research relating to the role of PPPs in the regeneration of social housing, focused on the experience of ten local-authority housing estates (these estates were: Fatima Mansions, St Michael's Estate, O'Devaney Gardens, Charlemont Street, Dolphin House, Dominick Street, St Theresa's Gardens, Croke Villas, Bridgefoot Street and Chamber Street/Weaver Court). Dr. Hearne recalls there were no solicitors representing the interest of local communities when PPPs deals took place. Moreover, in the conclusion of his research he indicates that while the structure of regeneration board allowed for resident participation in the planning and development of the proposal of the regeneration as well as providing for better accountability, if regeneration is to be successful, not only is this aspect needed (resident participation) but also something more, that is, a better distribution of power and decision making authority. He cites an example in which "while the community had representation at various regeneration boards and committees they were disempowered by their absolute exclusion, without exception, from direct negotiations between the developer and DCC." And it is here were public interest lawyers would have made a great contribution to empower the local community in the bargaining table. However, only recently, a solicitor has targeted individual tenants in one of the PPPs regeneration (Dolphin House) to litigate on behalf of them under a human rights angle but it is not linked to any community groups. Email correspondence Dr. Rory Hearne (January-February 2012). *See* also Rory Hearne, 'Origins, Development and Outcomes of Public Private Partnerships in Ireland: The case of PPPs in social housing regeneration' (n 184).

exclusively legal perspective[186] but rather from a much wider perspective aimed at combating poverty and social exclusion. Law would form part of a composite of legal, social policy and community development efforts that as a whole would interact to address issues of poverty and empower the local community, thus developing our understanding of CED law and CED lawyering.

Thus, Ballymun Community Law Centre (hereafter "BCLC") was born out of a development/poverty agenda based on regeneration, particularly social regeneration[187], and not directly from access to justice calls - an agenda under which public interest lawyers reacted favourably to regeneration efforts by contributing to the creation of this independent community-based law centre resulting in the formation of a collaborative practice that made lawyers part of the development process[188] rather than simple observers.[189] Moreover, BCLC would eventually facilitate the improvement of the socio-economic infrastructure and development of the community by using different legal approaches and techniques, such as the establishment of community legal education and the creation of mediation services[190] as well as working in partnership with government.

Consequently, the creation of BCLC provided for the use and implementation of a strategic (and comprehensive) model of legal aid supported by government, an approach which had been called for since the 1970s onwards but ignored by government until then.

This chapter therefore is aimed at finding how CED law and CED lawyering is practiced in Ireland by examining the case of BCLC as an example of the interaction between public interest law and regeneration. Section one offers a background as to the regeneration process in Ireland, including (with broad strokes) the influences of sustainable development

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[186] It could be argued that FLAC's campaign for a strategic model of legal aid was always part of a general anti-poverty campaign but it has always been looked through a legal stance.

[187] *See* interview with Evelyn Hanlon at section 6.3.4 (2)(a) later on in this chapter.

[188] Because the lawyer can provide, for example, legal education, it helps with the understanding of the rights/obligation of the community.

[189] The different origins of BCLC when compared to other CLCs in Ireland such as the NCLC has important practical implications as it places CLCs within a regeneration/sustainable development agenda.

[190] Note however that community legal education and mediation services were part of legal approaches and techniques already used in Ireland by the NCLC (until 2002, NCLC was the only community-based law centre existing in the country).

policies in regeneration. Section two gives an overview of the regeneration process of Ballymun thus setting the context for the case study. Section three offers BCLC as a case study of CED, arguing that CED law/lawyering exists in Ireland and that its use and practice can help with the strategic model of legal aid by expanding the role of law and the legal system in bringing about social change via the combination of law, social policy and community development while at the same time changing lawyering attitudes by a re-balance of power thus achieving empowerment.

6.3.2 Section One: Background to the Regeneration Process in Ireland

Because the issue of regeneration is a broad area that can be researched under many forms, such as part of housing policy[191], geography[192], sustainable development[193] and others[194], it is important to highlight that for the purposes of this research, regeneration in Ireland will be discussed in very broad terms[195] in order to place the regeneration of Ballymun[196] into a CED context. As such, it was deemed appropriate to also emphasise the

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[191] *See* for example, Kasey Treadwell Shine and Michelle Norris, *Regenerating Local Authority Housing Estates: Review of Policy and Practice* (n 182); Michelle Norris, 'Regenerating Run-down Public Housing Estates: A Review of the Operation of the Remedial Works Scheme' (2001) 49 Administration 25-45.

[192] *See* for example, Andrew MacLaran (ed), *Making Space: Property Development and Urban Planning* (Edward Arnold Limited 2003); Peter Roberts and Hugh Sykes (eds), *Urban Regeneration: A Handbook* (Sage 2000).

[193] Nessa Winston, 'From Boom to Bust? An Assessment of the Impact of Sustainable Development Policies on Housing in the Republic of Ireland' (2007) Vol. 12 *Local Environment: The International Journal of Justice and Sustainability* 57–71; Nessa Winston, 'Regeneration for Sustainable Communities? Barriers to Implementing Sustainable Housing in Urban Areas' [2009] *Sustainable Development* 319–330; Nessa Winston, 'Urban Regeneration for Sustainable Development: the Role of Sustainable Housing?' [2009] *European Planning Studies* 1781–1796.

[194] Andrea Colantonio and Tim Dixon, *Urban Regeneration and Social Sustainability: Best practice from European cities* (Wiley-Blackwell 2011); Tony Manzi, Karen Lucas, Tony Lloyd Jones, and Judith Allen (eds), *Social Sustainability in Urban Areas: Communities, Connectivity and the Urban Fabric* (Earthscan 2010) particularly chapters 9-11.

[195] A special note of thank you to Dr. Andrew MacLaran from the Department of Geography, School of Natural Sciences, Trinity College Dublin, for his invaluable help and advice in relation to the topic of regeneration.

[196] A special note of thank you to Dr. Padraic Kenna, for providing me access to his collection of materials in relation to the regeneration of Ballymun.

role sustainable development[197] has played in regeneration efforts before introducing the subject of regeneration itself.

(1) The role of sustainable development

> "Sustainable development is a fundamental and overarching objective of the European Union, aiming to continuously improve the quality of life and wellbeing for present and future generations, **by linking economic development, protection of the environment and social justice**".[198]

If the achievement of sustainable development objectives[199] (as envisioned by the EU and Ireland) is measured by the outcomes of development investment such as regeneration (better infrastructure, better housing and roads, more jobs, more green areas), then the question that comes to mind is how those current regeneration efforts that promote sustainable development goals have influenced and facilitated the development of CED/CED lawyering in Ireland.

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[197] Sustainable development has also been discussed under the role legal institutions play in development and if they should be reformed in order to achieve development, particularly from the point of view of developing countries. While this research does not focus on the role legal institutions in Ireland have played in development, it is important to keep it mind that theories about development also affect the type of policies that are enacted towards its achievement. In an article discussing the issue, Davis and Trebilcock indicate that the theories about development are "highly contested" and they place sustainable development under one of these theories. While they briefly carry out a survey of these theories, they indicate that a sustainable development perspective means the identification of "specific relationships between the environment and health status" as well as the relationship between "poverty alleviation and enhanced environmental quality". As a result, the creation of legal institutions that support the role of development are needed as they also carry implications for a wide range of laws such as constitutional, administrative, civil procedure and property. The other theories they discuss are: modernization theory; dependency theory; economic growth and; welfarism; feminism. *See* Kevin E. Davis and Michael J. Trebilcock, 'Legal Reforms and Development' [2001] T*hird World Quarterly*, Vol 22, No 1 21–36. For more scholarly writings about law and economic development, *see* Hans-Bernard Schäfer and Angara V. Raja (eds), *Law and Economic Development* (Edward Elgar Publishing Limited 2006). In Ireland, poverty alleviation has also played a role in determining how sustainable development is achieved, particularly when it comes to social inclusion. It is submitted that further research is needed in relation to this but the topic is outside the scope of this research.

[198] Eurostat, 'Sustainable development in the European Union: 2009 monitoring report of the EU sustainable development strategy - Executive summary' (Office for Official Publications of the European Communities 2009) 2. Available at: <http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/865-EN/EN/865-EN-EN.PDF> [Accessed last 21 November, 2012] (my emphasis).

[199] For example, social inclusion or the promotion of a healthy economy.

Funding for infrastructure development and regeneration has changed the landscape for a number of cities and towns in Ireland[200] yet regeneration[201] and the creation of sustainable communities do not equate immediately with access to legal services. Given that social inclusion cannot be achieved in isolation or without a proper civil legal aid system[202] - otherwise achieving social inclusion under the umbrella of sustainable development becomes an illusion - it can be argued that the need to translate the sustainable development idea (including social inclusion) into concrete examples, such as regeneration, has influenced and facilitated the evolution of CED lawyering in Ireland thus widening the development of access to legal services.[203] In other words, by using a sustainable development approach, legal services are taken out of the field of 'justice' and become part of the array of services a community should have in order to be sustainable at a social, economic and environmental level. This approach, in turns, helps not only CED lawyering but CED as a whole to evolve.[204]

(a) Sustainable development at EU level

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[200] In Ireland, only Ballymun and Limerick are listed as part of the regeneration programme in terms of housing schemes under the Department of Environment's website. However, there are also other areas which are or were regenerated under refurbishment schemes such Knocknaheeny in Cork or Cranmore in Sligo <http://www.environ.ie/en/DevelopmentHousing/Housing/SocialHousingSupport/RegenerationSchemes> [Accessed last 8 December, 2011]. It is important to note that although the regeneration of the Docklands in Dublin also contained the building of affordable housing and the regeneration of certain areas, the regeneration process of the docklands was done in a different manner, so it is not included in the regeneration programme of housing schemes. For a thorough understanding of the Dublin Docklands Regeneration *see* Niamh Moore, *Dublin Docklands Reinvented: The Post-Industrial Regeneration of a European City Quarter* (Four Courts Press 2008).

[201] To the average folk on the streets, regeneration is perceived as only with the improvement of physical infrastructure and nothing more.

[202] Social inclusion within the legal system is part and parcel of public interest law, thus highly relevant if we are to create synergies and create proper sustainable communities in which access to legal services is a vital component of the development discourse if we are to meet the needs of the "most vulnerable in society" as indicated by the EU SDS.

[203] For further elaboration of this argument, *see* section 6.4 in this same chapter which talks about the similarities and differences between the two CLCs, namely NCLC and BCLC.

[204] Although the impact of this approach would need further assessment in the future, the opening of the law centre in Limerick confirms this point, as to have a healthy community, legal services are necessary, thus they have been established under the auspices of the Limerick Regeneration Agencies.

Sustainable development has become one of the European Union's fundamental objectives in relation to the development of the European Union as a whole.[205] The *Preamble* of the Treaty on European Union as amended by the Treaty of Lisbon[206] (hereafter "the Treaty") indicates that all of the signatories to the Treaty are:

> "DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields ..."

The Treaty does not have a definition of what is meant by sustainable development, albeit it is mentioned throughout.[207]

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[205] As a matter of background, the concept of sustainable development was first formulated on the Report of the Brundtland Commission *Our Common Future* in 1987 (The Brundtland Commission was formally known as the World Commission on Environment and Development). The concept of sustainable development was defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". In 1997, the European Union incorporated the concept of sustainable development as a fundamental objective of the European Union by incorporating it into the Treaty of Amsterdam, under Article 2, now Article 3(3) of the Consolidated Treaty of Lisbon.

[206] The Treaty of Lisbon came into force on December 1, 2009. It amends and consolidates the Treaty of the European Union (also known as Maastricht Treaty) and the Treaty establishing the European Communities (also known as the Treaty of Rome but later renamed 'Treaty on the Functioning of the European Union'). For the full online version, see: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:FULL:EN:PDF> [Accessed last 21 November, 2012].

[207] Article 3 also indicates:

> "The Union shall establish an internal market. It **shall work for the sustainable development of Europe based on balanced economic growth** and price stability, a highly competitive social market economy, **aiming at full employment and social progress**, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. (my emphasis).
>
> **It shall combat social exclusion** and discrimination, and **shall promote social justice and protection, equality**...". (my emphasis).

Article 5 similarly,

> "In its relations with the wider world, the Union ... shall contribute to peace, security, **the sustainable development of the Earth**, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights...". (my emphasis)

In June 2006, the European Council adopted a renewed strategy towards sustainable development for the EU. The EU Sustainable Development Strategy[208] (hereafter "EU SDS") defined what sustainable development meant for the European Union as a whole.[209] It indicated that,

> "Sustainable development means that the needs of the present generation should be met without compromising the ability of future generations to meet their own needs. It [sustainable development] is an overarching objective of the

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Article 21(2)(f) Title V, Chapter 1, of the "General Provisions on the Union's External Actions" also indicate, that,

> "[t]he Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to... (f) help develop international measures to **preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development**". (my emphasis).

When it comes to the functioning of the European Union, the "Consolidated Treaty on the Functioning of the European Union" indicates at Title II, Article 11, Provisions of General Application" that,

> "Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development."

Note that in relation to Article 4, Title I, "(b) social policy, for the aspects defined in this Treaty; (c) economic, social and territorial cohesion; and (f) environment," the Union and the Member State have shared competence.

Under the Preamble of the Charter of Fundamental Rights,

> "The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values... [i]t places the individual at the heart of its activities, ... **it seeks to promote balanced and sustainable development**..." And under Article 37 of the Charter, which deals with environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured **in accordance with the principle of sustainable development**." (2010/C 83/01) (my emphasis).

For a full consolidated version *see* Nigel Foster, *Blackstone's EU Treaties & Legislation 2009-2010* (20th edn, Oxford University Press 2009).

[208] The overall aim of this renewed EU SDS is,

> "to identify and develop actions to enable the EU to achieve continuous improvement of quality of life both for current and for future generations, through the creation of sustainable communities able to manage and use resources efficiently and to tap the ecological and social innovation potential of the economy, ensuring prosperity, environmental protection and social cohesion."

<http://register.consilium.europa.eu/pdf/en/06/st10/st10117.en06.pdf> [Accessed last 16 February, 2011].

[209] (10117/06) <http://register.consilium.europa.eu/pdf/en/06/st10/st10117.en06.pdf> [Accessed last 21 November, 2012].

> European Union set out in the Treaty, governing all the Union's policies and activities. It is about safeguarding the earth's capacity to support life in all its diversity and is based on the principles of democracy, gender equality, solidarity, the rule of law and respect for fundamental rights, including freedom and equal opportunities for all. It aims at the continuous improvement of the quality of life and well-being on Earth for present and future generations. To that end it [sustainable development] promotes a dynamic economy with full employment and a high level of education, health protection, social and territorial cohesion and environmental protection in a peaceful and secure world, respecting cultural diversity."

Moreover, it indicated that if sustainable development were to be achieved, four key objectives had to be integrated into the process, namely: (i) economic prosperity, (ii) environmental protection, (iii) social equity and cohesion and, (iv) meeting the EU international responsibilities.

In 2009, upon reflecting on how sustainable development could be achieved in the future and in response to the economic crisis, a revised EU SDS strategy was agreed.[210] Thus, it was established that this strategy,

> "could focus on the EU's long-term goals in crucial areas, notably by... **promoting social inclusion** [as it is] [t]he most vulnerable in society [who] are at risk of being the most badly hit by the economic crisis and its effects may linger longest for them **unless effective measures are provided**".[211]

The question arises, therefore, on how to provide effective measures in order to promote social inclusion under the umbrella of sustainable development and meet one of the EU's fundamental objectives (i.e.: sustainable development). It can be argued that CED can indeed offer an answer to this dilemma as it can use its mixture of social policy, community

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[210] Brussels, 24.7.2009, COM(2009) 400 final. Commission of the European Communities, 'Mainstreaming sustainable development into EU policies: 2009 Review of the European Union Strategy for Sustainable Development', July 2009. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0400:FIN:EN:PDF> [Accessed last 21 November, 2012]

[211] ibid. 15 (my emphasis).

development and legal tools for the benefit of local communities thus creating a space for sustainable development to grow.

(b) Sustainable development at a national level

At the turn of the century, the Sustainable Development Council[212] ("Comhar")[213] published a series of principles for sustainable development which could be used to determine if existing or future Irish policies were "likely to lead to sustainable development."[214] Moreover, Comhar's members agreed that if Ireland were to meet the goal of sustainable development, then, sustainable development had to include "environmental protection, economic development, and social development in an integrated manner."[215]

The principles[216], enumerated from one to twelve, were brought together under a number of different groups or "themes"[217] and, although Comhar recognised that separating

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[212] On October 10 2011 it was indicated that the Council will become part of the National Economic and Social Council (NESC) and the role of the Council will be discontinued. It states:

> "Under new arrangements announced by Mr Phil Hogan T.D., Minister for the Environment, Community and Local Government the sustainable development role currently performed by Comhar, the Sustainable Development Council, is to be integrated into the National Economic and Social Council (NESC). Comhar Sustainable Development Council will be discontinued and an orderly wind down will be concluded by the end of the year. NESC will now develop its work in a way that integrates sustainable development issues into its analysis of significant national challenges. Additionally, the Department of the Environment, Community and Local Government can provide funding to support this work."

See <http://www.comharsdc.ie/index.aspx> [Accessed last 14 December, 2011].

[213] Previously known as the National Sustainable Development Partnership, Comhar Sustainable Development Council ("Comhar"), is a multi-stakeholder. It is made up for 25 people drawn from five sectors; the State sector, economic sectors, environmental NGOs, social/community NGOs and the professional/academic sector. It was initially set was set up in 1999 with the aim of advancing the national agenda for sustainable development, and contributing to the formation of a national consensus regarding this very important process. Comhar seeks to work in partnership to encourage sustainable development across Irish economy and society, and to advise Government on policies which support and promote sustainable development. <http://www.comharsdc.ie/about/index.aspx> [Accessed last 4 February, 2011].

[214] Comhar, The National Sustainable Development Partnership, 'Principles for Sustainable Development', 2 Available at: <http://www.comharsdc.ie/_files/comhar0218.pdf [Accessed last 21 November, 2012].

[215] ibid.

[216] The are 12 principles overall: 1. The use of non-renewable resources should be minimised; 2. Use of hazardous/polluting substances and wastes created should be minimised; waste management should be environmentally sound; 3. Renewable resources should be used within the capacity for regeneration; 4. The quality of soils and water resources should be maintained and improved; 5. The diversity of wildlife, habitats and species should be maintained and improved; 6. Air and atmosphere should be protected and human-

these principles into themes was "somewhat arbitrary because by definition, principles are inter-dependent," integration between the different themes and citizen participation was essential.[218] Among these themes was the theme of social equity, which acted as an "umbrella theme" for two separate principles: "social inclusion" or Principle 8 and "co-operation and agreement between states" or Principle 9.

Principle 8 indicated that "*[s]ocial inclusion should be promoted to ensure an improved quality of life for all*".[219] Furthermore, it specified that the significance, meaning and justification of this principle of social inclusion was based on the achievement of,

> "a quality of life which provides essential needs and offers dignity. There is need for social inclusion and equality of outcomes, so that there is no discrimination through which some sectors of society are disadvantaged and therefore unable to meet their own needs … [a]t a very practical level, there cannot be long-term planning in a society in which poverty is rife… Without social cohesion, the implementation of long-term strategies is made very difficult. Everybody, as a human right, should have the opportunity to make a living and achieve a satisfactory quality of life. But there exist social and economic barriers to the achievement of such equity."[220]

Comhar indicated that within Ireland, examples of inequalities in wealth and quality of life existed in every town, either rural or urban and thus affected social cohesion. Moreover,

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induced effects on climate minimised; 7. The development of resource potential in one region should not compromise the ability of other regions to achieve their own potential; **8. Social inclusion should be promoted to ensure an improved quality of life for all**; **9. Sustainable development depends on co-operation and agreement between states** (my emphasis); 10. The quality of landscapes, the heritage of the man-made environment and historic and cultural resources should be maintained and improved; 11. Decision-making should be devolved to the appropriate level; 12. Stakeholder participation should be promoted at all levels of decision-making.

[217] The seven themes are: Satisfaction of human needs by the efficient use of resources (principles 1 & 2); Equity between generations (Principles 3 & 4) ; Respect for ecological integrity and biodiversity (Principle 5); Equity between countries and regions (Principles 5 & 7) ; **Social equity (Principles 8 & 9)** (my emphasis); Respect for cultural heritage/diversity (Principle 10); Good decision making (Principles 11 & 12).

[218] Comhar, The National Sustainable Development Partnership, 'Principles for Sustainable Development' (n 214) 3.

[219] ibid. 5

[220] ibid. 21.

Comhar indicated that "[a]ccess to basic services and the ability to meet fundamental needs are accepted as essential to sustainable development"[221] and if the problems created by the inequalities are to be addressed, then, "a broad strategy is [was] needed if Ireland is to achieve or come close to sustainability".[222]

Access to basic services therefore is an important element in providing effective measures that promote social inclusion under the umbrella of sustainable development which in turn meets one of the EU's fundamental objectives.[223] Although the description of the principle of social inclusion does not mention access to legal services as part of it, yet it is well known that social and economic barriers exist where access to legal services is concerned. Access to legal services, and particularly the practice of CED law/CED lawyering, does enable people and communities to have the opportunity to make a living and achieve a satisfactory quality of life.

(c) Sustainable development and social inclusion

As observed, integrating social inclusion into sustainable development goals is not something new yet the possibilities of research are still unfolding. For example, research that combines the social, economic and environmental aspects of sustainable development is still relatively new.[224] Similarly, in Ireland, social inclusion seems to be a common theme on the policy/government agenda[225] and research into the social aspects of sustainable development is progressing. For example, there is now an interactive option on Comhar's website that looks

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[221] ibid.

[222] ibid.

[223] It is important to highlight that from 2012, "the sustainable development role currently performed by Comhar is to be integrated into the National Economic and Social Council (NESC)" <http://www.comharsdc.ie/index.aspx> [Accessed last 21 November, 2012]. NESC also started to talk about the concept of sustainable development as part of how they envisage housing policy.

[224] *See* for example, Malcolm Eames with Maria Adebowale (ed), *Sustainable Development and Social Inclusion: Towards an integrated approach to research* (Joseph Rowntree Foundation 2002); Andrea Colantonio and Tim Dixon, *Urban Regeneration and Social Sustainability: Best practice from European cities* (n 194).

[225] For example, the Department of Social Protection has under its umbrella, a social inclusion division. *See* <http://www.socialinclusion.ie/> [Accessed last November 21, 2012]; the Economic and Social Research Council (ESRI) also has an area of research focused on social inclusion and quality of life. *See* <http://www.esri.ie/research/research_areas/social_cohesion_and_quality_of_life/?> [Accessed last 21 November, 2012].

at a series of 20 sustainable development indicators, which inform the country about "broad strategic progress on sustainable development challenges"[226]. Social inclusion is one of these indicators and it is intrinsically linked to poverty rates. This in turn can inform policy using a series of interconnected factors to ensure there is sustainable development.

(d) Sustainable development and local empowerment

The issue of local empowerment is also present when talking about sustainable development strategies and Comhar also sees local empowerment as essential. In 2007, Comhar carried out a review of Ireland's sustainable development strategy, in which it recognised that exclusion in relation to the decision making process was still taking place and that Principle 8 (social exclusion) had been left in the back-burner. Moreover, under the "Theme for Governance and Sustainable Development" Comhar indicated that local and community grass-roots groups played a governance role via community action. But, to date, there is no mentioning of the role of legal services (or lack of it) in the empowerment of communities or how they can contribute to the advancement of sustainable development. It is submitted that CED lawyering (and public interest law) can help to fill this gap as it provides for community legal education not just to individuals but also to community groups.

(2) Regeneration – a background

Defining regeneration depends on the particular viewpoint of each person.[227] In Ireland, to date, there is no real definition of regeneration.[228] Moreover, there is no national

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[226] <http://www.comharsustainableindicators.ie/explore-the-indicators/comhar-indicators.aspx> [Accessed last 21 November, 2012].

[227] Andrea Colantonio and Tim Dixon, *Urban Regeneration and Social Sustainability: Best practice from European cities* (n 194) 7.

[228] Albeit there is mentioning of urban renewal on a number of Acts directed towards the promotion of fiscal incentives for developers, which intrinsically includes regeneration, urban renewal is not defined either. For example, the Urban Renewal Act 1986 (19 /1986) which made provision for the renewal of certain urban areas and created the Custom House Dock areas (the IFSC was a product of it); the Urban Renewal Act 1998 (27/1998) which set the precedent for qualifying future tax reliefs in respect of capital expenditure (urban renewal tax reliefs) mention the words but no definition is given. Moreover, the Dublin Docklands Development Authority Act 1997 (7/1997) (hereafter "DDDA") also mentions that it is the general duty of the DDDA to secure the "social and economic regeneration" of the area on a sustainable basis, but it does not state what social or economic regeneration means (*see* particularly section 18.1.(a)(i) of the Act). The Local Government (planning and development) Act 1999 (17/1999) and subsequent amendments, to date, do not have a definition either.

regeneration agency underpinned by legislation.[229] For example, in reviewing the policy and practice of regeneration of social housing in Ireland, Treadwell-Shine and Norris concluded that the current social housing regeneration arrangements are fragmented and that much more work is needed if Ireland is to have a coherent and cohesive regeneration policy.[230] Moreover, their research also showed that there were three different approaches to the implementation of regeneration projects within social housing. Depending on the type of funding received these regeneration schemes could be divided into local authority, multi-agency or public-private partnerships. Local authority funded schemes could also be subdivided into local authority led or by led by an independent urban development company set up by the local authority to specifically oversee the regeneration (Ballymun and Limerick Regeneration Agencies are examples of this).

Some other scholars, namely Colantonio and Dixon, have argued that regeneration could be categorised under some "main thematic narratives" in order to facilitate its understanding. For example, in relation to area-based regeneration and renewal, regeneration could be divided into a "property-led physical approach", a "business-driven approach", and a "health and well-being approach" among others.[231]

Thus, it can be asserted that regeneration can be divided in the one hand as to how it is funded (Treadwell and Norris) and as to the type of approach used (Colantonio and Dixon) on the other. In Ireland, one can find all of the above approaches existing either separately or in conjunction. For example, Ballymun falls under the local authority-health and well-being approach[232] and most of the well-known "commercially focused" regeneration that has taken place in Dublin has been "area-based" which includes the property-led physical approach as

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[229] Dr. Rory Hearne, lecture given on the topic of regeneration as part of the Housing Law & Policy course in Ballymun (8 February 2012).

[230] Kasey Treadwell Shine and Michelle Norris, *Regenerating Local Authortiy Housing Estates: Review of Policy and Practice* (n 182) *see* particularly pages 51-52.

[231] Andrea Colantonio and Tim Dixon, *Urban Regeneration and Social Sustainability: Best practice from European cities* (n 194) 8.

[232] Studying the type of regeneration and how they fall under the different classification would require further research outside the scope of this research.

seen in the Dublin Docklands development and the business-driven approach used to regenerate Temple Bar.[233]

(a) Urban regeneration

(i) Context

The aim of regeneration, as defined by government, can be found at the Department of Environment, Community and Local Government (the Department) website. It indicates that,

> [t]he aim for regeneration projects is to build sustainable communities through a combination of social, educational and economic initiatives and also by rejuvenating the built environment by a mixture of demolition, construction and refurbishment of dwellings having regard to urban design guidelines. In addition, **local authorities are also required to focus on a strategic multifaceted approach to address the range of social, educational and economic issues that may be evident**. Procurement may take a number of forms, using public monies or private funding through a Public Private Partnership. It is a matter for the local authority to submit proposals for regeneration of an area."[234]

What is interesting about the Department is that "the process which facilitates sustainable development at a community level" (also known as "Local Agenda 21") is separated from the regeneration schemes (regeneration schemes are found under social housing support), giving the impression that development and housing relate to infrastructure, to the physical development of an area and is not related to the concept of sustainable development or to the environment at all. However, regeneration, particularly from the point of view of communities, is linked to Local Agenda 21.[235] Local Agenda 21, the Department indicates,

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[233] More research into this area is needed, but once again, it is outside the scope of this research.

[234] <http://www.environ.ie/en/DevelopmentHousing/Housing/SocialHousingSupport/RegenerationSchemes/> [Accessed last 11 February, 2012].

[235] No changes, to date, have been seen in relation to the new government (Fina Gael-Labour Coalition 2011).

"is a process which facilitates sustainable development at community level. It is an approach, based on participation which respects the social, cultural, economic and environmental needs of the present and future citizens of a community in all its diversity and which relates that community and its future to the regional, national and international community of which it is a part".[236]

Similarly, the Sustainable Development Unit of the Department recognises sustainable development is a matter for all concerned and deals with the policy issues driving the sustainable development agenda.[237]

As a matter of background, the Department has four main sections and within them, two sections are particularly relevant to this research. One section is entitled "Environmental section" which in turn is responsible for a number of areas, including "Local Agenda 21" and "Sustainable Development". Regeneration is contained within the other section which is entitled "Development and Housing Section".[238]

In addition, the newly reformed Local and Community Development Programme of the Department of Environment, Community and Local Government (managed by Pobal), aims to, "tackle poverty and social exclusion through partnership and constructive engagement between Government and its agencies and people in disadvantaged communities."[239]

This aim is to be "underpinned" by four different goals, namely, (i) To promote awareness, knowledge and uptake of a wide range of statutory, voluntary and community services; (ii) To increase access to formal and informal educational, recreational and cultural development activities and resources; (iii) To increase peoples' work readiness and

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[236] <http://www.environ.ie/en/Environment/LocalAgenda21/> [Accessed last 21 November, 2012].

[237] "While obviously this is an overarching issue, which concerns all sections of this Department, all other Government Departments and the whole of society" <http://www.environ.ie/en/Environment/SustainableDevelopment/> [Accessed last 21 November, 2012].

[238] This section in turn has a housing section which in turn has a Housing unit. This housing unit has a Social Housing Support Unit, and it is under this Social Housing and Support unit where one finds the Regeneration Schemes.

[239] <https://www.pobal.ie/Funding%20Programmes/LCDP/Pages/Background.aspx> [Accessed last 11 February, 2012].

employment prospects and, (iv) To promote engagement with policy, practice and decision making processes on matters affecting local communities.[240]

Consequently, it is argued, that the policies which facilitate sustainable development and the synergies between sustainable development and urban regeneration assist in the achievement of social inclusion which, in turn, influence the further role/development of CED/CED lawyering in empowering local communities – and Ballymun is a good example of this.[241]

(ii) Regeneration of Social Housing

In 1997, the Department of Environment published a document entitled "Sustainable Development: A Strategy for Ireland"[242] (hereafter "the development strategy"), which contained a planned strategy for the achievement of sustainable development under the concept of urban regeneration.[243] Under this concept, the development strategy indicated that the policies for achieving "sustainable urban regeneration" would have "key elements" such as the integration of strategic economic and social planning.[244]

Although the regeneration of individual dwellings had started to take place in Ireland since 1981, under a programme that provided for "new windows, heating systems, bathrooms

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[240] Ibid.

[241] The sustainable development concept is also shaping the community legal services to be provided by the regeneration scheme in Limerick. It is important to highlight that the "project list" of Limerick Regeneration contains "sustainable strategic objectives", Sustainable Economic and Enterprise Development, Sustainable Housing, Sustainable Community and Social Development, and social inclusion activities. In other words, it is one of the two examples (Ballymun is the other example) on how promoting social inclusion via sustainable development can take place, including empowerment via the construction of a community law centre. Also, some initial progress of establishing a community law/mediation centre with local sub-centres is been made, but it is at a very early stage. Email correspondence with Brendan Kenny, CEO. Limerick Regeneration Agencies, 14 February 2011. To date, November 2012, some seed money has been granted to start the community law centre and they are looking for a managing solicitor but no further details have been provided.

[242] Department of Environment, 'Sustainable Development: A Strategy for Ireland' (Government of Ireland 1997). Available at: <http://www.environ.ie/en/Environment/SustainableDevelopment/PublicationsDocuments/FileDownLoad,1825,en.pdf> [Accessed last 21 November, 2012].

[243] ibid. at foreword.

[244] ibid. 150.

and extensions to inadequate local authority dwellings"[245], the refurbishment of entire housing estates did not take place until 1985, with the introduction of the Remedial Works Schemes[246] (hereafter "RWS").[247]

Albeit literature on urban regeneration and management of social housing in Ireland is increasing,[248] it does not deal with access to legal services or with services overall. Nessa Winston, in writing about urban regeneration and sustainable development, states,

> "[f]or schemes in disadvantaged areas, **social supports are crucial for the success of regeneration programmes.** Some progress in addressing social disadvantage may be made from the provision of high quality, affordable housing in attractive environment. However, **a whole range of local support services are also required**... These elements of community and neighbourhood regeneration **tend to be neglected in research,** despite an acknowledgement that physical regeneration alone is not sufficient."[249]

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[245] Michelle Norris, 'Regenerating Run-down Public Housing Estates: A Review of the Operation of the Remedial Works Scheme' (n 191), 27.

[246] The RWS were recommended under the national plan for the year 1985 *Building on Reality*. RWS would take place in housing estates built in the 1960s and 1970s and those from pre-1940.

[247] One example of RWS is the Area Regeneration Programme in Dublin which refurbishes older flat complexes. Currently, Regeneration Projects in Dublin City Council are divided/called Integrated Area Plans which include the refurbishment/regeneration of different areas around the Council's remit. *See* <http://www.dublincity.ie/YourCouncil/LocalAreaServices/CentralArea/RegenerationProjects/Pages/RegenerationProjects.aspx> [Accessed last 22 November, 2012].

[248] *See* for example, Michelle Norris, 'Regenerating Run-down Public Housing Estates: A Review of the Operation of the Remedial Works Scheme' (n 191); Kasey Treadwell Shine, 'Regenerating Unpopular Social Housing Estates: Can Complexity Theory Help to Achieve Best Possible Solutions?' (2006) 23 *Housing, Theory and Society* 65–91; Nessa Winston, 'From Boom to Bust? An Assessment of the Impact of Sustainable Development Policies on Housing in the Republic of Ireland' (n 193); Nessa Winston, 'Regeneration for Sustainable Communities? Barriers to Implementing Sustainable Housing in Urban Areas' (n 193); Nessa Winston, 'Urban Regeneration for Sustainable Development: the Role of Sustainable Housing?' (n 193); Kasey Treadwell Shine and Michelle Norris, *Regenerating Local Authortiy Housing Estates: Review of Policy and Practice* (n 182).

[249] Nessa Winston, 'Urban Regeneration for Sustainable Development: the Role of Sustainable Housing?' (n 193) (my emphasis).

For example, there is some recent literature on urban regeneration and social sustainability[250] but nothing on urban regeneration and access to legal services.[251] Moreover, recent literature indicates that "a comprehensive study of urban regeneration from a social-sustainability (i.e.: the social dimension of sustainable development) perspective is still missing."[252]

In relation to housing law and policy in the one hand and social policy on the other, their influences on regeneration schemes in Ireland also lack in-depth research.[253] Albeit literature on social housing exists, there is much more still to do. A study carried out in 2006 by Dr. Rory Hearne in relation to the role of PPPs in social housing regeneration indicated that PPPs left residents worse-off, displacing and breaking up communities. [254]

Recently, the PPP's approach to regeneration highlighted its drawbacks as residents of Dolphin's Barn (a regeneration project under PPP) are planning to take individual actions against the State for contravention of human rights in relation to housing.[255]

Urban renewal tax reliefs, incentives and different legislation[256] as well as planning law[257] have also played their part in regeneration of social housing efforts. However, these

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[250] Andrea Colantonio and Tim Dixon, *Urban Regeneration and Social Sustainability: Best practice from European cities* (n 194); Tony Manzi, Karen Lucas, Tony Lloyd Jones, and Judith Allen, *Social Sustainability in Urban Areas: Communities, Connectivity and the Urban Fabric* (n 194).

[251] Regeneration as part of urban studies/geography area seems to have advanced in Ireland, yet to date, nothing is found from a legal angle.

[252] Andrea Colantonio and Tim Dixon, *Urban Regeneration and Social Sustainability: Best practice from European cities* (n 194) 9.

[253] Email correspondence Dr. Padriac Kenna, NUI Galway (15 December 2011).

[254] Note that this is the type of relationship (between the private and the public) is what one often sees and perceives in relation to some housing estates in Ireland as well as some "famous regeneration projects" abroad. For example, the regeneration experience of downtown Los Angeles and the creation of a new downtown Los Angeles displaced and broke-up entire communities. Ballymun was fortunate as it was not regenerated under a PPP approach per se. Recently, however, a new type of housing policy is developing in Ireland which may leave the provision of social housing to the private market (Dr. Padraic Kenna's Housing Law & Policy class, Ballymun January 2012).

[255] Thejournal.ie, 'Dolphin's Barn Residents dreading a damp Christmas', December 20, 2011. Available at: <http://www.thejournal.ie/readme/column-dolphins-barn-residents-dreading-a-damp-christmas/> [Accessed last 20 December, 2011]. To date, no other information about the cases has become available.

areas are only mentioned as separate studies would be needed to make an informed assessment.

The concept of citizenship under the remit of social policy has also played an important role in ensuring an array of social services are provided as part of regeneration schemes, including community legal services. This is best exemplified by the regeneration of Ballymun and the creation of the BCLC but again, this area is only mentioned in passing, as a separate study under a social policy context would be best placed to make an informed assessment.

6.3.3 Section Two: The Regeneration of Ballymun

(1) Background

Ballymun was to be the "housing estate of the future". It comprised a set of seven high towers, all named after the leaders of the 1916 rising, as well as a number of spine blocks and two-story housing units. The Ballymun housing estate was to house a large number of families following the collapse of a number of tenement buildings[258] and subsequent evacuation of the rest of the tenements in Dublin City in 1963. Ballymun was officially "opened" in 1969 with many of its new residents experiencing "life" in high-rise buildings for the first time. It initially contained 2,820 flats and later increased by the addition of 1,600 two-story public housing units, making it "one of the largest public housing estates in Europe".[259] By the 1980s, much had changed and the housing estate of the future with its seven towers had

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[256] For example: National Development Finance Agency (Amendment) Act 2007; National Development Finance Agency Act 2002; State Authorities (Public Private Partnership Arrangements) Act 2002. *See* <http://ppp.gov.ie/key-documents/legislation/> [Accessed last 10 January, 2012].

[257] For example, section V of the Planning Act, 2000 required that, as a condition of planning permission, twenty per cent of the land allocated for development to be transferred for social and affordable housing but two years after the legislation was amended, thus since 2002, "less than 3 per cent of total private development has been transferred". *See* Jesuit Centre for Faith and Justice, 'The Irish Housing System: Vision, Values, Reality' (Jesuit Centre for Faith and Justice and Messenger Publications 2009) Foreword.

[258] In June 1963, four people died following the collapse of tenement buildings in Bolton Street and Fenian Street.

[259] Aibhlín McCrann, *Memories Milestones and New Horizons: Reflections on the Regeneration of Ballymun* (Blackstaff Press 2008) Foreword.

become a housing estate error of the past.[260] Ballymun was now home to a high level of unemployment, with a majority of single families and poorly-serviced communal areas.

Nevertheless, the 1980s was also a "breeding ground" for activism in Ballymun.[261] Áine Rooney, a local activist and resident of Ballymun since its inception, indicates that for example, when the Bank of Ireland pulled out its banking facilities from the area, local community groups created a coalition which was able to open a job centre and a credit union. The coalition also started a "housing group" which, in turn, became part of a task force calling for a large number of flats to be refurbished.[262] As result, a pilot scheme to refurbish the flats in one tower block and two spine blocks took place under the auspices of the RWS and completed in 1993.[263] The decision to regenerate Ballymun, however, was not made until 1997, when an evaluation of the RWS that had taken place in Ballymun was completed.

(2) Decision to Regenerate

The decision to regenerate Ballymun was taken following an evaluation of the completion of the remedial works undertaken as part of the pilot scheme to refurbish the flats.[264] Because of the costs associated with improving/refurbishing the existing stock of housing together with the expense of remedying structural defects, it was determined that the tower blocks and spine blocks would be demolished "progressively over eight years" and replaced by new housing.

> "The redevelopment of the housing was to be the central element in an integrated strategic plan for the economic, and social development of the area which would include arrangements for consultation with, and involvement of the local community in its implementation."[265]

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[260] However, when first built, the architecture was considered modern.

[261] Local activist presentation by Áine Rooney from the Ballymun Welfare Rights Group to the NUI Galway student's day trip to Ballymun, 11 March 2011.

[262] Ibid.

[263] BRL, 'Ballymun Regeneration Limited Completion Report', 2008 7.

[264] These consisted of improvements to one tower block and two spine blocks which were completed in 1993 at the cost of IR£7 million (approx. €8.8 million). BRL, 'Ballymun Regeneration Limited Completion Report' (n 263).

[265] ibid. 7

Thus, in March 1997, the go-ahead for the redevelopment of Ballymun was given by the then Minister for the Environment and the Minister for Housing and Urban Renewal[266] and following a consultation with the then Department of Environment and Dublin Corporation[267] (now Dublin City Council) a company limited by guarantee with no share capital was established to oversee the redevelopment.[268] The company became known as Ballymun Regeneration Limited (hereafter "BRL").[269]

(3) The Master Plan

The master plan for the regeneration/redevelopment of Ballymun took place "in consultation and partnership" with the community[270] and adjacent areas.[271] It proposed a strategy for the regeneration of the social, economic and physical aspects of the community and not solely for the physical infrastructure.

Among the recommendations under a consultation process carried out on a "Public Planning Day", it was indicated that the residents needed "decentralised advice and welfare rights"[272] among others. This recommendation would become the seeds of the start of a community civil legal aid centre.

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[266] ibid.

[267] Dublin Corporation was renamed Dublin City Council in 2002.

[268] It was felt that because of the distrust the local community felt against the government, having an independent body would be more appropriate. Interview with Sheena McCambley, Senior Planner BRL (11 March 2011).

[269] In order to obtain best practices, BRL's original Master Planner, David Pritchard, a person with considerable regeneration experience in the UK looked at Europe for lessons and as a way to translate ideas from abroad into an Irish context. Professor Anne Power of LSE was also a valuable advisor over the years and not just prior the establishment of BRL. ibid. *See* also, Aibhlín McCrann, *Memories Milestones and New Horizons: Reflections on the Regeneration of Ballymun* (n 259) particularly pages 1-43.

[270] The community consultation groups was comprised of different "umbrella" groups, namely Ballymun Housing Task Force, Ballymun Partnership, Area Forums, Design Group, Focus groups, working groups and adjacent Resident Associations.

[271] The then Managing Director of BRL indicates that over 2,000 local people became involved in designing "their new town" and increased to over 5,000 when the Draft Master Plan was launched. BRL, 'Masterplan for the New Ballymun', 1998 (Foreword).

[272] The recommendation was placed under the umbrella of "Advice, Support and Community Development". This umbrella or theme was one out of six themes that BRL decided to established to address six key social themes that required specific attention under the Masterplan. ibid. 6.

The master plan contained a huge number of proposals and different points of views. It was later submitted to government for approval as well as a way to obtain tax-incentives for investment in the area, as despite the growth in the Irish economy during the initial Celtic-tiger years, Ballymun was still experiencing high-levels of unemployment and poor living standards. Regenerating not only the physical but also the social and economic environment was important, as under these three axles of regeneration (physical, social and economic) the displacement of the local community could be avoided.

To date, 5,000 housing units have been built with 80% of them owner-occupied and 10% rented. The housing part of the regeneration scheme should be completed by 2014.[273] Commendably, to keep the local community "local", a relocation programme was created, which meant residents have had to live literally among building sites for a number of years, and some still face a long wait. Thus, Ballymun is still a community in transition, as there are still buildings to pull-down[274]and even though significant regeneration has taken place, the reputation of Ballymun is such that people still look at Ballymun with suspicion. [275]

(4) BRL and the creation of legal services

Equipped with the strategy of creating social, economic and physical regeneration, and with the view of the community that there was a need to have a decentralised advice and welfare rights service, the idea of a community legal centre for the local residents came to the fore. Providing legal services would fall under the stream of social regeneration, a concept that places the idea of citizenship at its core.[276]

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[273] In the BRL newsletter of December 2011, it is indicated that eight blocks remained to be demolished and they are due to complete all demolitions by 2014.

[274] All the demolition is to be completed in 2014.

[275] Sheena McCambley, Senior Planner BRL, BLR's presentation to the NUIG student's day trip to Ballymun, 11 March 2011.

[276] For BRL, they have tried to bring the idea of citizenship to local residents through different initiatives such as a Transition Course and Safer Ballymun. These two courses aim at providing residents with the skills to know how they can make the place they live better and not just rely on the authorities doing things for them. It also seeks to empower the resident by advising on how ' they' can solve the problems in their street/community. Interview with Sheena McCambley, Senior Planner, BRL (11 March 2011). *See* also interview with Evelyn Hanlon at section 6.3.4 (2)(a) later on in this chapter.

Moreover, BRL sees the concept of citizenship as that which includes rights and responsibilities; therefore, a place where legal services are provided is fundamental to the regeneration scheme. By having a law centre people can learn about their rights and responsibilities. For BRL, having rights and responsibilities means participation and involvement in the community, so everyone (people and community institutions) can be accountable.[277]

Thus, BRL became a significant funder and proponent of having a community law centre as it provides a service where no one existed before. Furthermore the community law centre also acts as an agent of empowerment both through raising awareness of the relevance of law in society and through its educational activities.[278]

6.3.4 Section Three: Case Study Ballymun Community Law Centre

The aim of this case study is to argue that CED lawyering exists in Ireland and that its use and practice can help in the promotion and implementation of a strategic model of legal aid as well as to argue that public interest law and regeneration efforts can be connected through the further development of CED. It is envisaged that by expanding the role of law and the legal system in bringing about social change via the combination of law, social policy and community development tools, public interest lawyers can further understand and develop this innovative area of law. Albeit there is already some research describing how the Ballymun Community Law Centre (hereafter "BCLC") was established[279], it is submitted that by exploring BCLC from a CED perspective, focusing on its on-going community involvement as a way to bring about social regeneration such as the provision of community legal education, an Irish version of CED lawyering can come to the fore.

(1) Context and Overview

[277] Interview Sheena McCambley, Senior Planner, BRL (n 281).

[278] Email correspondence with Sheena McCambley, Senior Planner, BRL (11 March 2011).

[279] Gerry Whyte, 'Providing Effective Access to Legal Services: The experience of the Ballymun Community Law Centre' (n 21) 115–134.

In operation since 2002 and servicing a population of almost 20,000[280], BCLC's creation and history of BCLC differs from that of its predecessor (NCLC) as it arose out of Dublin's blue print for the regeneration of a disadvantaged neighbourhood rather than out of a demand for the establishment of a community law centre.[281]

The publication of the Department of the Environment's "Sustainable Development: A Strategy for Ireland" in 1997[282] (hereafter "the development strategy"), designed a national strategy for the achievement of sustainable development which aimed "to apply considerations of sustainability more systematically to Irish economic policies and to integrate them into associated decision making processes".[283]

The development strategy also focused on the built environment which highlighted the concept of urban regeneration. Under the concept of urban regeneration, the development strategy indicated that the policies for achieving "sustainable urban regeneration" would have "key elements" such as the integration of strategic economic and social planning.[284] Moreover, it particularly mentioned the existing local authority housing and the number of schemes available to improve them, such as the Remedial Work Scheme[285] (hereafter "RWS"), a scheme that would be influential in bringing about the regeneration of Ballymun.[286]

Consequently, the development strategy and the policies contained within as to how urban regeneration could be achieved under the concept of sustainable development offered a

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[280] Ursula Halpin, Sylvia Mooney, Katrin Todt, and Bernadette Walsh, 'Ballymun Community Law Centre: Evaluation Report 2009' (BCLC 2009) 12. The evaluation report contains a series of social demographics as published in the Census 2006. Detailed data from the most recent census (2011) is not yet available.

[281] G Whyte explains that FLAC, following the establishment of the then "Coolock Law Centre", campaigned for the creation of a community law centre in Tallaght (a town in South County Dublin) but it was never developed by the government. *See* Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) footnote 143 at page 311.

[282] Department of Environment, 'Sustainable Development: A Strategy for Ireland' (n 242).

[283] ibid. *Foreword.*

[284] ibid. 150.

[285] It also mentioned the Estate Improvement Programme, which aimed at assisting local authorities to tackle environmental and related problems of "severely rundown urban housing estates and flat complexes". ibid. 155.

[286] *See* Regeneration of Social Housing at section 6.3.2 (2) (ii) of this chapter.

great opportunity as to how the redevelopment of the Ballymun Housing Estate could take place.

Ballymun could be replaced with "a self-sustaining urban centre" for the people in the area and the redevelopment plan could also provide for "consultation with, and involvement of, the local community in its implementation."[287] This is because the development strategy indicated that, "sustainability in housing require[d] tenant participation and empowerment".[288]

Although the development strategy did not mention the provision of a community law centre, it was government policy that the "strategic economic and social planning" linked the measures and programmes for urban renewal on an integrated basis to address the physical, economic, social and environmental regeneration of urban areas.[289]

As such, it can be said that the regeneration of Ballymun and the subsequent birth of BCLC is the first example in Ireland of how the practice of CED as a whole (i.e.: as a concept and as a lawyering strategy) has evolved with open support from the government. Moreover, and although the government may not have realised it,[290] it can be argued that the government approach of addressing the physical, economic, social and environmental needs of the community on an integrated basis, firmly rooted the concept of CED within that of regeneration and sustainability in the one hand and public interest law in the other (via BCLC). Although it took a few years after the start of the regeneration process for BCLC to open its doors, BCLC celebrated its 10th year anniversary in November 2012.

It is also important to highlight that because BCLC was part of the regeneration project, it also received government support from the Legal Aid Board (hereafter "LAB") in addition to State funding via BRL. This process of collaboration between LAB and BCLC, a government run civil legal aid scheme on the one hand and an independent civil legal aid service (in the form of the law centre) on the other, would not have been possible before

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[287] Department of Environment, 'Sustainable Development: A Strategy for Ireland' (n 242) 156.

[288] ibid.

[289] ibid. 150.

[290] Ballymun Regeneration Limited (BRL) called for community services to be set-up within the newly regenerated area, the process relating to the establishment of BCLC is described below. *See* also, Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) at footnote 215 on page 332.

despite FLAC's call for the establishment of local community centres as part of their "National Advice and Legal Service Council" programme back in 1992.[291]

(2) Origins

The campaign for the establishment of a community law centre started on a formal basis in July 1999 but it originally began in January 1999 at a public meeting in Ballymun which was called to discuss if there was a need for a community law centre, the type of work it should do and how to finance it.[292] Evelyn Hanlon, the then Head of Finance at Ballymun Regeneration Limited and subsequently the person in charge of social regeneration within the company recalls the hard and arduous process of how the law centre became part of the Master Plan.[293]

(a) How the law centre became part of the Master Plan[294]

The idea that sparked the suggestion to have a law centre based in Ballymun came about from discussions between Evelyn and David Prichard about social sustainability and how to encourage greater interaction between Ballymun and other areas of the wider city. The project wrote to about 400 organisations asking them if they were thinking of moving their HQ offices and if they would consider moving to Ballymun.

One organisation which replied was FLAC who, while they did not want to relocate to the area, were interested in promoting the concept of a community law centre such as the one already operating in Coolock[295]. FLAC explained to Evelyn what a law centre was about and how it could meet the aims she wanted to address (create a collaborative environment where the community could seek redress if necessary brought about by the disruption caused by the

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[291] Also requested in their submission to the Pringle Committee.

[292] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Feasibility Study Report', January 2000 4; Evelyn Hanlon interview 17 January, 2012.

[293] Evelyn Hanlon is the current Chair of the Board of Directors, BCLC Ltd.

[294] Special thanks to Evelyn Hanlon, the current Chair of the Board of Directors of BCLC for her insights into the history of BCLC. This section is based on the findings of a long interview with Evelyn Hanlon at the Dublin Civic Offices, on January 17, 2012.

[295] This is the Northside Community Law Centre (NCLC).

regeneration and maintain issues of accountability as key components in the process of regeneration).

Up until then, Evelyn was not aware of the concept of a community law centre but she quickly saw the community law centre as the best way of rebalancing power and providing an element of accountability (check and balances) for the community. The law centre would also serve to reduce the need to provide a separate appeal system and given that it would be independent, it would also help to maintain accountability and would create a different dynamic which would be healthy for both BRL and the community.

The idea of a law centre tied in with another concern which was being discussed within the regeneration company about the need for checks and balances. This arose from the sense that the regeneration of Ballymun involving detenanting[296], demolition and rebuilding would be hugely disruptive and that it would inevitably bring about tensions between BRL as the instigator and the community; within BRL there was a belief that local people needed to have recourse and access to mechanisms that would support challenges to the proposals which affected them if they wanted to appeal decisions etc. One way of addressing the issue of accountability and imbalance of powers was to have Ballymun Neighbourhood Council (formerly the Ballymun Housing Task Force) as a representative of community concerns and issues. However it was felt that some other independent organisation which could represent individuals wishing to challenge decisions would also be a good way of supporting individual cases, even if necessary taking legal action against public bodies dealing with the regeneration including those making decisions about regeneration but also the local authority, police, health services and other statutory providers. Specifically in relation to regeneration it was felt that there should be representative groups and organisations which were resourced to channel concerns instead of the traditional outlets of protest marches and public meetings where feelings and positions became entrenched and nothing got resolved. The provision of an independent organisation with professional legal advisors and representation meant that if the people experienced what they saw as injustice they could resolve it as equals; people tended to use the media and the political system for larger issues and disputes but individuals tended to use the law centre.

[296] Detenanting is a specific term used within regeneration, it mean placing the tenant out of his/her home and locating him/her somewhere else.

In order to establish the law centre - having become convinced that it was a good idea - Evelyn acting for the regeneration company tried to find an organisation within Ballymun who would foster the project.

The first organisation approached was the Ballymun Partnership who considered the idea but eventually decided it was not for them. The next organisation approached by Evelyn was Community Action Programme (hereafter "CAP") who agreed provided the regeneration company sponsored and resourced the project and remained involved.

Subsequently CAP called for a meeting with local groups[297], and after a period of time, the group of people who began to meet regularly decided that research was important in order to understand what was specifically needed for Ballymun and also to make the case for funding for the law centre from the exchequer. The researcher employed was Dave Ellis whose research culminated in the publication of a feasibility study report in January 2000.

Since there was no funding available from the exchequer or LAB to undertake research, money was sought from different charities and the Katherine Howard Foundation and the Joseph Rountree Foundation helped to fund the research; office space, PR, IT and Graphic support as well as administrative back up was provided by BRL directly and the embryo law centre operated from BRL's campus in Stormanstown House along with a number of other projects. The work load soon justified a development worker and Patricia Scanlon (now Flynn) was employed full time by BRL for the law centre project.

In order to launch the idea of a community law centre for Ballymun, a public lecture was held in Stormanstown House and a senior official from the Community Law Centre movement in the UK was invited as the key note speaker. This was picked up by the media and when Evelyn went on Morning Ireland to discuss the project, this resulted in a series of discussions with LAB who subsequently joined the committee to set up a community law centre in Ballymun. There was some disagreement initially with the LAB about whether there was a need for a community law centre given that their remit covered more than family law.

[297] The local groups included Dublin City University, Welfare Rights, Dublin City Council Area Office, Drugs Task Force, An Garda Síochána, National College of Ireland, Ballymun Youth Resource Centre, Womens Resource Centre, Mens Network, MABS, Credit Union, Citizen Information Centre, Ballymun Partnership, Ballymun Housing Task Force and others.

But the Ballymun project was of the opinion that the LAB did not in fact deal with very much other than family law despite their wider remit.[298]

(b) The Feasibility Study Report 2000

Following the public meeting, a number of public consultations took place and a committee to oversee its establishment also met regularly.[299] Thus, in the year 2000, a Feasibility Study Report (hereafter "the feasibility study") was published outlining the ideas and views arising from the consultation process and offered a number of options as to how the law centre could best develop.[300]

The feasibility study indicated that despite the evidence of deprivation[301] and marginalisation found within Ballymun, there was a strong network of community groups and organisations which, until then, had organised among themselves to meet the needs of the

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[298] Evelyn indicates that the relationship with the Legal Aid Board has strengthened over the years but there is still no financial support from them for the law centre and a proposal to develop a one-stop legal aid centre in Ballymun in partnership with the Legal Aid Board is yet to materialise. Dr. Moling Ryan, Chief Executive of the Legal Aid Board indicates that there have been a number of attempts to develop an integrated approach to the provision of legal aid services in Ballymun. The most recent one was to have a co-located, integrated client-based approach to service the people of Ballymun but it had to be put on hold for a number of reasons. Email correspondence Dr. Moling Ryan, Chief Executive, Legal Aid Board (8 March 2012).

[299] The consultative process had taken place under a series of meetings. It included: Ballymun Regeneration Limited, Coolock Community Law Centre, Ballymun Community Action Programme, Ballymun Welfare Rights Group, Men's Networking Resource Centre, FLAC, Youth Action Programme, Ballymun MABS, Eastern Health Board – Community Welfare Service; Gardai; Dublin Corporation (now Dublic City Council); Women's Resource Centre; Threshold; Ballymun Housing Task Force; Balcurris/Baltbutcher Lane Estate Forum; Poppintree Estate Forum; Ballymun Youth Reach; Linx Project and Ballymun Men's Centre. The Committee also heard the views from other interested groups and individuals.David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Feasibility Study Report' (n 292) 4. Note the Action Plan also mentions Ballymun Citizen Information Centre. *See* David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Action Plan 2000', November 2000 4.

[300] The feasibility study was carried out by David Ellis on a consultative basis between July and December 1999 and published in January 2000. (Dave Ellis worked as a consultant to the Campaign Committee since 1999). His expertise and experience highlighted the best options he considered were suitable for the further development of BCLC. *See* David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Feasibility Study Report' (n 292).

[301] It is interesting to note that the feasibility study does not mention poverty at all but rather it indicates there are high levels of deprivation and an unmet legal need within Ballymun. It is uncertain if omitting the word poverty was done to accentuate the issue of poverty as looking at levels of deprivation are a way of measuring poverty.

community.[302] The feasibility study called for the need to develop information and advice services to meet the changes brought about by regeneration such as rectifying the decades of neglect and deprivation experienced within Ballymun.

The study further recognised there were already a huge range of information and advice services within Ballymun but no proper legal services. FLAC only operated a voluntary service twice a week.[303] Moreover, it was an "advice only service" and there were no private solicitors in the area.[304] Thus, establishing a community law centre could meet the unmet legal need of the community as well as that of community groups, as people were seeking legal advice from the existing support groups available at the time but those groups could not offer the legal advice sought.[305] The feasibility study also deemed that the development of the law centre should be based on a number of principles[306] and the services should be offered through a combination of different approaches, namely: casework; community support group; training; information / education programmes; law reform and social policy work.[307]

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[302] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Feasibility Study Report' (n 292) 7. Author quotes the Gamma Report 1995 (to date, I have been unable to find the original source).

[303] FLAC was set up in Ballymun around 1969-1970 and was run by law students. The solicitor would advise the students as to how to advice the client, so the solicitor never meet the clients personally. "History of FLAC in Ballymun" at pages 15-16 written by Dennis Barror, found at BCLC, 'Ballymun Community Law Centre Annual Report 2006', 2006.

[304] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Action Plan 2000' (n 299) 8.

[305] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Feasibility Study Report' (n 292). The consultation process also had indicated that local groups were looking for a "back-up service" in relation to their case-work and a place that could offer training in legal issues and expertise in making submissions for reform, hence a law centre was best suited to offer all the requirements. David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Action Plan 2000' (n 299) 8.

[306] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Feasibility Study Report' (n 292) 9. The principles were: to provide a community-based legal service; work to protect and promote the constitutional, legal and social rights of marginalised individuals **and groups**; **work with existing community organisations to complement and support their work**; provide and independent, professional, and confidential service; committed to a consistently excellent standard of service; service to be based on respect for individuals, and equality of treatment; the service to seek to empower **both** the individuals **and groups** it works with. One way BCLC pursues working with groups is via its legal education services to groups when needed. So community groups are trained to service their clients (my emphasis).

[307] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Action Plan 2000' (n 299) 9-10. The feasibility study further indicated that the law centre should also work closely with the then CCLC and create a formal mechanism for an exchange of ideas, co-operation and "when appropriate" a sharing of resources.

More importantly, for the purposes of this research, the feasibility study also contained a definition of what a community law centre was[308], thus setting the standard as to what a community law centre was supposed to do. This definition indicated that a community law centre was:

> "an independent and community-based service which provides free legal aid and advice to individuals and groups in marginalised areas. It provides court and tribunal representation and usually concentrates on areas of law such as housing, debt, employment law, welfare rights, equality issues, and family law. **However, a community law centre does not confine its work to individual casework. It also recognises that local information / advice / support groups also need to use the legal resource available in the community law centre to assist them in their work. This strengthens the work of such groups and enables them to meet the needs of their users more effectively.** In addition these groups may need legal service to meet their own requirements, for example, in relation to **company formation, or drawing up contracts of employment**. Again the community law centre model will provide this service."[309]

By indicating that the role of the law centre was also to service community groups which in turn would also help to strengthen their work so the community groups could meet the requirement of their users,[310] the author of the feasibility study, Dave Ellis, unknowingly had described part of the process of CED law/lawyering and how it worked in action.

This is partly because the vision of BCLC was the product of the many years of experience Dave Ellis spent working with the NCLC, but also because the establishment of

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[308] The earliest definition offered to the government as to what a community law centre was is found on the Pringle Report. *See* Dennis A Pringle, 'Report to Minister for Justice: Committee on Civil Legal Aid and Advice' (Stationary Office 1977).

[309] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Feasibility Study Report' (n 292) 6. The description of what is a community law centre also appears in the Action Plan. *See,* David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Action Plan 2000' (n 299) 6 (my emphasis).

[310] ibid.

BCLC included a very different approach as to how NCLC was created.[311] For BCLC, regeneration and the government policy of working in an integrated manner played a key role in its development. As such, there is an explicit acknowledgment that the role of a law centre is to serve community groups.

Additionally, Ellis, drawing on his experiences with NCLC and his desire to involve more community development into law and legal practice,[312] shaped and cemented his vision of how a law centre would look in theory and practice. Aided and inspired by the potentials of regeneration, it precipitated the creation of a law centre which not only could meet a legal need but could also provide for the social and economic development of the community.[313] In other words, regeneration sparked the blossoming of CED lawyering in Ireland, connecting public interest law and regeneration under the umbrella of BCLC while at the same time addressing the need for an integrated approach in the provision of information and advice services as indicated in the feasibility study.[314]

It is interesting to note also that in relation to casework, the need for legal services was so great that at some point there was a debate about the focus of the work of BCLC and if it should be directed to community groups rather than individuals. However the demand for a legal service to individuals was so great, it was unrealistic to restrict the remit of the law centre to community groups only.[315] That said, servicing the legal needs of community groups was perceived as just as important as servicing the needs of individuals.

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[311] This is in contrast to NCLC which was set up to meet the unmet legal need but under an access to justice approach. This difference also explains the geographical focus of BCLC when compared with NCLC. NCLC services two electoral district areas with a population of about 140,000.

[312] Conversation with Sarah Flynn, the late David Ellis wife (International Community Development Conference, NUI Maynooth, 16 November, 2011).

[313] This vision of community development when compared to NCLC presents some interesting views in relation to the impact of CED.

[314] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Feasibility Study Report' (n 292) 16.

[315] ibid. 11.

The feasibility study also proposed to meet the need for family law issues in conjunction with LAB[316], acknowledging this would "break new ground" but it was important to realise that the regeneration of Ballymun necessitated all types of services, statutory and non-statutory and thus new forms of thinking and the validity and recognition of new approaches when delivering legal services.[317] This process of collaboration proved to be crucial as it also facilitated the delivery of a strategic model of legal aid in partnership with the government, which to date, had been unattainable[318], thus supporting the argument that CED can act as a link between public interest law and regeneration and as such it can facilitate the practice of the strategic approach to legal aid. In other words, regeneration involved a different arm of the State to access to justice – Dublin City Council and the Department of the Environment on the one hand *versus* the Department of Justice on the other. And it is this public/private partnership in BCLC which sets it apart from NCLC in this regard.

(c) Post- feasibility study: a summary

Once the feasibility study was completed, the establishment of the community law centre was "intensified".[319] A series of meetings were held with different government agencies such as the Area Committee of Dublin City Council, LAB, the then Department of Social, Community and Family Affairs and the then Department of Justice, Equality and Law Reform.[320] Then, an Action Plan was published in November 2000, containing almost *verbatim* the findings of the feasibility study[321] albeit it recognised that it was important to

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[316] The Civil Legal Aid Board had also proposed to work with BCLC following the interview of Morning Ireland. *See* Hanlon's interview at section 6.3.4 (2) (a) of this chapter.

[317] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Feasibility Study Report' (n 292) 11.

[318] NCLC and FLAC had been unsuccessful in obtaining government support in relation to the practice of strategic legal aid although they do receive/have received government funding by the Department of Social Protection and the Department of Justice respectively.

[319] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Action Plan 2000' (n 299) 4.

[320] ibid.

[321] ibid. 4–5. The differences found were a) the Action Plan contained a more detailed business plan and management structure; b) it pointed out that it would be of benefit to have "a partnership approach between local community groups, voluntary groups, statutory organisation, educational establishments, local government and state agencies" and; c) it recognised that the regeneration of Ballymun was "unique" within Ireland was also key as it offered the opportunity to acknowledge that the approach to be taken in meeting the legal services need of the community also needed to be "innovative and inclusive".

have a project development officer[322] sooner rather than later so funding was arranged.[323] The Action Plan further recognised the unmet need for legal services both on the part of individuals and community organisations. The acknowledgement that there was a need for legal services in relation to community organisations which could only be provided by a community law centre also highlights the changing nature of unmet legal needs, acting as a testimony of how the development of CED lawyering started to take shape in Ireland.[324] Now, there is an explicit recognition that legal support for community organisations is also necessary in the achievement of development. Community organisations played a very important part in BCLC as BCLC was not supposed to supplant their services but to help them.

(3) Local Management and Control

The attainment of local management and control of the BCLC by the community is an on-going process and goal as reflected in the development of its management structure.

The feasibility study originally proposed that the running of the centre could be done under a company limited by guarantee with an elected board,[325] indicating that the board "should be as representative of the people of the area as possible" so it could be aware of the needs of the community.[326] This model reflected the existing arrangements of the other

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[322] ibid. 16. The employment of a Project Development Officer was important and working in conjunction with the BCLC Campaign Committee, in ensuring the progress of the law centre such as obtaining funding; develop the concept of the centre as envisaged on the feasibility study and action plan, ensure the establishment of a mediation service and others.

[323] ibid. 5. The Action Plan indicates that Dublin Corporation committed 60% of the cost and the Katherine Howard Foundation also made a contribution. Some other organisations also committed themselves to provide matching funds for the post.

[324] ibid. 8–9. The consultation process carried out in 1999 indicated that the different community groups "would use the Ballymun Community Law Centre as a resource service, to provide back-up in relation to their case-work, for training in legal issues for their workers and for legal expertise in developing submissions on legislative reform and research. This is because the government scheme of civil legal aid (run by LAB) offered a different type of service and could not address the needs of the community.

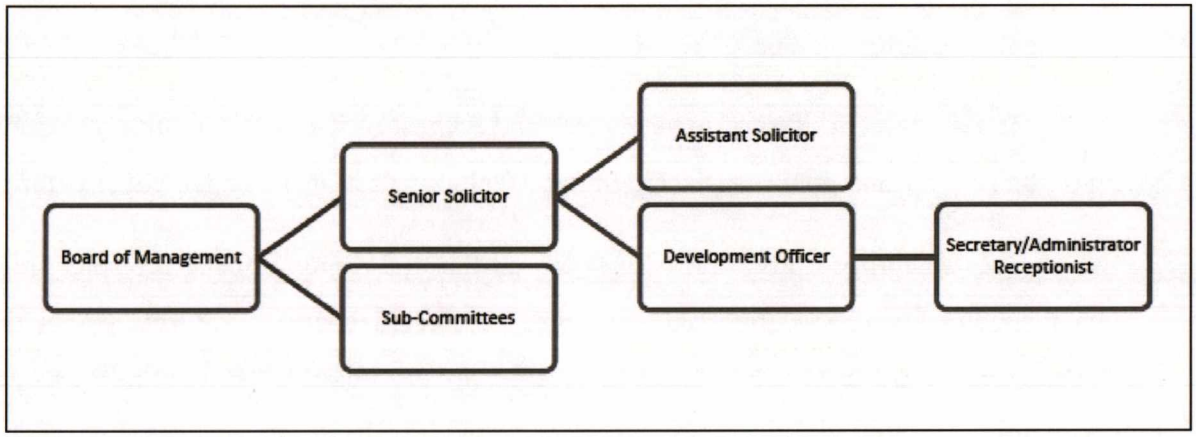
[325] BCLC would be a limited company limited by guaranteed and managed by a management board.

[326] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Feasibility Study Report' (n 292) 17. It also proposed to have as member of the staff a senior solicitor; an assistance solicitor; a development officer (to administer the running of BCLC); a secretary/administrator and a receptionist. Currently that structure is different now there is project officer that looks into the interaction between the community and the law centre and the projects BCLC can develop such as mediation and legal education.

existing CLCs at the time;[327] however, its management board would be different as it would also contain nominees of statutory agencies and others.[328] The membership of the BCLC Ltd. was later addressed in the Action plan indicating it should represent the people of Ballymun in order for the law centre to be "responsive to the needs of the community"[329]. However, no further details were given as membership was deemed to be outside the scope of the Action Plan.[330]

The following figure (Figure 6.3.4 (3)) represents the proposed management structure[331].

Figure 6.3.4 (3): Proposed management structure of BCLC



[327] At the time, the only other independent community law centre was NCLC.

[328] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Action Plan 2000' (n 299) 19. The management board would have: directors, elected by the members of the company (BCLC Ltd.); nominees of statutory agencies; co-options (persons with particular expertise); elected staff representative and specialists subcommittees established by the board (directors, staff, co-option).

[329] ibid. 20.

[330] In 2009, the Board of Directors was comprised of 11 members representing a number of organisations: URRUS/Ballymun Youth Action Project; Dublin City Council; National College Ireland; Men's Centre; FLAC; BRL; BCLC; Welfare Rights; LAB and a retired solicitor. The staff are comprise one full time solicitor; a part time development manager; a full time law clerk (funded through Job Initiative; a part-time project officer a full time receptionist and a part-time cleaner. The services offered are legal advice, information and representation, specialising in certain areas of law: housing, consumer, debt, social welfare, employment and equality and it makes a series of referrals to other organisations when needed. *See* Ursula Halpin, Sylvia Mooney, Katrin Todt, and Bernadette Walsh, 'Ballymun Community Law Centre: Evaluation Report 2009' (n 280) 15-16.

[331] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Action Plan 2000' (n 299) 19.

In reality, however, local management and control has worked rather differently. According to Frank Murphy, the managing solicitor of BCLC,

> "one cannot just present a law centre as a *fait accompli.* One has to grow it in the community with the community and for the community. In an area where there were no solicitors, one has to work with the community to develop the law centre and its management". [332]

Currently, the management board is composed of nine people, two of which represent the local community.[333] BCLC hopes that in the future, more community representatives will become involved. In the words of Frank Murphy,

> "in order to build local management and control takes place, there is a lot of ground to cover first, to make up for people's distrust in the legal system. After all, there were no legal services facilities in the area since the foundation of the housing estate"[334].

This view of rebalancing of power[335], of understanding the background of people and the community has also required BCLC to become a facilitator and take a step back and offer legal help when required, thus changing lawyering attitudes in order to achieve empowerment. This process, in turn, acts as a further example of CED lawyering in action as the lawyer, as indicated on the definition of CED lawyering in chapter two, acts as a facilitator, and by using different legal tools and approaches, it empowers the community. CED lawyering can therefore help to further facilitate local management and control but it might take much more time than anticipated.

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[332] Interview with Frank Murphy, managing solicitor of BCLC (23 February, 2011).

[333] These two representatives are from the Men's Centre and the Welfare Rights Group. The other members consist of a solicitor, one independent person, DCU, LAB, FLAC, BRL and BCLC. At the beginning, prior to the establishing of BCLC as a limited company, the management board setting up BCLC continued to be chaired by CAP who only resigned when the centre was established as a Community Law Centre i.e. had moved beyond the development stage. Evelyn Hanlon has remained as chairperson since the establishment of the centre. Interview with Evelyn Hanlon (n 294).

[334] Interview with Frank Murphy (n 332).

[335] For example, the lawyer by understanding the community is not used to having legal services at its door step (and distrust of government) it does not push the service but let's the community come on their own time.

(a) Project Officer's Role

One important element of how BCLC can achieve local management and control is the role played by the Project Officer, whose main aim is to look for projects within the community and assess how BCLC can contribute or create further projects that are needed within the community. This position was not envisaged within the original management structure but it has proven to be a crucial role. For example, at present, the project officer runs a series of projects targeting the local community[336] in which BCLC can make an impact. The Project Officer also looks for projects within the community under which BCLC can provide assistance, making the role of project officer one example as to how CED as a lawyering strategy is currently being practiced.[337]

(4) Services provided

(a) The feasibility report:

As to the areas of law in which BCLC would specialise, the feasibility study indicated that family and housing were considered a priority. Employment was seen as increasing in demand. Social welfare and health board services were already covered by local organisations but the report suggested the involvement of the centre in more complex appeals and test cases. In relation to equality, a test-case approach was suggested and in relation to debt, the centre should provide a back-up support to MABS[338] with the possibility of pursuing a test-case strategy in appropriate cases. With regards to criminal law it proposed that BCLC would provide information on rights and the training of youth workers.[339]

In relation to support for community work, the study suggested a back-up advice service for information groups such as rights centres and resource centres, a referral service by

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[336] For example, the project officer has established a "Restorative Justice" project. *See* section 6.3.4(4)(b)(i)2 later on in this chapter for more information.

[337] Although it can be argued that this role seems similar to the role of the CLO at the NCLC and that is was not inspired by CED, the issue here is about empowerment and how CED as a lawyering strategy can empower communities by involving then in their work and not about the source of inspiration.

[338] Money Advice and Budgeting Services (MABS). For more information, go to: <http://www.mabs.ie/> [Accessed last 21 November, 2012].

[339] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Feasibility Study Report' (n 292) 10–11.

which organisations would refer complex cases to the law centre; legal support services for community groups such as legal structure advice and contracts (i.e.: practice of CED law) and working in conjunction with community groups to offer/develop further services such as mediation.[340] Training would also to be offered to groups to ensure the better performance of their duties in areas such as "good employment practice and company structure issues".[341] In addition, it was envisaged that BCLC would offer a back-up service of legal advice to community groups submitting proposals for law reform.[342]

The role of information provided was also highlighted and it recommended a proactive approach under a range of activities and with different stake-holders such as schools, community groups and others.[343]

The feasibility report further recommended a test-case strategy for law reform and policy work but it noted it should be done in conjunction with local community groups.

(b) Current

The current services provided by BCLC vary. According to Frank Murphy, BCLC aims at providing integrated "holistic" services and it has a strategic approach "vision" on how to achieve it. It also provides for advocacy and it is open to try new things in order to achieve the integrated holistic services as otherwise the law and the legal process becomes detached from reality, isolating the law from the other components of a person's life such as their mental wellbeing, family related problems as others.[344] The law needs to be availed by people

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[340] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Action Plan 2000' (n 299) 13.

[341] David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Feasibility Study Report' (n 292) 13.

[342] ibid. 14.

[343] ibid. 13.

[344] Interestingly to point out that J. M. Norwood and A. Paterson wrote an article back in 2002 about how to provide holistic legal services. Albeit the article was based on the ABA Rules of Ethics and the example used was from the New Mexico Law School Child Advocacy Clinic, it offers great insight as to how holistic legal services can be offered under an approach they call Multidisciplinary Practice (MDP). *See* J Michael Norwood and Alan Paterson, 'Problem-Solving in a Multidisciplinary Environment? Must Ethics Get in the Way of Holistic Services?' [2002] 9 *Clinical L. Rev. 337* (2002-2003). Note that if the Legal Services Regulation Bill 2011 is passed, provision to establish partnerships with non-legal professionals will be allowed, thus making it easier for CLCs to provide holistic legal services, which in turn will make it easier for CED lawyers to partner with other professions for the benefit of the community. Part 7 of the Bill even includes the word "Multidisciplinary Practices".

in a wholesome/holistic/all-encompassing approach, as otherwise, "what is the point of the law if it cannot be availed by people?"[345]

The proposed test-case approach has not come to the fore as many of the cases are unsuited for same. The evaluation report from 2009 indicates that in relation to, for example, social welfare and Health Board cases, the view of BCLC was that it was not appropriate to carry out test cases as each client was represented on an individual basis. Albeit individual cases were capable of engendering new legal interpretation or influence new legislation, it was best to take them on an individual basis[346], but the evaluation report nevertheless suggested that "more collaborative association in the taking of test cases may have the effect of providing a more efficient means of challenging deficits in both implantation and statutory provisions."[347] This lack of test-case approach also shows the more collaborative approach BCLC has taken and although it had represented clients in court in very important cases, particularly housing, it is the client and not the law centre who gives the instructions as to how the case is to be handled. Although the evaluation report suggests there is an implicit distinction between a test case and an individual case, in reality every test case concerns an individual and the majority of test cases are not pre-planned but become apparent only where an individual has consulted.

Pro bono services are also offered by barristers and solicitors either in the form of representation or in delivering courses or seminars. NUI Galway, Trinity College Dublin and Dublin City University also support the educational work of BCLC.[348]

(i) Community Legal Education

When it comes to community legal education in Ballymun[349], the community education programme was one of the issues identified in the initial feasibility study and one of

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<http://www.oireachtas.ie/documents/bills28/bills/2011/5811/document2.pdf> [Accessed last 21 November, 2012].

[345] Interview with Frank Murphy (n 332).

[346] Ursula Halpin, Sylvia Mooney, Katrin Todt, and Bernadette Walsh, 'Ballymun Community Law Centre: Evaluation Report 2009' (n 280) 23-24.

[347] ibid. 24.

[348] ibid. 50–51.

the first projects to be put into practice.[350] In an evaluation report carried out in 2009, it was indicated that the aim of BCLC in relation to community legal education was to deliver "innovative legal education programmes" by promoting "understanding of the law and encourage disadvantage communities to use the law and work with the legal profession."[351]

Currently, three courses are been delivered to the community.[352] The list is usually available on their website and the courses are also publicised via leaflets, social media such as facebook, and most importantly, by word of mouth.[353]

One course that has proven particularly beneficial is the housing law and policy course, as it directly relates to the changes faced by the regeneration of Ballymun as well as bringing an innovative approach by creating a concept I call "community legal education without walls"[354].

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[349] The Legal Education Programme Autumn - Winter 2010-2011 for example, provided for a range of courses on various legal subjects located in different venues. The courses were: Family Law Matters (FETAC level 4); Employment Law (FETAC level 6); Corporate Governance (2 days course); Professional Training for Marital/Partner Separation & Divorce Mediation (3 days) and the Housing Law and Policy course (no accreditation but participants receive certificate of attendance). The Law Reform Commission also holds meetings and discussions at least once a year with the community. And between 2007-2009 the Legal Education for All Project (LEAP) aimed at improving access to legal education for people in disadvantaged communities provided opportunities for many students. LEAP was a joined effort involving the Irish Traveller Movement, Ballymun Community Law Centre, Northside Community Law Centre, the Immigrant Council and Trinity College Dublin. For a description of the type of lunch-time seminars carried out by the Law Reform Commission, *see* Frank Murphy, 'Wearing the shoes of those affected by the law' - Law Reform Commission' [2009] Law Society Gazette 14–15. And for more information on LEAP, *see* Zachary Lyons, 'Leaping Barriers: a report on access for non-typical students into legal education' (Legal Education for All Project 2008); LEAP Project, 'A LEAP in the Dark: The experiences of project participants in the Legal Education for All Project', 2008.

[350] Community Legal Resource, 'Ballymun Community Law Centre: Evaluation Report 2003', August 19, 2003 10. In the first evaluation report, published in 2003 and following the first six months of the centre, a number of "public information sessions and talks" had taken place including a number of training programmes. These included: a mediation project; an active citizenship programme and community training and education. The training sessions included some areas of law and others such as Irish law; budget changes 2003; criminal law; social welfare; consumer rights and property law. The evaluation indicated that despite the "buzz" the attendance had been low as it was felt there was not enough publicity, it was unclear who the target audience was and the timing of the course (day or evening).

[351] Ursula Halpin, Sylvia Mooney, Katrin Todt, and Bernadette Walsh, 'Ballymun Community Law Centre: Evaluation Report 2009' (n 280) 17.

[352] Social welfare law, family law and mental health law. The most recent Housing Law & Policy course offered by Dr. Kenna was completed in March 2012.

[353] Christina Beresford, law clerk, interview 18 January, 2011.

[354] At present, further research into this approach is been carried out by the author.

1) Housing Law and Policy Course

Background to Housing Law and Policy course: The course started five years ago (2008), but there were some technical issues during the first year. The course is transmitted via video link to the Ballymun Civic Centre's meeting room, which is not part of the BCLC but it is free of charge, so no rent is payable for the hiring of the room. It takes place in the evenings 6-8 pm once a week. In the host university (NUI Galway) students attend for credit, so the people taking the course come from different realities and backgrounds.[355]

The number and backgrounds of people attending from the Ballymun side differ from year to year. In the year 2011 the total intake was 15 and in 2012, the number of people registered reached 12.[356] In the five years the course has been running, it has been attended by locals as well as people working in NGOs in the area and civil servants working with housing issues.

Empowering individuals and Communities?: The question that arises is if this model of teaching/community legal education "empowers communities" or not. Once the video-link class is finished, Ballymun students spent an extra thirty minutes discussing the issues argued during the lecture. Talking under more informal terms and assimilating their own experiences to the course's theme empowers the attendees to view their situation under a different light. This is particularly important when it comes to housing law and policy for the people of Ballymun as most of them have experienced housing law issues first hand. By participating, discussing their experiences and listening to each other's opinions, empowerment takes places.

2) Restorative Justice Project

The idea behind the Restorative Justice Project is that if children learn how to manage conflict from an early age, they can manage conflicts at a later age thus lessening the chances of becoming young offenders. The project is structured in a way that now it covers primary and secondary students.

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[355] Private conversation with Dr. Padraic Kenna, lecturer of the course 2 January 2011.

[356] The course in 2012 run from January 11to March 28. For more information on the course, go to: <http://www.bclc.ie/legal_education_programme/legal_education_programme.507.html> [Accessed last 14 April, 2012].

Primary School Students: The project began in 2008 and is delivered in six out of the seven primary schools found within Ballymun under the umbrella of "peer-to-peer mediation" and it runs for eight weeks. It teaches the children how to manage conflict, and thus provides for a better way to go into secondary education.[357]

Secondary School Students: At the secondary level, the project is run under the umbrella of "the law club" and covers legal topic courses as well as trips to the Courts, a mock trial and a placement in a solicitor's firm to obtain work experience.[358] It has been running since 2008. BCLC works in collaboration with some of Dublin City University (DCU) law staff who volunteer their hours by teaching some of the modules and organising the mock-trial. In this way, students feel they can be closer to the law as proactive participants rather than as young offenders.

(ii) Mediation

BCLC also has a number of mediation projects, which act as an alternative to conflict resolution. The idea of having mediation services from the outset was due, in part, to the view that legal issues could be solved by other means other than recourse to the courts.[359] To date, there are a number of different mediation services[360]: Peer Mediation; Community Mediation; Family Mediation; and a pilot mediation project run in conjunction with the Courts Services.

(iii) Outreach Clinics

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[357] For recent evaluation of the Peer Medication Programme in primary schools, *see* Seamus Farrell, 'An Evaluation of Ballymun Community Law Centre's pilot Peer Mediation Programme in National Primary Schools in Ballymun Community: Managing Relationships and Behaviour in Schools through Mediation and Restorative Practices', 2010. In file, with author.

[358] The law club is run at the Trinity Comprehensive Secondary School and it is targeted at transition-year students so they can have a better understanding of the Irish Legal System. BCLC, 'Ballymun Community Law Centre Annual Review 2010', 2010, 7. The school is one of the biggest in the country with a majority of its students not progressing to third level education via the normal route (they might do however via post-leaving Cert courses as it has happened in the past). The programme is run in conjunction with Dublin City University and 2011/2012 is the second year running. Currently, there are two groups of approximately 20 students. For more information on the school, see The Irish Times - Tuesday, February 15, 2011 "A New School Conquering Old Problems" <http://www.irishtimes.com/newspaper/education/2011/0215/1224289813165.html> [Accessed last 26 January, 2012].

[359] The way funding for the law centre came about is also important. *See* interview with Evelyn Hanlon in relation to the origins of the law centre at section 6.3.4 (2).

[360] Conversation with Sonia Keniry, Project Officer, BCLC. Thursday 12 January, 2012.

BCLC also runs outreach clinics every week. These clinics are held in different areas within Ballymun with the aim of bringing legal services to those who cannot or are unable to make it to the BCLC's offices. The most active one is the one held at the Ballymun Drop in Well Family Resource Centre.[361]

People may visit the outreach clinics, in varying numbers and for different reasons, but they usually have issues in relation to housing such as tenancy or moving premises. Yet there is a feel that despite the free service, many people are not aware of BCLC.[362]

In order to find out why people were not aware of BCLC or other services, informal conversations were held at one of the outreach clinics based at the Drop in Well Family Resource Centre. One person who usually drops in the mornings explained that people just do not get out and although they might have had young children at some point, now those people do not interact as much as before (perhaps because the children are grown up), so they simply do not know about the law centre at all or of any of the other services available to them for that matter.[363] Sometimes they do not know their problems are law related so they assume it is a fact of life. In order to solve this issue, of how to meet the unmet legal needs or become aware of what the unmet legal needs in the community, it is submitted further research in this area is needed.[364]

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[361] The Drop-In Well has been in operation since 1991 and since January 2011 has been relocated to a purposed-built centre. This clinic takes places on the fourth Tuesday of every month, from 10-1pm.

Within the centre ones finds information about the location of BCLC and other resources available to the community such as MABS services, LAB, mental health, small claims courts and others. Posters containing the Universal Declaration of Human Rights published by Amnesty International, and those published by the Citizens Information Board are explain what entitlements are there for older people, for people with disability and in relation to benefits and taxes. There is always coffee and tea for anyone who comes (drop in), and a round table where people can chat.

[362] Similarly people are also not aware of the services provided by the Family Resource Centre or other groups. They do not know why, despite the amount of advertisement they do.

[363] Speaking with person at the drop-in centre, 24 January, 2011. Her name has been omitted as person did not wish to be identified. In file, with author.

[364] A project research in the near future may take place at BCLC in relation to this. It is interesting to point out that when assessing unmet legal needs, getting to know the community is a very important point if not the most important. Questionnaires may be indicatives of a specific area, for example, who attends a shopping centre and is willing to answer. Although these types of questionnaires are useful, they should not be used on their own. They should also be compared with what the community, in their everyday lives, think. This is why it

(iv) Further Community Support

Extensive training programmes have been put into place to support community groups and their workers, benefiting the community as well as communities outside Dublin in an indirect way (in that if an organisation attended a training session, they could pass on what they learnt to their clients). Enhancing the community's understanding of the law may also lead to more collaborative relationships with the Gardaí and others.[365] In 2010 BCLC participated in the advisory group of the "Telling Women's Stories Project", a project facilitated by Amnesty International as part of the International Women's Day celebration (the project which included a session on human rights)[366] and in the "Young Ballymun Literacivic Project" a project aimed at civic literacy.[367]

(5) Funding

BCLC is currently funded by the BRL[368], the Law Society and the Bar Council.[369] The role played by the BRL has been crucial in this regard as without it, BCLC would not exist.

Evelyn Hanlon[370] explains that initially, the then Department of Social Welfare[371] was approached but it was very clear that it did not wish to provide any funding for the Ballymun

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is important to get to know it from the inside out and from my experience in Ballymun, joining community activities is a way of doing such.

[365] Ursula Halpin, Sylvia Mooney, Katrin Todt, and Bernadette Walsh, 'Ballymun Community Law Centre: Evaluation Report 2009' (n 280) 48.

[366] BCLC, 'Ballymun Community Law Centre Annual Review 2010' (n 358) 10.

[367] ibid. BCLC was part of the advisory group.

[368] BRL took over the funding in late 2004, when a request was made to them to take over the Joseph Rowntree Charitable Trust which had funded the first three years of BCLC. (BCLC, 'Ballymun Community Law Centre Annual Report 2004', c2005 4. BRL gave funding for the next three years (2005-2008).

[369] Between 2005 and 2008, the then Department of Community Rural and Gaeltacht Affairs also gave some funding for the development and delivery of FETAC accredited courses on Employment Law and Corporate Governance. POBAL provided fund for Housing Advice & Advocacy and the pilot Peer to Peer training. And in 2007, The Irish Fund funded the Community Mediation Training.

[370] Interview with Evelyn Hanlon (n 294).

[371] As discussed in the previous case study, the Department of Social Welfare is the main funder for the NCLC.

project. The Department of Justice was also approached but indicated that it already provided for the Legal Aid Board.[372]

Thus, because BRL is funded by the Department of Environment, the Department of Environment has been responsible for the continued existence of the law centre in Ballymun. They undertake this funding as part of their commitment to social sustainability and social regeneration. Initially some politicians wanted assurances that the centre would not take any clients who wished to take a case against the regeneration company or the council. However as indicated earlier on, the whole purpose and point of establishing a community law centre was to provide access to the law, other than in respect of family and criminal law, for people who could not afford it regardless of what the basis for their complaint was. However both BRL and BCLC did strongly promote the idea of alternative dispute resolution and community mediation as alternatives to going to Court in every instance.[373]

Yet the main issue with BCLC's current funding situation is not about being able to meet the targets set in its Action Plan (2000)[374] but rather in relation to financial sustainability. The question that continuously lingers around is about the financial sustainability of BCLC in the long term, as once the mandate of BRL is completed, BCLC would no longer have an umbrella organisation to channel funding. [375]

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[372] It is interesting to note that at as part of the consultation process, four government departments were proposed as a source of funding, Department of Justice, Equality and Law Reform; Department of Social, Community and Family Affairs, National Service Board, Eastern Health Board. By the time the Action Plan was published, suggestions for core funding proposals had changed as it included Dublin Corporation and also possible sources for start-up, which included Ballymun Regeneration Limited. It also contained sources for joint service provision such as the Legal Aid Board and National Non-Statutory Agencies such as Threshold/Mediation Service. The other suggestions for start-up funding were: Suitors Fund; Ballymun Partnership; Combat Poverty Agency; EU funds; Legal Profession – governing bodies; local authority; National Lottery; Charitable Trusts/Foundations; Educational Institutions; Trade Union Movement. *See* David Ellis Community Legal Resource, 'Ballymun Community Law Centre: Action Plan 2000' (n 299) 19–21.

[373] Interview with Evelyn Hanlon (n 294).

[374] The conclusion of the 2009 evaluation report indicated that the areas of service provided as set out in the action plan 2000 were all in target and that the legal education programmes have filled the information gap within the community, not mention the use of technology in linking its housing course with NUI Galway, its engagement with schools and free lunch talks. ibid. 51-55.

[375] Questions such as keeping the services free of charge or requesting other types of government funding from different departments seem to appear. For example, should the Dept. of Environment continue funding (issue of sustainable development), or diverted to Dept. of Social Protection (due to its element of social inclusion) or to the Dept. of Education (because of the community legal education component). Or should a Bill for the

6.3.5 Conclusion

Goals of achieving empowerment and having better communities have become clichés or even part of the rhetoric of development for the past decades.[376] Nonetheless the role of law and lawyers in promoting social inclusion as part of a sustainable development strategy has not become part of the sustainable development discourse.[377] If we are to overcome economic downturns, create jobs and enhance local economies, then the practice of CED lawyering can become an important aspect of how answers and solutions could be created while at the same time promoting social inclusion. Although it could be argued that lawyers are not really needed to combat social inclusion, the fact that BRL sees access to legal services as part of social regeneration as a way of ensuring real citizenship in which rights and responsibilities can be ascertained by the community as well as by government is an indication that lawyers are needed. Because CED lawyering acts as a facilitator, CED is best placed to connect the dots between regeneration and public interest law and this is why BCLC offers the best example of how CED has developed and how it can further take place.

If economic recovery means economic development, then the role and evolution of CED lawyering is influenced by the goal of sustainable development which in turns creates a new vision on how to enhance the provision of civil legal aid services among communities.

Although there is nothing linking access to legal services to sustainable development, providing access to basic services such as civil legal aid in regenerated areas has created that link in an unexpected way. The link has allowed for the creation of a community law centre under a regeneration framework. Moreover, it has facilitated the role of CED lawyering in promoting/implementing a strategic model of legal aid.

BCLC overcame the constraints posed by the Irish government in respect of funding legal aid as the project was seen as part of the regeneration project of the area and as part of government policy of how to achieve sustainable development. By developing new and

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establishment of funding and others in relation to the Independent Community Law Centres be developed? These are all further questions that BCLC faces but also other CLCs in Ireland.

[376] A quick Google scholar search for 'community empowerment' revealed over 530,000 articles.

[377] Other than drafting contracts and the legal issues associated with regeneration BUT NOT from a community perspective.

innovative ways as to what is meant by legal aid and access to civil legal aid services, which includes access to legal services by community groups, a new form of lawyering can ensue, making the practice of CED law a reality.

Furthermore, although CED lawyering does not equate with just servicing community groups, the involvement of NGOs is an essential component of its practice[378] and the case-study of Ballymun has highlighted this throughout.

6.4 Discussion: Differences and similarities between case-studies and their links to CED

The two case studies, as indicated at the start of this chapter, were aimed at highlighting how CED lawyering has developed in Ireland and how it is promoting/implementing (or helping to promote) a strategic model of legal aid. Thus, this section firstly offers a summary of the similarities between the two law centres before proceeding to describe, in detail, their differences and to assess if CED has played a role, if any, in the reasons why these differences exist, either at the practical or theoretical level. And secondly, by looking at the main characteristics of CED, a discussion of the links between these two law centres and CED is presented. Given the different origins of the NCLC and BCLC, it can also be argued that despite their similarities in relation to their every-day work, there are also a number of differences which perhaps show the different nuances found within the practice of CED lawyering even at a local level.

6.4.1 Comparisons and contrasts between case-studies

(1) Similarities

(a) Legal Services

The areas covered under their case-work are the same in the two CLCs. The family law service at BCLC is only a recent project as prior to 2011 family law matters were left to the Legal Aid Board (hereafter "LAB"). Now BCLC's pilot service advises people on what type

[378] Dana A. Thompson, 'The Role of Nonprofits in CED' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009) 57–82.

of documents they may need for their LAB's appointment, what to expect and any other query they may have about LAB process.

(b) Advice Clinics

Both CLCs run advice clinics. However, BCLC has outreach clinics in different areas within Ballymun whereas NCLC has its advice clinics at its offices only (although it used to have outreach clinics in the past now it does not). This may present certain differences as discussed later on (albeit they might be not ideological but purely pragmatic).

(c) Mediation Services

Both community law centres offer mediation services, albeit BCLC's has developed a peer-to-peer mediation service targeted at youths, which is not present in NCLC. This is one difference to be discussed below.

(d) Community Legal Education

Both community law centres offer a range of community legal education courses, including some FETAC accredited courses. However, there seems to be much more interaction between the community and the law centre in Ballymun, as Ballymun also offers lunch-time talks. This also presents differences as discussed later on.

(e) Management /Staff Structure

The management structure is quite similar. However, there are different roles within each CLC, such as the project officer in BCLC and the education and volunteer coordinator in NCLC. The different roles also cause certain differences as discussed later on.

(2) Differences

In relation to the differences between the two CLCs, they can be looked at from a broad policy perspective or a narrow operational one. They could also be looked at from a pragmatic/practical point of view or from a point of view which seeks to determine if those differences are based on principles. The major differences between the centres stem from their origins but in terms of operational activities their differences are not that significant.

Moreover, the question that can also be asked is if these differences are due to the different social fabric of each community, despite the fact that they are located in close proximity to each other.

(a) Policy Perspective

The key difference between BCLC and NCLC is that BCLC was developed as part of a regeneration/sustainable development concept, securing government support almost from the outset. In contrast, NCLC originated in the attempts of the voluntary legal aid sector to demonstrate how a strategic model of legal aid might work.

For over 30 years the NGO sector campaigned unsuccessfully for the government to invest on a strategic model of legal aid and it was not until the regeneration of Ballymun took place that the government, under the Department of Environment and using a different perspective (not access to justice but rather regeneration and community development) invested on the strategic model. In this regard, CED may a significant impact as to how CLCs develop in Ireland.[379]

(b) Operational Perspective

(i) Service Delivery

From a service delivery perspective, as indicated earlier, there is not much difference between BCLC and NCLC. BCLC followed the NCLC model as envisaged by Dave Ellis, and in a way, it could be argued that BCLC is just "smaller" than NCLC.

Thus, the differences found in relation to service delivery seem to be accidental rather than deliberate, particularly when population size, type of cases and non-litigation approaches are taken into account.

1) Small community vs wider community

[379] Now, the Limerick Regeneration Agencies are developing and working towards the establishment of a community law centre in the area, which will also be supported and funded by them. The working group involved in the development is composed of NCLC and FLAC. Moreover, as discussed in the case study of NCLC, NCLC has used the concept of sustainable development as part of its strategic plans as a way to secure funding and also as a way of adapting itself to the political, economic and social changes found within Ireland. *See* also chapter five at footnote 235 for more information on this.

Because BCLC services an area of approximately 20,000 compared to the two electoral districts of approximately 150,000 serviced by NCLC, BCLC seems more "embedded" in the community and community life than NCLC, allowing for BCLC's remit to become more defined. The mandate of BCLC is for Ballymun and Ballymun alone, which allows for the "boxing-in" of the population into a small, defined zone (for example, there are only eight schools, one MABS or one Garda Station, etc.). In contrast, the remit of NCLC (despite having a defined zone) is much bigger, occasioning a certain detachment from the community (the centre is not as embedded as before when it has a smaller population to attend) which in turn makes the establishment of projects more difficult. For example, rather than eight schools in close proximity, there might be two schools from area A, one from area B etc., making it harder to accomplish a project's goal. Moreover, by its recent rebranding of NCLC as a local service and national resource, the concept as to what type of community it serves has been altered as its group work with community organisations and group work with national organisations may not necessarily have any community representation (a community of interest perhaps but not a local community per se).

Thus, this "closeness" or "intimacy" of relationship or defined/narrow focus found within BCLC and not as much as in NCLC facilitates the practice of CED lawyering. It could be argued that, based on these two-case studies, using CED as a lawyering strategy seems easier to use in smaller communities rather than larger ones and that CED lawyering within wider communities may require a different approach – such as creating more individual contacts with community groups or the creation of "satellite" clinics within its catchment area.[380]

2) Lawyering Approach

BCLC lawyering approach or what BCLC calls "Ballymun Law" provides two different types of services: direct and indirect legal services. Direct assistance consists of,

> "advising the client and writing on their behalf and where appropriate acting for them in court proceedings. Indirect assistance takes the form of more

[380] It would be interesting to learn how the law centre in Ballymun progresses as it is supposed to service the different communities regenerated as part of the Limerick Regeneration Agencies and they are physically not in closed-proximity.

general advice to clients and often drafting a letter on their behalf which they can send to the other party – in this way the person is both empowered to try to resolve the matter themselves and the other party (be it a business, local authority, public service etc.) may be more inclined to respect the consumer acting for themselves."[381]

Although NCLC lawyering approach is similar to BCLC's, because of the type of community it serves, BCLC is more hands-on/grass-root than NCLC, which is further evinced by the legal education courses and lunch-talk seminars taking place at BCLC.[382] This issue is discussed further below.

3) Test-cases/Strategic Cases

Albeit minimal, the use of test-case/strategic litigation seems to be more often used in NCLC than in BCLC. In a community of 20,000 where most people know each other or know someone who knows them, participating in an strategic case/test case may cause more harm than good for the individual as too much of his/her private life may be open to public scrutiny. It can also be argued that issues for test cases are not coming through in the cases reaching BCLC. Although the same is true for NCLC and any other case (as at the heart of each case is the client) the way NCLC carries its group work which focuses not only on the local but also on the national level (via its members) has also influenced the type of strategic cases pursued by NCLC.

It is important to clarify also that the way BCLC is funded has no bearing on the type of cases BCLC takes against the State. Thus State involvement in CED does not affect BCLC's independence of action. The same is also true of NCLC who sued the Department of Social Welfare in the High Court on one occasion[383]!

4) Law Reform

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[381] BCLC, 'Ballymun Community Law Centre Annual Review 2010' (n 358) 4.

[382] This assertion is also based on my own experiences while doing ground-work research at the two CLCs.

[383] *Foley v. Moulton* [1989] ILRM 169. *See* also Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) 155.

It is interesting to note that the website of NCLC specifically mentions Law Reform as part of the work they do, whereas BCLC does not. This does not mean BCLC does not do law reform, but rather, BCLC's approach is more "hands-on". For example, the Law Reform Commission comes to BCLC every year to discuss with the community issues about law reform[384] whereas NCLC makes submissions on law reform to government in written form, which many times are the result of collaboration with other organisations,[385] a point that is also evident in the relationship between the wider/small community aspect of the work of NCLC.

(ii) Management Structure/Staff

As indicated earlier, the management structure is similar, but because of the amount and type of population BCLC and NCLC serve, the length of their existence (34 years in the case of NCLC as opposed to 10 years in the case of BCLC) and the size of the law centre (NCLC's eleven staff as opposed to BCLC's six staff) the composition and role of their staff differs. This in turn affects how the community is serviced. For example, NCLC has not had a Community Law Officer since the early-2000s. With time, NCLC hired a volunteer and education coordinator but the role is not the same.[386] BCLC however does have an equivalent to the CLO (in the form of the Project Coordinator) and it is in relation to these two roles that an important "accidental" difference seems to have emerged.

1) Project Officer vs Education and Volunteer Coordinator

The main difference between the Project Officer (hereafter "PO") at BCLC and the Education and Volunteer Coordinator (hereafter "EVC") in NCLC is the impact these roles have in the way CED as a lawyering strategy develops.

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[384] Latest visit was a half-day seminar entitled "Do you want to change the law"? 25 January 2012, 9:45-1pm.

[385] For more information on the different submissions, *see* <http://www.nclc.ie/law-reform/default.asp> [Accessed last 1 February, 2012].

[386] The structure of NCLC has also evolved in that a CLO was no longer required as the work "evolved" and the managing solicitor took over the legal side of the CLO and the education & volunteer coordinator over the community aspect (not that these roles do not allow to cross the boundaries of the roles as the managing solicitor may also engage with the community).

The PO's role seems more appropriate when addressing and developing the type of community assistance and projects needed in the community whereas the EVC plays less of a role in forming such (not wanting to diminish the great work done by the community education and volunteer coordinator). The EVC relies more on the input of local groups (spread over two electoral districts) whereas the PO as well as relying on the input of local groups also interacts with the local community in a way the EVC cannot.

As a consequence, BCLC's CED lawyering strategy is more immediate, more "in-tune" with the community need as it does not depend on a third party to inform the situation when compared to NCLC. This does not mean NCLC is not "in-tune" with the community but it affects their lawyering strategy[387].

2) Community Management and Control

While it can be argued that the issue of community management and control is a contested issue in relation to the role it plays in CED, it is submitted that having members of the community as part of the management board is not as important as to how the community control is asserted. It seems that BCLC seeks to involve the community in its work through the role of the project officer rather than by having community members as part of the management board as is the case with NCLC.

Paradoxically, however, is that from the outside, it appears that there is less community control in BCLC rather than NCLC because there is not enough community involved in the management of BCLC when compared to NCLC. However, at present, BCLC has more community members than NCLC (NCLC has one, BCLC has two).[388]

The reasons behind community control in NCLC were shaped by the way lawyers perceived how CLCs operated in England and the United States. Moreover, because of the community structure available at the time in Coolock via the resident associations, it was easier to ensure community control of the law centre within a short period of time (two years),

[387] A Community Liaison Council was established by NCLC in 1998 but it is no longer in existence.

[388] It could further be argued that because of the involvement of the State/government, the price paid has been to have less community control as represented in the management board of BCLC but evidence disproves this argument.

whereas in Ballymun community politics worked rather differently, so it was hard to find a point of neutrality (as there were tensions between different community groups).

Different views about community control may also arise from what is meant by community representation. It could be argued that NCLC sees community representation in the broad sense[389], as currently its community representative is the Chief Executive of the Northside Partnership, whereas BCLC has two local people representing the community, thus exemplifying community representation in a narrow sense. Thus, community representation, construed broadly, may mean someone who works on behalf of community groups and not necessarily identify himself with that community, whereas in the narrow sense it means someone local.

(iii) Community Legal Education

It can be argued that the main difference between the different approaches to community legal education by the two CLCs is due to the different composition of the respective communities they serve (BCLC serves a small community whereas NCLC serves two electoral constituencies). It can be argued that this difference also facilitates "intimacy" which in turn facilitates community legal education under a 'hands on' approach, dealing directly with the public (first tier approach). It can also be argued that bigger communities are more conducive to a second tier approach (working with organisations which in turn work with the public). For example, in the case of NCLC, it started with a first tier approach when the community it served was small, but now they have moved to second tier as other organisations developed through the years and as such they train their volunteers and their workers who in turn train their constituents. Consequently, it can be argued that it is not the size of the community but the existence of an infrastructure of groups that determines how community legal education is delivered.

BCLC's involvement in the peer-to-peer mediation and law club together with the delivery of its community legal education courses and lunch-time seminars has meant the use

[389] As indicated in chapter five, there are different types of communities. For some, community representation may involve someone who works in a particular area rather than being a resident for example.

of a more "hands-on" approach[390], whereas NCLC's "top-down bottom up" approach is more representative of their second-tier approach – an approach that is further influenced by the services offered to its membership base (they provide courses to community organisations who in turn pass their learning to their clients)[391]. Although NCLC used to be involved in using legal education in schools to help young students to understand the legal system and to become aware of their rights and responsibilities, their involvement with schools is not as prominent as it was before.[392] Currently, despite advancements in technology and in contrast to some of the courses offered at BCLC, NCLC does not offer courses via a virtual setting, although it foresees the use of skype and video links as a future avenue to offer community legal education courses and reach a higher audience.

(iv) Involvement of community organisations

Another difference found when comparing the involvement with community organisations between BCLC and NCLC is that the tradition and amount of community organisations and activism found within Ballymun is unique.[393] Although it could be argued that there was also a tradition of community organisations and activism in Coolock when NCLC was started, the need for the establishment of a law centre in Ballymun came from both within and from the outside whereas in Coolock the initiative came from the outside only. That is, FLAC looked for a community in which to establish a law centre under their vision of who had an unmet legal need, whereas BCLC came from the regeneration scheme as well as from the community (this view is taken because the community, by insisting on having the repair work schemes done in the flats and the realisation by government that it was better to

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[390] BCLC for example also runs legal placement for students in transition year. The students are placed with law firms or at the Law Library.

[391] NCLC's website indicates "Northside Community Law Centre is pleased to offer a wide range of Community Education courses, featuring several legal courses aimed at all organisations that work within communities." <http://www.nclc.ie/community-education/default.asp> [Accessed last 8 March, 2012]. Moreover, their membership application form indicates that full membership is open to NGOs who work to combat poverty and social exclusion <http://www.nclc.ie/documents/2011%20Membership%20Form.pdf> [Accessed last 8 March, 2012].

[392] Archival research at NCLC did not show an exact date as to when was last time legal education courses were offered to schools

[393] A recent count of the community organisations working in Ballymun was 35 (the count was done in preparation for the 10th year anniversary of BCLC).

demolish the flats and regenerate the area, allow services to be established in the area, one which happened to be a community law centre).

Moreover, the distrust of government born out of the broken promises experienced over many years by the residents of Ballymun (which also meant Ballymun residents had to fend for themselves) added to the way the community organisations and activism operated.

The implications of their different history also brought about collaboration with government via LAB and the placing of CLCs as part of social regeneration/sustainable development agenda.

6.4.2 The case-studies and their links to CED

(1) Main characteristics of CED

One of the proponents describing the CED movement in 2001, William H Simon, concluded that not all community development was part of CED, as for CED to take place three essential characteristics were needed:

1) CED needs to have a "relational density and synergy" meaning that people meet in different roles, not just as neighbours but as sellers and consumers, employers and employees, administrators and service recipients, etc., therefore "CED links economic development to residency"[394];

2) CED needs to have a "geographic focus" meaning it brings a new social policy under the umbrella of new urbanism to a particular area.[395] That is, there needs to

[394] William H. Simon, *The Community Economic Development Movement: Law, Business, and the New Social Policy* (2nd edn, Duke University Press 2001) 41.

[395] Although new scholarship has emerged indicating CED does not necessarily need a geographic focus as it can also involve community of interests. Carmen Huertas-Noble, 'Promoting working-owned cooperatives as a CED empowerment strategy: A case study of Colors and lawyering in support of participatory decision making and meaningful social change' (2010) 17 *Clinical L. Rev.* 255–284. *See* also chapter five at section 5.3.3.3 (1) for a discussion on the different types of communities.

be a sense of place, of detail, of identity within the community (think of the tower-blocks in Ballymun as the opposite of new urbanism),[396] and

3) CED needs to have "face-to-face encounters" rather than isolated and "remote impersonal relations".[397]

Cummings has also succinctly described CED as "locally accountable development"[398] and it is the inclusion of this element of accountability which further supports the proposition that not all community development falls under the umbrella of CED.[399]

Therefore, for CED to take place, having contact with the local community either by face-to face encounters or by been part of a geographic focus as well as making the community the recipients of development is essential. Moreover, local development has to be accountable to the community it serves.

In relation to its definition, to recall, although there is no exact definition or single theory that dominates CED[400], CED can be described as a composite, as a mixed-recipe of legal, social policy and community development tools all of which interact to address issues of poverty and disempowerment within communities.

> "CED law, therefore, is said to include matters of corporate, real property, contract and tax laws, all of which act singly or in conjunction to support community projects. CED also entails the use of legal regulatory frameworks that sustain its existence. CED law therefore embraces all those efforts aimed at developing "housing, jobs, or business opportunities for low income people … in which a leading role is played by non-profit, nongovernmental organizations … that are accountable to residentially defined communities."[401] CED also has

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[396] William H. Simon, *The Community Economic Development Movement: Law, Business, and the New Social Policy* (n 394) 41

[397] ibid. 42

[398] CED clinical course notes, UCLA 2009.

[399] William H. Simon, *The Community Economic Development Movement: Law, Business, and the New Social Policy* (n 394) 69.

[400] ibid. 412.

[401] ibid. 3.

an evolving nature and as such, it also includes other initiatives such as those that provide services to fight homelessness, unemployment, drug abuse, violence and crime.[402],[403]

In Ireland, the development of CLCs, particularly the approach taken by NCLC and BCLC in its every-day work, shows that the core definition of CED is also applicable, thus supporting the argument that CED is part of what community law centres do (*see* Figure 6.4.2 (2) in the next sub-section below). It is argued that this might be one of the reasons why the term CED/CED law/CED lawyering has not been heard in this part of the world.

(2) The practice of CED Lawyering within NCLC and BCLC: their day to day approach and links to CED - an Irish style of CED lawyering

In Ireland, NCLC started its contact with the local community via the role of community law officer which was aimed at developing the community aspect of the law centre.[404] In this way, face-to-face encounters took place and the group work was developed. This process of developing the community aspect of NCLC also meant local development was accountable to the community, as evidence for example, by becoming part of the campaign to build a Civic Centre.[405] BCLC from its part has constant contact with the community, via its community legal education, outreach clinics and project officer.

In relation to CED lawyering itself[406], it can be argued that the exploration of alternative methods of providing legal aid services also helped to bring about the emergence of CED law in Ireland.

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[402] Roger A. Clay Jr. and Susan R. Jones, 'What is Community Economic Development' in *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policy Makers* (American Bar Association 2009) 3.

[403] Definition as explained on chapter two at section 2.2.1.

[404] David Ellis, 'A Law Centre Within A Community - The Coolock Experience and Lessons' (n 18) 22.

[405] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) 334. Once the Civic Centre was built, the community became the recipients of that development. Note that this example is not intended to mislead the reader and place a special significance on this development.

[406] For a definition CED lawyering, *see* chapter two at section 2.5.

At the beginning, the decision of FLAC to open a law centre based in the community was to show the government the type of strategic legal aid scheme that should be implemented in Ireland[407] and thus form part of a comprehensive legal aid scheme. Over time, however, NCLC became more than just an example of how a comprehensive legal aid scheme should look but also an example of how a community law centre can make a difference in a community by addressing not only legal issues but also the root causes of poverty.[408] Similarly, BCLC, although born out of the regeneration of Ballymun, further developed collaboration between government and this independent CLC, bringing a different approach as to how CLCs could be formed. It also rooted the idea that CLCs are also meant to offer legal services to local groups.[409]

For example, NCLC has established two new clinics for the local community[410] (Wills and Probate and Consumer) and established Mediation Northside. Recently, Mediation Northside in partnership with the Alzheimer's Society of Ireland launched a pilot called the "Elder Mediation Project"[411] aimed at helping the elderly and their children to solve issues such as "living arrangements, care giving, financial planning, inheritance / estate planning, medical decisions, family communication, driving and guardianship".[412] Moreover, NCLC has based its community legal education and clinics on local community needs.[413] Financial and estate planning are part of what I would call an Irish-Style of CED law, as it ensures the economic well-being of some of the members of the community.

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[407] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) 327.

[408] Under the words of its former managing solicitor, NCLC indeed "uses a community development approach in order to achieve social change". 'NCLC Interview with former Solicitor-in-Charge, Colin Daly' (n 124).

[409] *See* Ellis' definition as to the role of the law centre as discussed earlier. The definition is found at section 6.3.4(2)(b) in this same chapter.

[410] They both run once a month. NCLC, 'NCLC Annual Report 2009' (n 107) 9.

[411] "The program was devised to introduce a model employed in other countries and to familiarise six volunteer mediators with the types of issues they may encounter when working with seniors and their families. It also addressed the differences between elder mediation and other types of mediation" ibid. 17.

[412] ibid.

[413] For example, the course given to officers dealing with "death matters".

NCLC also offer presentations, talks and training[414]at a local[415] and national[416] level and community development and support at a local and national level as well.[417]

BCLC for its part also offers presentations, lunch-time seminars and training to the community (in the form of community legal education), which also includes participants from different community groups not necessarily located in Ballymun.[418]

By empowering the community via the use of local management and control, by the different legal tools and approaches used such as group work, community legal education, clinics, mediation services and integrative approach[419], the socio-economic infrastructure of the communities NCLC and BCLC serve has improved. It is argued that the community development approach and the every-day work of NCLC and BCLC are in fact a vivid example of how CED lawyering is practiced in Ireland. The following diagram (Figure

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[414] NCLC's expansion to the national level in this area was driven by the need to obtain some sort of income-generating projects for NCLC due to the uncertainty of government funding. Moreover, in 2006, NCLC established the role of Community Education & Volunteer Co-ordinator on a pilot basis, which has continued since. Unsurprisingly, this vacancy was taken by an experienced community development worker.

[415] Local Level: Wills and Estate Planning – Residents Group; Dublin North East MABS Forum – DNE MABS; Community Mediation – Northside Community Forum ; Legal Responsibilities and Disclosure of Confidential Information – Northside Counselling Service.

[416] National Level: Consumer Law Training – Comhairle (2 days); Consumer Law Seminar (with BCLC); Consumer Law Distance Learning Course Module – Comhairle; Debt Collection Court Procedures – Comhairle (2 days); Introduction to Employment Law, Employee Status – Legal Island; Introduction to Employment Law, Preliminary Issues – Legal Island ;Employment Law, Equality & Discrimination – Legal Island ;ECHR Act 2003, Impact on Family Law – ILCN ;ECR Act 2003, Employment Law - ILCN ;Wills and Estate Planning – MABS ;Alternative Dispute Resolution and Advocacy – Threshold.

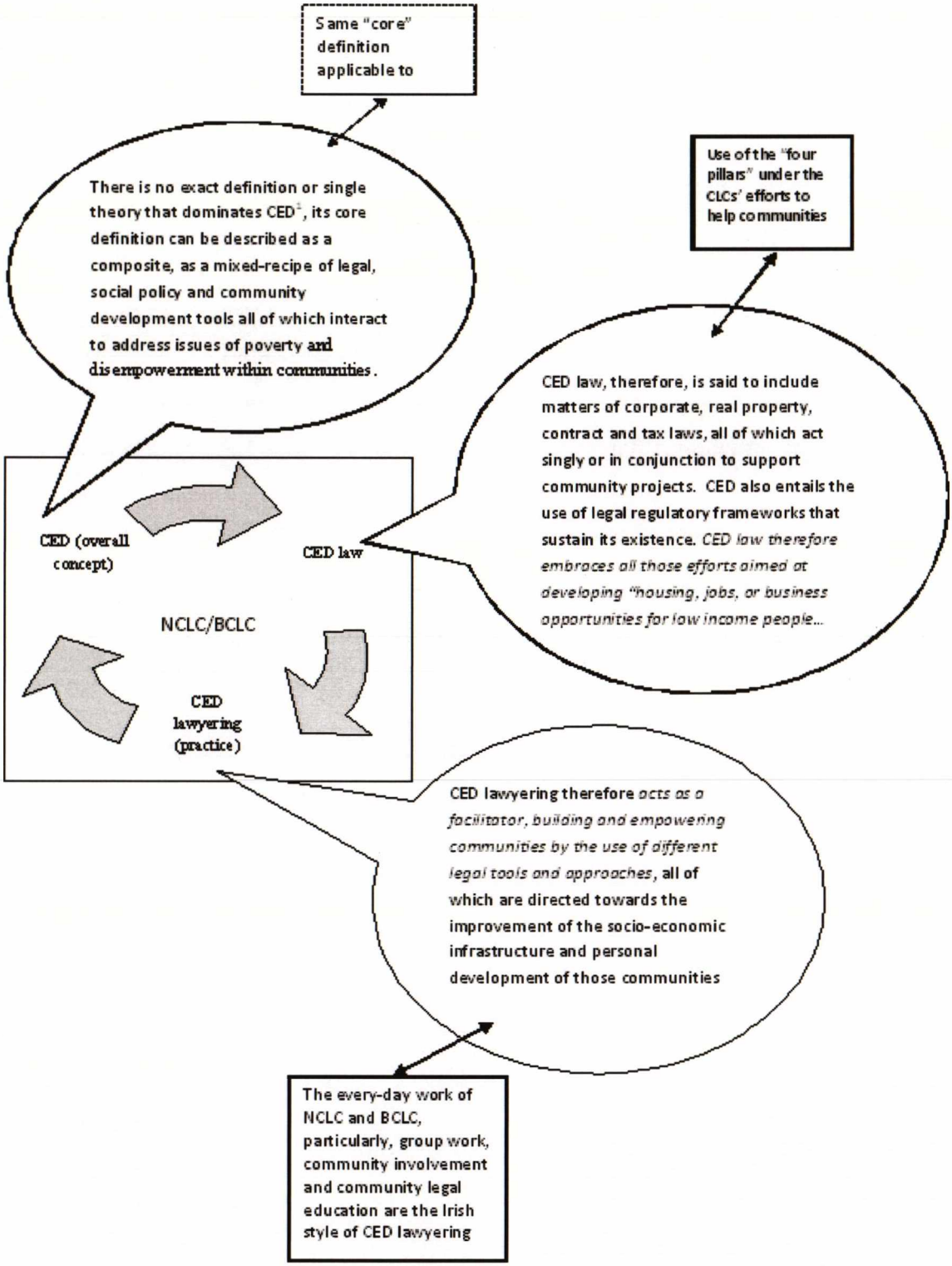
[417] NCLC, 'NCLC Annual Report 2004', c2005 12. At a Local level: Northside Partnership Community Development Sub-Committee; Northside Community Forum Steering Committee; Northside Domestic Violence Forum; Specialist advice and support to Community Homemakers, Darndale Community Training Workshop, TARGET, KARE, DNE MABS, Northside Counselling Service and Darndale Business Initiative. And at a National level in: MABS External Technical Support Panel; Bar Council 'Access to Justice' initiative; British Council - Lawyers in the Community Seminar.

[418] Spirasi, (an NGO working with asylum seekers, refuges and other migrant groups within Ireland. For more information, go to: <http://www.spirasi.ie/> [Accessed last 16 August, 2012]) and FLAC for example send some of their interns to attend the different courses and lunch-time seminars BCLC offers. Dublin City Council has also sent some their staff to the housing law & policy course.

[419] The integrated approach has also allowed for collaboration with other organisations. For example, in 2004, there was also the development of "two specialists' clinics" that worked in partnership with the Northside Citizens Information Centre (CIC) and Threshold in matters of social welfare appeals and housing/accommodation issues respectively. NCLC, 'NCLC Annual Report 2004' (n 417).

6.4.2(2)) summarises how CED lawyering takes place at both community law centres at both a theoretical and practical level.

Figure 6.4.2 (2): A diagram of CED, CED law and CED lawyering in Ireland at a theoretical and practical level



6.4.3 Conclusion

As demonstrated by the day-to-day practice of NCLC and BCLC, CED lawyering does take place in Ireland, albeit it has never been labelled as such. Both CLCs have acted as facilitators, helping to build and empower their local communities by using different legal tools and approaches such as community legal education and group work which, in turn, have improved the socio-economic infrastructure and development of their local communities and residents.

From the outset, NCLC acted as a model of comprehensive civil legal aid aimed at delivering legal services to disadvantaged communities[420] as well as an example to show the government how a comprehensive civil legal aid scheme would look and work. BCLC for its part became an example of the interaction between regeneration and public interest law and how government could collaborate with a non-State controlled law centre in the provision of civil legal aid. Thus, in one way or another, both CLCs have evolved into a model of how a community based law centre can work under a collaborative process with government and other institutions by the practice of CED lawyering, NCLC via the Department of Social Protection and BCLC via the Department of the Environment.

Both CLCs have also shown how the interaction between legal, social policy and community development tools (i.e.: CED) can be adjusted to provide for the legal and non-legal needs of the individual and the local community via the service model and the strategic model of legal aid.[421]

Despite their differences, which arise at a broad theoretical level in relation to their origins, both CLCs closely resemble one another in their every-day practice yet one finds a certain amount of differences - differences which can be justified perhaps by the very definition of CED and its changing nature[422]. CED concepts can be adapted to local realities,

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[420] NCLC, 'NCLC Strategic Statement 2008-2010' (n 163) 4.

[421] As Whyte has indicated, "[o]ver the years, CCLC [NCLC] has attempted to combine the servicing of individual cases and queries with strategic work". *See* Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 40) 328.

[422] For a definition of CED in Ireland, *see* chapter two at section 2.2.1 and also Maria Antonieta Nestor, 'The Research of CED Lawyering in Ireland: An Overview' (2011) 1 *The Irish Review of CED Law & Policy* 6–10.

even when addressing the needs of communities which literally are only a few miles apart.

The type of CED work may not be the same in each place but their lawyering strategies are very similar. Hence, CED lawyering presents itself as an excellent tool and lawyering strategy when implementing a strategic model of legal aid, particularly because of its adaptability to local needs and also because of its focus on the alleviation of poverty.

Moreover, the rich experiences of BCLC and NCLC accumulated over the years have also created something else which goes beyond what was expected: by mixing CED lawyering and sustainable development concepts either by the implementation of a number of strategic plans in relation to NCLC and as part of the social regeneration approach as part of BCLC, these two CLCs have formed a new type of community law centre aimed at the creation of sustainable communities and as a way of promoting of social inclusion, giving rise to a number of comparisons and the establishment of best practices between Ireland and the United States (to be discussed in the next chapter).

Because CED law covers efforts to create jobs, housing and business opportunities for low income people, it is hard to say if either NCLC or BCLC are trying to achieve these objectives. However, in offering community legal education to groups such as corporate governance they do, although it is not as pronounced as one would like (this is what I have referred to as "an incipient mode of CED law" in this research). The possibilities of its development nevertheless are endless.

PART THREE

COMPARISONS AND BEST PRACTICE

Chapter Seven Comparisons between Ireland and the United States: Suggestions for Best Practice and Conclusion

7.1 Introduction

The initial question this thesis sought to answer was whether community economic development lawyering (hereafter "CED lawyering") was solely a phenomenon that took place in the United States, and if not, how did it take place in other jurisdictions, in particular, Ireland, and could it be of any benefit to their existing approaches to the delivery of legal aid?

My assumption was that because public interest law in Ireland was influenced by developments taking place in the United States, there was a real likelihood that CED lawyering was being practiced in Ireland but it had never been studied or become part of a legal research agenda before. This was particularly true when observing how lawyers participated in issues of poverty and social exclusion and how regeneration efforts were shaping the establishment of independent community law centres in Ireland. Thus, by offering a series of comparisons between Ireland and the United States, this concluding chapter seeks to argue that, by using Ireland as a "testing ground", one can say that CED lawyering is not just a phenomenon that takes place in the United States, that it does take place in other countries, albeit not in the same manner or using the same terminology.

By drawing materials and arguments from previous chapters, the structure of this chapter therefore is intended to reflect the breakdown of the PhD research question and is divided into four sections. Section one compares both jurisdictions and offers a two-fold concluding argument. It firsts indicates that CED lawyering is not solely a phenomenon taking place in the United States and that it is also to be found in Ireland, as part of what independent community law centres (hereafter "CLCs") do and therefore it could enhance the delivery of legal aid in this country. The result of these comparisons and lessons learned from the United States experience also help to set the grounds for suggestions for best-practice, which are explained in the second section of this chapter. Section three discusses the impact of CED law and CED as a lawyering strategy in the landscape of the community law centres in Ireland,

which as a corollary of this research and based on the work of Garth[1], argues for the establishment of a new category of community law centres as well as calling for the creation of an over-arching scheme to fund all CLCs in Ireland. Lastly, and as a final section, an overall conclusion is provided not just of this chapter but also of the thesis in general suggesting ways as to how CED can influence non-state controlled legal aid services for the future, working in partnership with all stakeholders.

7.2 Section One: Comparisons between Ireland and the United States

7.2.1 The overall picture

The Great Recession has deepened poverty in Irish society. Advocates[2] have responded to the crisis through a variety of strategies, including the formation of grass-roots groups and alliances with both legal[3] and political objectives[4] and the use of community legal education[5] (in relation to such areas as debt, mortgages, housing, and unemployment) together with the social and political changes they bring. But how does this compare to the development of CED in the United States in general?

In order to elucidate this, the following table (Table 7.2.1) provides a timeline for the development of CED in Ireland and the United States, offering a brief summary as to its development.

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[1] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (Sijhnhoff and Noordhoff 1980).

[2] The word advocate has been used to refer to community activists, those working within NGOs on behalf of certain groups such as Travellers, immigrants and others, those who seek better conditions such as in housing and health.

[3] For example, New Beginning was formed in November 2010 to address the needs of vulnerable home owners <www.newbeginning.ie> [Accessed last 26 October, 2012].

[4] For example, Claiming Our Future was formed in late 2010 <www.claimingourfuture.ie> [Accessed last 26 October, 2012].

[5] For example, Ballymun Community Law Centre offers legal education on housing law and policy issues and Northside Community Law Centre offers legal education to community groups.

Table 7.2.1 CED Timeline: Ireland vis-à-vis the United States

CED Timeline: Ireland vis-à-vis the United States					
IRELAND	**1960s-1970s**	**1980s-1990s**		**2000s**	**2008 onwards / Result?**
	-Civil Rights Movement -1960s War on Poverty (including the concept of empowerment) made their way to Ireland via the law centre movement but less-confrontational.	-Market-based approach did not take place in Ireland in the same way as it did in the United States -Government was involved in local economic development -welfare state	-Welfare approach to tackle poverty -Market-based approach had some influence as observed particularly in the redevelopment of dockland areas -Ireland's Docklands was the first example -But lessons learned (community participation needed) -Poverty lawyers not involved in economic development (lawyers focused on access to justice)	-Welfare state: government approach to tackle poverty -Regeneration of Ballymun -Accountability created in the form of BCLC -3 axes of regeneration (social, infrastructure, economic) meant citizenship key (which can influence politics through citizen participation)	-Not enough critiques of market-based CED. -PPPs have not reduced poverty but destroyed communities (as no finance available, private firms pulled out/bankrupt) -PPPs and Part V of the Planning Code (affordable housing requirement can be waived by money equivalent instead) -No participation of lawyers on behalf of the community (in PPPs deals)
Influence in poverty law?	YES	NO	NO	YES (BCLC)	YES (at least in housing)
Parallel Legal Develop-ments	-Use to promote Access to Justice (which was seen as a way of combating poverty) -Use of the Strategic Approach	-Development of the strategic approach to legal aid: evolution of Ireland's only community law centre (although was unable to fully focus on the strategic approach due to issues of funding -Law centre movement influence how lawyering approach develop, rooted in the ideals of the 1960s (USA).	-Access to justice approach used to tackle poverty (by lawyers)		-CED is the result of government policies under a welfare-based approach which also includes market-based approach to tackle poverty. Poverty lawyers can learn from lessons from USA

United States	1960s-1970s	1980s-1990s		2000s	2008 onwards / Result?
	Civil Rights Movement -1960s War on Poverty	-Neoconservatism (Reagan and Bush) 1980s and neoliberalism (Clinton) 1990s. -Decline in economic justice grass-roots movement during these period -Retrenchment of welfare (see also Thatcher's different in CED policies) which is replaced by market-basedCED law of 1990s.	- Re-emergence of organising in the 1990s	- Critique of market-based CED = does not reduce poverty (e.g.: housing)	
Influence in poverty law?	YES	YES	YES	YES	YES
Parallel Legal Develop-ments	-CAAs (concept of empowerment)	-CDCs (local empowerment, empowerment has different definitions depending on the actor) -market-based approach to tackle poverty, it also involved CED lawyers working for CDCs	- Change in attitude from poverty lawyers (disempowerment)	- CED lawyers use and adapt their transactional skills, combined with organising	- CED is the result of government policies under a market-based approach to tackle poverty but CED lawyers changing that by combining their skills towards the creation of movements for economic justice

What Table 7.2.1 shows is that the market based approach did not take place in Ireland in the 1980s and 1990s in the same way it did in the United States. While the concept of the War on Poverty and the Civil Rights movement influenced the practice of poverty law in Ireland, later developments did not.

Thus, when tracing this time-line, it can be observed that the incipient mode of CED lawyering that developed in Ireland has its roots in the United States of the 1960s but it can also be said that its roots also emanate from the indigenous approach of how to combat poverty through the law under a welfare state – which greatly differs from what was happening in the United States.

From the 1980s onwards, Ireland and the United States were not influenced by the same legal developments of the 1960s and 1970s as they once did before. In Ireland, the law centre movement developed together with its own version of CED lawyering (thanks to the roots of the War on Poverty) and in the United States, CED re-traced back its influences of organising, emerging within a movement for economic justice.

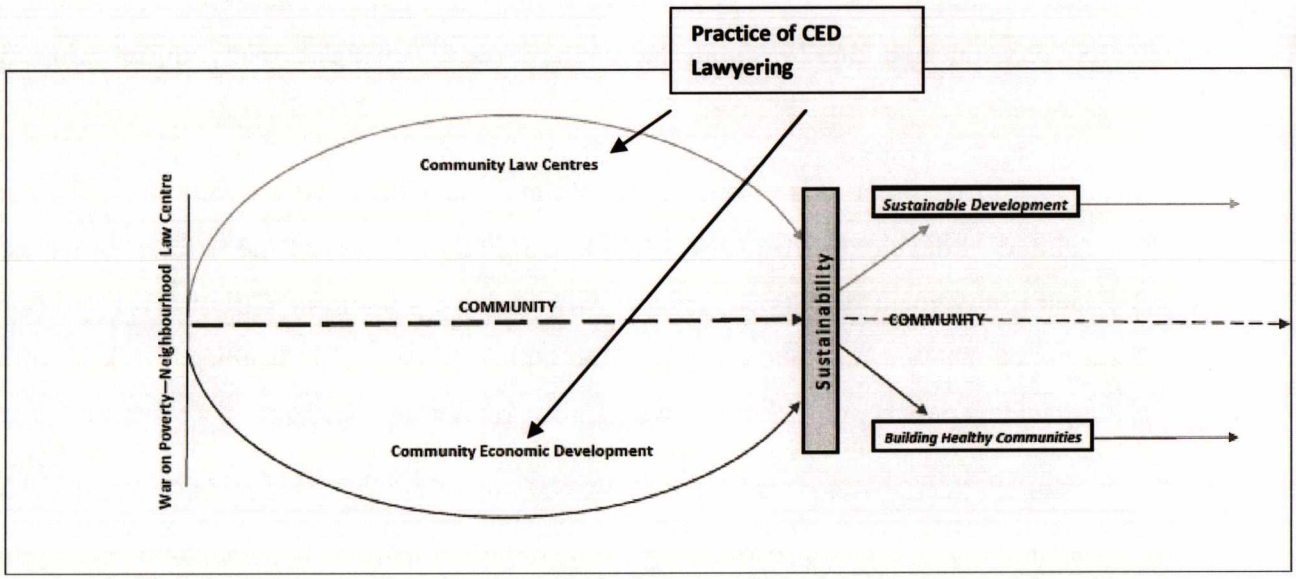
However when viewed from a different angle, and despite their bifurcated developments, it can also be argued that in the United States and Ireland the community has always been placed at the heart of CED and CLCs, resulting in poverty lawyers in both jurisdictions working towards the same objective, a place that strives for the establishment of sustainable and healthy communities.

(1) The community as a common theme for Ireland and the United States

From a comparative angle, it can be observed that the roots of the War on Poverty and the CLCs (neighbourhood law centre) of the United States gave rise to a parallel development of CED lawyering. In the United States it developed, in an obvious manner, under the auspices of CED and in Ireland under the auspices of the CLCs – both of which kept the community at its heart and both which now find themselves wanting to create sustainable and healthy communities.

Also, as it can be observed in Figure 7.2.1 (1) below, the common denominator for the evolution of CED lawyering in both jurisdictions has been the community. CED and CLCs have both looked at ways of addressing issues of poverty, exclusion and marginalisation.

Figure 7.2.1 (1): The community as common denominator for CED and CLCs



7.2.2 The detailed picture

In a more detailed picture of developments in both jurisdictions, certain areas come to the fore, namely the development of CED law, the provision of civil legal aid and the use of different lawyering approaches.

(1) The development of CED law

The formulation of government policy has meant that in the United States, CED developed under a market-approach to combating poverty, as observed through the development of the Community Development Corporations, whereas in Ireland government has played much more of a role in tackling poverty through its involvement in development such as the regeneration of Ballymun. As a consequence of the market-based approach used

within CED in the United States, the development of CED as a substantive area of law through the use, for example of transactional law, means CED law in the United States is highly developed when compared to Ireland. CED law in Ireland is in its infancy, and although it could be argued housing law is a dominant area, it has never been studied from a CED angle.

Given the government's recent policy announcement of delegating the construction and maintenance of housing to housing associations[6], the need for transactional lawyers working in the public interest field (such as dealing with tax issues or finance issues) is where CED law could show its first signs of how it can benefit the Irish public interest law landscape[7].

(2) Provision of Civil Legal Aid

In relation to the provision of civil legal aid, albeit both countries developed its own different types in relation to how they operate, both government funded legal aid services, those under the Legal Services Corporation and under the Legal Aid Board, face restrictions as to the type of services they can provide. However, when it comes to CLCs and their counter-

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[6] *See* Department of Environment, Community and Local Government, 'Housing Policy Statement 2011', June 16, 2011. In relation to the regulation and role of the voluntary and cooperative housing sector it indicates that,

> "... approved housing bodies will be at the heart of the Government's vision for housing provision. Approved housing bodies are uniquely placed to help overcome vertical segregation in housing. The move from capital-funded programmes of construction and acquisition by approved housing bodies to more revenue-funded options presents challenges for the sector in light of the termination of the Capital Loan and Subsidy Scheme. However, use of loan finance (from both commercial lending institutions and the Housing Finance Agency) has the potential to develop a stronger, more sustainably funded voluntary and cooperative housing sector, playing a much more active role in the supply of social housing without reliance on capital funding from the Exchequer."

It is also important to note that at present, there are 700 different housing associations in Ireland (these include voluntary and co-operative bodies that have approve status as housing associations). Deputy Catherine Byrne, Dáil Debates (November 15, 2012). Available at: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2012111500032?opendocument> [Accessed last 17 November, 2012].

For a general background on housing associations and Co-operatives, *see* Padraic Kenna, *Housing Law, Rights and Policy* (Clarus Press 2011) 953–980.

[7] This can also help the representation of tenants of social housing in Ireland, as to date; "unlike tenants in every other European country" they do not have an organisation to represent them or their interests. *See* Dr. Padraic Kenna, 'Housing Allocations - A Better Way?' (21 September, 2012) 4. For a general background on local authority housing *see* Padraic Kenna, *Housing Law, Rights and Policy* (n 6) 727–905.

parts in the United States, this is not completely true as some CLCs in Ireland, such as NCLC and BCLC receive government funding and do not face constraints as to the type of cases or clients they can take when compared to the United States. The practice of CED law and CED lawyering, therefore, can take place within the current provision of civil legal aid as BCLC and NCLC have shown.

(3) Lawyering approaches

The study of lawyering approaches to tacking social exclusion is much more developed in the United States, as evidenced by its literature and discussed in chapter three. In Ireland, the literature is minimal and to date, no studies have been carried out as to how anti-poverty lawyering takes place within different settings. The recognised methods are the strategic approach to legal aid, used mostly by the CLCs and the service approach to legal aid used by the Legal Aid Board but there has been no proper evaluation of these approaches to see whether lawyers do, in fact, empower or disempower their clients and whether these approaches need to be changed in the same way poverty lawyers changed tactics in the United States.

7.2.3 Answering the thesis question

(1) Is CED lawyering solely a phenomenon taking place in the United States?

As discussed in the above section, it can be argued that CED and CED lawyering is not solely a phenomenon that takes places in the United States. Because of the roots the community law centre movement and CED share (as discussed in chapter four) the seeds of CED were spread outside its birth place, as one can observe in the Irish situation.

(2) If not, how does it take place in other jurisdictions?

By providing Ireland as a comparison this thesis has offered a hypothesis as to how CED lawyering may take place outside the United States. The research has found that CED lawyering finds itself embedded in the work of what independent community law centres do and it is not seen as something separate.

(3) Can it be of any benefit to their existing lawyering approaches/delivery method of legal aid?

Galanter, when coining the term "strategic approach" in the early 1980s, indicated that the "classical problem of the strategic approach" was that the lawyer and not the client informed the legal strategy.[8] As indicated earlier, there is no real study as to the impact of lawyering approaches used within the Irish legal landscape.[9] The use of the strategic approach, it can be argued, has always been analysed as part of a methodology as to how legal aid is delivered but not as a lawyering approach. Because of the similarities between the strategic approach and CED (as discussed in chapter six), the use and practice of CED lawyering may help to overcome the shortcomings of the strategic approach, as it places law in a wider context and not just within an access to justice approach, unveiling a new space where public interest lawyers and those working within CLCs can make a difference as now they can have a point of comparison that was not readily available before.

7.3 Section Two: Suggestions for Best Practice

When looking at the United States experience of CED in general, and given the difference in policy and approaches to welfare, suggestions for best practice are best confined to the use of CED law and CED lawyering.

The pitfalls of the market-based approach to CED as expressed in Cummings' critique in the early 2000s[10] are a good example for Ireland as to how not to proceed. Relying on the market to combat issues of poverty without looking at the full-picture is not a good option. Public interest lawyers (including poverty lawyers) can learn from this and see how their skills can expand to help communities. Now for example that housing associations are to play a

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[8] Marc Galanter, 'Making Law Work for the Oppressed' (1983) III *The Other Side* 7, 11–12.

[9] It is important to highlight at this juncture that these lawyering approaches do not refer to the way legal aid is delivered (i.e.: service models or strategic models) but how lawyers interact with their clients. For example, do they use the integrative, facilitative or any other lawyering approach?

[10] Scott L Cummings, 'Community Economic Development as Progressive Politics: Towards a Grass Root Movement for Social Justice' (2002) 54 *Stanford Law Review* 400–493.

bigger role in the construction of housing[11], there is a good way of developing the field of CED law. Moreover, government cuts require new ways of thinking as to how public interest lawyers can have an input in the development of communities. Some examples that could be explored are the use of community benefit agreements and the approach taken to group work, both of which are discussed below.

(1) The use of Community Benefit Agreements

In relation to CED law, it can be argued that organisations and communities in Ireland can learn from the use of CBAs[12] when it comes to issues of infrastructure development. To date, for example, the different developments taking place within different regeneration schemes (as indicated on chapter six) show that lawyers have not taken part in representing the interest of the community as a whole when it comes to issues about local development.

(2) The development of group work

It can be argued that the evolution of group work, either in an organising or participatory capacity under second-tier work has become one of the main differences between the practice of CED law in Ireland and the United States. Whereas in the United States organisations that practice CED law provide legal advice, training and representation to a vast number of community groups, organisations and others, including small businesses,[13] in Ireland, CLCs that practice an incipient mode of CED law provide mostly legal training and act as part of the management committees of different community organisations (second-tier work). The provision of legal advice and representation to groups is left to the Voluntary

[11] Department of Environment, Community and Local Government, 'Housing Policy Statement 2011' (n 6).

[12] CBAs or Community Benefit Agreements are agreements between the developer, the community and the local authority in which each party has a positive obligation. For more information on CBAs refer to chapter three, section 3.3.2.2(1).

[13] Susan Bennett, Brenda Bratton Blom, Louise Howells, and Deborah Kenn (eds), *Community Economic Development Law: A Text For Engaged Learning* (Carolina Academic Press 2012) 36–38. They indicate that the clients are "probably limitless" and mention a few, for example, Community Associations, Community Based Organisations, Community Development Associations, Tenants Organisations, Small Businesses, Youth and Schools, Employees (from the perspective of the employer, which is usually an organisation or association), Condominium Owners and Associations and Homeowner's Associations among others.

Assistance Scheme (hereinafter "VAS") of the Bar Council of Ireland, which focuses on helping community groups.[14]

It is submitted that, although the approach to group work in Ireland differs from the United States, Ireland could learn from the way group work is carried out in the United States as a way of expanding and developing CED law.[15] For example, it could help in the formation of associations for tenants of social housing. It could also work with small or micro-businesses in helping them to start-up or provide other type of legal assistance[16]. This could also be assisted by the development of university-based law upon which students can use their skills to help the community and/or by the use of volunteers which can provide the skills needed to make group work successful.

(3) CED lawyering

It is proposed that the developments of CED lawyering in the United States can strengthen not only the role of CLCs in Ireland but also the use of the strategic approach. This is because the foundations upon which CED lawyering can further develop already exist, the best example being that of community legal education. Other examples are offering legal services to groups, such as using transactional law to assist them. Furthermore, the role of clinical legal education can also be explored and offered as an extra-resource for communities and CLCs.

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[14] The experience of the NCLC has shown that community and voluntary groups more often than not had employment issues with their employees rather than with anything else.

[15] A community activist in Donegal has indicated that community groups and people have ideas as to how to do things but do not know how to go about legal issues involved such as formation, representation and others. Accessing legal services is costly, particularly with all the budget cuts, so having access to legal access, even a phone line where groups could call would be of great assistance. Email correspondence and telephone conversation with Molly Reynolds, Community Development Activist, Donegal (February, 2011). In file. I would like to thank Dr. Caoimhin Mac Aoidh, CEO, Donegal Local Development Company Ltd. for putting me in contact with Ms. Reynolds.

[16] Although government provides for assistance with small businesses through County and City Enterprise Boards, it is not enough. For example, people with an idea for a start-up micro-business venture, such as catering within the community or making flower arrangements for local occasions may find it very hard to navigate the law (e.g.: partnership agreements, employment law, client contracts or guarantees) without any assistance. Also, the Irish Small and Medium Enterprise Association which further provides assistance for small and medium- size enterprises, has a minimum joining fee of €522.75 which may be out of reach for many micro-businesses <http://www.isme.ie/joinisme-page.html> [Accessed last 27 November, 2012].

As observed in chapters two and three, the overview of CED in the United States can offer guidance as to the type of projects where CED lawyering can have an input such as with immigrant communities. The different types of lawyering approaches used within CED lawyering also offer a platform for future research, such as looking for example, at lawyers' interaction with groups or views as to how the legal strategy is driven (by lawyers or by the group?) or if the use of the collaborative approach[17] takes place within their practice.[18]

In relation to the development of CED outside the United States, and how CED lawyering can strengthen the role of CLCs in Ireland, one can observe that in Ireland, there

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[17] Note that this is different to what some family lawyers in Ireland call "collaborative practice". This collaborative practice approach "addresses the needs of all involved, and in family disputes, the needs of the whole family. Resolution is achieved through the participation of both parties meeting together at the same table, often with the help of other practitioners including lawyers, coaches, financial neutrals, child specialists etc. The resolution is based on an open sharing of all relevant information and a commitment to reach agreement, without the financial and other costs of Court litigation."

For more information, visit the website of the Association of Collaborative Practitioners at: <http://www.acp.ie/index.php?option=com_content&view=article&id=133:faqs&catid=31:general&Itemid=288#whatis> [Accessed last 26 October, 2012].

[18] One example as to how this may take place is by looking at lawyers and the legal profession and their role with legal aid through the work of William Felstiner. William L.F. Felstiner (ed), *Reorganisation and Resistance: Legal Professions Confront a Changing World* (Hart Publishing 2005). Under a series of essays about England, Canada, Australia and the United States, Felstiner's work makes one wonder as to the type of changes that have taken place in Ireland and how the legal profession has affected the development of legal aid. Felstiner classifies these development or changes under different "axes", namely, the axis between the institutional (e.g.: unification of the profession budget caps, salaried lawyers, etc.) and the demographic or evolutionary influence (alterations in the makeup of the profession such as more women, legal education (at page 4) and the axis found between the developments that originate in the environment of law practice and those that are indigenous to it, such as the interactions between social, economic and cultural context and the legal profession (at page 5), higher costs in legal education, rise of elite-tier of lawyers, growth of private legal education, rise in litigation, constrictions in legal aid, others (at pages 5-6).

Felstiner's work is also useful from the point of view to see if the changes in the legal profession in Ireland have affected access to justice at all including the CLCs and the idea of empowerment. Whether the Irish legal profession have any axes that in turn affect the provision of legal aid and the furtherance of the CLCs is uncertain. For example, the axis between lawyers' ethics and the constrains in legal aid funding might form an interesting study (the research question may lie in the applicability of lawyers' ethics when it comes to the type of lawyering CLCs' lawyers practice and how they have influenced certain aspects of legal aid).

Another example would be to look at the issue of legal ethics. Although legal ethics was not central to this research it could be important in the future, particularly with the advent of changes to the legal profession (once the *Legal Services Regulation Bill* becomes an Act). For example, Parker argues that when it comes to public interest law, lawyer ethics and their relationship to the client reveal themselves in different ways. It is not known how lawyer ethics have revealed in Ireland in relation to public interest law and legal aid. *See* Christine Parker and Adrian Evans, *Inside Lawyer's Ethics* (Cambridge University Press 2007) 23.

was no market-based CED approach to end poverty. Rather, there was a market-based approach to development that influenced government policy but was mostly to attract international companies (such as the development of the IFSC[19] and the Docklands[20]). As such, the use of a market-based approach to combat poverty did not take place in Ireland when compared to the United States. Moreover, as chapter five shows, the different welfare traditions between both jurisdictions also affected the way CED developed, as in Ireland, there has been more government involvement when compared to the United States. As a consequence, CED lawyering seems to have had an 'easier time' when compared to the United States, which arguably may be the reason as to why it has gone unnoticed here. Poverty lawyers have not concerned themselves as to the role of law in issues of development.

However, as discussed in chapter six, the case-studies allude to the use of sustainable development and government involvement in social regeneration, which also allows for citizen participation. CED lawyering can further help these CLCs to base themselves not under an access to justice approach but under the wider remit of sustainable development. This is because the practice of CED lawyering not only offers access to justice but also improves the socio-economic infrastructure of the communities where they are located. This can help to form a different type of CLC, which is discussed in the next section.

In relation to CED lawyering and its role in strengthening the strategic approach, it can be argued that although the ultimate objective of the strategic approach is to improve the socio-economic status of the community, it is always seen as part of an access to justice approach rather than part of sustainable development.[21] Moreover, the fact that the strategic approach focuses on empowerment does not mean that empowerment is been achieved, as the client could be a passive actor throughout the lawyering process (e.g.: the client may have no involvement in the tactics use within a case or within a campaign). Therefore, because CED lawyering places greater emphasis on empowerment, it could be further argued that its

[19] IFSC stands for Irish Financial Services Centre.

[20] Niamh Moore, *Dublin Docklands Reinvented: The Post-Industrial Regeneration of a European City Quarter* (Four Courts Press 2008).

[21] The practical implications of following an access to justice approach is that there is already a body of precedent using the strategic approach (as observed in section 5.3.1.2 of chapter five), making the argument for the improvement of the socio-economic status of the community easier to construe.

influence on the strategic approach is to try to ensure that the strategic approach addresses the question of disempowerment. This is because the strategic approach implies more input on the part of the client (such as deciding about the different legal or non-legal routes to take) and as such, the CED lawyering approach fits better within the strategic model rather than with any other existing model (i.e.: service model).[22]

7.4 Section Three: The Impact of CED as a concept and as a lawyering strategy in the Irish CLC's Legal Landscape

The activism of Ballymun can be said to be the best signs of an emergent CED movement[23] in Ireland despite the fact that lawyers did not "tap" into it in the same way as poverty lawyers did in the United States as, until 2002, there were no legal services in Ballymun, other than a law clinic run twice a week by FLAC.

In responding to the demand coming from the community in Ballymun for the improvement of the physical infrastructure of the area, the State realised that regeneration was the best approach to take[24] and it was through State promotion of regeneration that lawyers became involved with this movement, which eventually led to the establishment of BCLC.

This is in contrast to NCLC where, because of the amenities already in existence, the community did not have to defend itself in the same way Ballymun did. The focus of NCLC was to provide for the unmet legal need and include community development components in its practice but it was not driven by CED or community activism. Eventually, NCLC with its strategy planning would include more of a CED dimension to its practice but it arrived there in

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[22] Given the fact that the strategic and service approaches to the delivery of legal aid are mutually exclusive, in principle, it could also be argued that despite their differences, the service model could also benefit from the use of the facilitative approach or integrative approach but because it is more "traditional" when it comes to the delivery of its services, it is doubtful if it could take place.

[23] Albeit this "Irish CED movement" has not developed in the same way as it did in the United States, it can arguably be compared with it, particularly on the type of community involvement experienced in Ballymun.

[24] The remedial works that had taken place through the Remedial Works Scheme showed that it would be cheaper to regenerate the whole area rather than conducting this type of work. *See*, chapter six at sections 6.3.2 (2) (ii); 6.3.3 (1) and 6.3.3 (2).

a very different way to the way CED developed in Ballymun. Although both law centres have arrived at the same junction, BCLC was the result of a community movement which sought to address the poverty of the community which also included the unmet legal need whereas NCLC was the result of lawyers seeking to address an unmet legal need as part of access to justice inspired by the CLC movement.

Thus, although their origins are very different, they show how CED lawyering in Ireland has developed. NCLC has always had elements of community development but its role has changed, thus resulting in a great leap which went from focusing solely on access to justice to being concerned more with how to be part of a sustainable community by using CED. As such, the impact of CED as a concept and as a lawyering strategy in the Irish CLC's legal landscape call for the creation of a new category of CLC in Ireland, pushing the boundaries of our understanding of CLCs. Furthermore, CED lawyering might require CLCs to refocus or reconsider their efforts to facilitate the creation of sustainable communities and/or take the notions of sustainable development more seriously.

7.4.1 Pushing the CLCs' boundaries further: the creation of a new category of community law centre for Ireland

It can be argued that the first CLCs in Ireland (i.e.: NCLC), developed independently of the State and not as part of an over-arching strategy for regeneration whereas BCLC was part of an over-arching strategy for regeneration[25]. Moreover, Ireland has been influenced by the developments of different jurisdictions, guiding the development of the CLCs in an ad-hoc fashion. This is particularly true when it comes to experimenting with the different "legal transplants" of its neighbours as well as distant cousins. For example, when it comes to community legal education, CLCs in Ireland are active[26] and BCLC has already planted the seeds for legal education "without walls"[27].

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[25] It is important to highlight that the new CLC in Limerick is also part of the regeneration scheme of the area.

[26] Questionnaires and interviews carried out at the different CLCs in Ireland show they are constantly engaged in community legal education, including individuals and community organisations. In file with author.

[27] For example, the housing law and policy course held at the Civic Centre in Ballymun is offered by BCLC but transmitted from NUI Galway. This is the only example of this type of course in the country but hopefully more will come. *See* BCLC case-study at section 6.3.4(4)(b)(i)1 for more information on this.

It is argued that by learning from the international experience of how CED lawyering is practiced, such as the one stemming from the United States, Ireland can enhance the role of its independent community law centres.

Garth indicates that, internationally, the debate of the 1980s was not about whether law centres should exist but rather about the number and locations of centres and what role they should play.[28] As argued in chapter four, it was the evolution of the CLCs outside the United States that opened the path for the community law centre to act as a channel for CED – a channel that allowed for the same ideas that led to the creation of CED within the United States to be fostered.[29] This is because, as argued earlier, CLCs and CED both arose out of the War on Poverty, and in Ireland without the establishment of CLCs, the sprouting of the seeds of CED and their eventual grow into CED lawyering may not have taken place.

It could also be argued that the evolution of CLCs in Ireland was inspired by the changes taking place in other jurisdictions and thus transforming the landscape leading, at the same time, to new ideas on how to tackle poverty and how to address issues among marginalised communities, including those related to the development of CED lawyering. These ideas, however, did not come from a legal world necessarily, as described in chapter six. The establishment of BCLC and more recently the law centre in Limerick relied on sustainable development and regeneration as the main framework for their growth. This framework, it is argued, places some of the Irish CLCs in a different category or CLC model. Thus, it can be argued that in Ireland there are two different models as to how CLCs originate and are subsequently funded – BCLC[30] in the one hand and NCLC[31] on the other.[32]

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[28] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) xvii.

[29] As indicated earlier, further research would be needed to ensure this assertion is correct for jurisdictions other than Ireland.

[30] Founded on regeneration and funded under its auspices. Part of sustainable development approach.

[31] Founded on an access to justice approach and funded under its auspices. For the past 10 years however, it has added the concept of sustainable development to its development.

[32] The other CLCs could fall in either category. For example, the new CLC in Limerick falls within the BCLC model and the ITM Law Centre and the MLRC within the NCLC model.

(1)The different models of CLCs

In relation to the different types of CLCs, Garth's research indicated that there were five types of CLCs, and although the CLCs could fall into more than one category, the categories were helpful, particularly to see the differences between the Unites States "professional model" and that of England "social reform through groups" model. The five models are:

(1) the "legal needs" model;

(2) the "professional" model;

(3) the "therapeutic" model;

(4) the "community control" models; and

(5) the "social reform through groups" model.[33]

Note that Whyte also indicates that law centres "range from purely service models to exclusively strategic models, with many centres trying to combine elements from both models."[34]

The legal need model is, as the name indicates, the one that seeks to meet the "unmet legal needs" by getting lawyers to the poor to service their individual cases. But this model, according to Garth, does not work well, as no matter how many lawyers become available, the need is still there. Garth proposes to leave those problems, such as welfare, consumer, land-lord and tenant, to be handled by "dispute-processing institutions"; criminal and family legal problems can be addressed by the judicare model and thus, "the problems of the poor must be seen as problems of a group or class, not simply as an array of disparate individual problems",

[33] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 218–225.

[34] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (Institute of Public Administration 2002) 323.

concluding that the legal needs model needs to be joined with another in order to work, such as small claim courts, subsidised lawyers, and citizen's advice bureaus.[35]

The professional model was the one most commonly used (at the time of Garth's writing in 1980) in the United States as it also brings test-cases and class actions and does not just serve individuals. The problem is that group work and organising activities are perceived as political and not legal. There is very little community education and participation of the poor is almost non-existent. With this model, the solution to the problems of the poor is found within legal rights and remedies.[36] This issue brought critics, such as Bellow, to speak out about the problems of this approach, which in turn, opened the path for CED lawyering.[37]

The therapeutic model, Garth indicates, is not just legal but "multidisciplinary" and "the group models found in England have tendencies in this direction" [38]. As such, community action does not become "an effort to build community power" but it becomes an effort to break ""the cycle of poverty" to allow people to take advantage of laws and programs [that are] supposed to help them".[39] However, Garth indicates that one of the "obvious limitations" is that the problems may also have to do with the institutions and actions of others, such as "corporations, banks, welfare departments, and landlords [as] [i]t is not enough to change the poor".[40] The criticism is that "need" is defined by professionals, thus creating "stultifying dependencies on lawyers and legal strategies".[41]

It is important to highlight that this "therapeutic" model eventually (and relatively recently) materialised in the form of the "multidisciplinary approach" used in England, Canada, Australia and is advocated by the current Chief Executive of the Legal Aid Board,

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[35] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 218–219.

[36] ibid. 219–220.

[37] ibid. 220. Garth indicates Bellow as a critic of the professional model system citing Bellow, 1977:60.

[38] ibid. 220–221. Garth cites Johnson 1974:25-27, 34-35.

[39] ibid.

[40] ibid. 221.

[41] ibid.

Moling Ryan[42]. It is submitted that further research in relation to this approach is needed to assess if there has been any indication of drawbacks or if its practice is only limited to government practice and if there are any conclusions about the limits of this model that go in agreement with that of Garth.[43] It may also allow for the development of CED law as lawyers could use their transactional legal skills and develop ideas within the partnerships created.

The community control model is said to remedy the dependency of marginalised individuals on lawyers and legal strategies, yet the drawback is the difficulty of securing community participation and control[44], and as such, Garth explains that,

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[42] Moling Ryan, 'Access to Justice. A Study of the Legal Needs of Clients of the Citizens Information Service", Dissertation for Doctorate of Governance degree (unpublished 2008)' (Queens University, Belfast 2008).

[43] For the studies *see:* Moling Ryan, 'Access to Justice. A Study of the Legal Needs of Clients of the Citizens Information Service", Dissertation for Doctorate of Governance degree (unpublished 2008)' (n 42); *England*: Chris Fox, Richard Moorhead, Mark Sefton, and Kevin Wong, 'Community Legal Advice Centres and Networks: A process evaluation' (Legal Services Commission 2010); Alexy Buck, Marisol Smith, Judith Sidaway, and Lesley Scanlan, 'Piecing it Together: Exploring One-Stop Shop Legal Service Delivery in Community Legal Advice Centres' (Legal Services Commission June 2010); Pascoe Pleasence, Alexy Buck, Nigel Balmer, Aoife O'Grady, Hazel Genn, and Marisol Smith, 'Causes of Action: Civil Law and Social Justice (book of findings of the first LSRC Survey of Justiciable Problems) (LSRC Research Paper No. 11)' (Legal Services Commission 2004); *Australia:* Christine Coumarelos, Zhigang Wei, and Albert Z. Zhou, 'Access to Justice and Legal Needs: Justice Made to Measure -NSW Legal Needs Survey in disadvantaged areas' (Law and Justice Foundation of NSW March 2006); *Canada:* Roderick A Macdonald, 'Access to Justice in Canada Today: Scope, Scale, Ambitions' in *Access to Justice for a New Century - The way forward* (Irwin Law 2005). It is important to highlight that as part of the strategic development of BCLC 2011-2013, the view is that the multidisciplinary approach should be used (but it was not made part of it as their strategic plan as their strategic plan lays done what they think is achievable and measureable in a given period of time within their resources) Email correspondence with Paula McCann (25 October, 2012).

[44] In relation to community control and participation in the management of CLCs, Garth indicates that "participation of the poor or local community" is important (Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 203). He divides the issue of control into four basic separate "methods", albeit there may be variations in relation to "client participation" and in relation to control, this depends as it is "a matter of degree" (at page 204). Garth further highlights the fact that when the local community or a representative part does not have control, the tendency is to have a "local "advisory committee" (ibid). These methods are: 1) Control of NLFs by national or provincial governing boards, aided by local advisory committees; 2) Control of NLFs by a regional board, aided by local advisory committees; 3) Local board control, aided by advisory committee; and 4) Local board control by a lay-dominated board.

Garth indicates that in relation to model (1), involving the lay public through a local advisory committee, does not mean there is "effective community involvement... [and thus it] may discourage activism" making the role of the advisory committee a weak one (at page 204-205).

In relation to number (2), the problem of community participation is similar to the previous one, and the committees cannot make a real contribution (at pages 205-206). In relation to number (3) the United States is a

"[c]ommunity control, therefore, should not be romanticized. When an NLF goes into a poor community, it may be too much to expect the community to suddenly wake up to the potential of the NLF. The poor may also have

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good example, as the local board control meant local control by attorneys, as the requirement (at the time) was to have 60% board composition by lawyers. This requirement of lawyer majority was changed by the ABA from the previous model of the OEO in which there was a requirement to have "maximum feasible participation" of the poor in all projects, including the legal services programme (at page 206) Thus, in practice, the requirement changed to have one-third of the board was composed of eligible clients. However, up to 1980 when the book was published, very little studies have been done in relation to evaluating client participation in the boards, but available data showed that the governing boards were not "very active" (at page 207).

In relation to model (4), under which Garth indicates England as an example, (at page 209) due in part to "ideological and partly for practical reasons, they have chosen to take the participation of the target population one step further than advisory councils or one-third community representation" (ibid). This "community control", however, does not mean the same as control by poor people, but rather a board that is not controlled by lawyers (ibid).

In England, the experiences of the "independent management committees", indicates Garth, act as a check to ensure that local issues and concerns are addressed by the law centre. This is why "group work" works better when compared to the law reform efforts of the United States via the test-case, as with group work, the lay person can participate in the discussion whereas discussion pertaining test-cases are too technical to understand by the lay-person (at pages 210-211).

One of the problems that Garth highlights, and is of particular interest to Ireland, is the difficulty of having,

> the strong participation of members of deprived communities, particularly when all that is sought is involvement in decisions clearly made by others, either at the national, regional or local level. No one can be expected to participate actively when there is no real function to fulfil. Experience suggests that if control is given to the target group over at least some basic issues, most notably that of priority setting, it will be easier to spark citizen interest ... [l]ay persons are more likely to add to group work and community education efforts than to test cases, class actions, and individual service work (at pages 212-213).

This is another way of how CED lawyering can further enhance the role of the law centre as it addresses group work and community education efforts rather than test cases, class action or individual service work, thus improving lay participation.

The extra issue in relation to community control is how to ensure the whole community is represented and not just some, thus, there is also a danger with community control, "even by the poor" (at page 213) as community control and institutional change may clash. If community control is sought, the question must be asked as to what type of participation is wanted and for what purpose Garth, however, indicates that some type of community control is needed (at page 214).

In relation to the issue control, archival researched showed that NCLC used a "representative system" as it was seen as one that "would help towards ensuring that the work of the centre, particularly its wider work, would as far as possible reflect the needs and views of the community it serves" although they were aware that other models of community representation were used in the UK (the other models indicated were models under which individuals are elected from a "larger law centre membership", others include representatives from Statutory Bodies, professional bodies or other or a mixture of different models). *See* CCLC, 'CCLC Annual Report 1975-1985 'Review of Work Excluding Casework'', c1986.

> traditional ideas of what constitutes legal services, and they may, in any event, defer to others with traditional opinions. Accordingly, community control is probably best seen as a strategy for giving a "consumer perspective" to NLFs already oriented in a certain direction. This, it was suggested, is what has apparently happened with English law centres".[45]

Garth indicates that the above four models are all considered "social reform" models by their proponents[46] as these types of CLCs, in one way or another, may change the rights and the law concerning the poor, they may help the poor to help themselves via the therapeutic model or by improving the position of the inhabitants of the community by using the community control model.[47] Garth also indicates that because of the limitations of these four models[48], there is a recognition that if "real social change on behalf of the poor" is to take place, there needs to be recognition that the problem is not only legal but also political.[49] Whyte, in writing about CLCs in Ireland, has also suggested there is a need to make law centres more political, "for lawyers to be most effective in tackling social exclusion... they need to be able to engage with the political process."[50]

The social-reform-through-groups model uses the legal skills "in a broader, more political effort to help the poor".[51] Moreover, indicates Garth, "[t]he lawyer seeking social

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[45] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 221.

[46] ibid.

[47] ibid.

[48] ibid. The limitations of these four models can be seen by the goals they try to achieve. According to Garth, while the "legal needs" model provides accessible lawyers to poor individuals, it does not provide high quality legal services to the poor as the "professional" model does. In relation to the "therapeutic" model, it prepares the poor to utilize available services, but does not promote community participation and control, something the "community control" model does.

[49] ibid. 222.

[50] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 34) 279.

[51] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 223.

change should realize that changes in the law are not sufficient to obtain what is an undeniably political goal".[52]

This model, Garth asserts, "rests on the assumption about causes of poverty, possible remedies, and how lawyers can contribute to those remedies." Therefore, political change, "is made and enforced by organised pressure groups" and because "lawyers advocating reforms either in courts or before other decision-making bodies cannot substitute effectively for such groups, it is necessary for lawyers to help create groups and support existing ones". [53] This approach, for Garth,

> "implies that rights proclaimed by the law are used, with the help of community workers, to mobilize groups to organise and take action on behalf of their members and others who are similarly situated." [54]

Therefore, a major role is played by organised groups "in changing and enforcing the law."[55] Community education is also part of this approach and it is also given "considerable importance"[56] as it shows "both the possibilities and the limits of legal strategies". [57] Ideally, says Garth, deciding when to bring legal actions, seek legislative or administrative changes by lobbying or how to best represent the interest of their members, is for the organisation to decide.[58] In England, this model would also ideally have "an independent management committee, composed of largely representatives of local groups"[59] and would have the role of

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[52] ibid.

[53] ibid. 224 (my emphasis).

[54] ibid.

[55] ibid.

[56] ibid.

[57] ibid.

[58] ibid.

[59] ibid.

linking the strategy of the group to their respective networks as well as been accountable to them.[60]

(a) The social-reform-through-groups model: cementing the foundations of CED lawyering

It can be argued that what Garth calls the social-reform-through-groups model, in essence, contains the same ideas and concept of the foundations of CED lawyering.[61] American scholars such as Bellow and Trubek influenced the development of CED lawyering by challenging and criticising the status-quo which in turn influenced Garth's ideas about the fifth model of CLCs and how it operated. The opinions and criticisms of these American scholars - which were about the professional model used by American lawyers and what role the lawyer should play[62] in helping the disadvantaged - made their way to England, cementing the foundations of CED lawyering within that of CLCs.

Garth argues that this social-reform-through-groups model is the "evolving English model" citing the Brent Community Law centre. But he also recognised that it was also limited in what it could do to remedy social problems as its primary focus was on legal rather than economic relations. "[A]fter all, [we are] dealing with the law, legal strategies, and organisations of persons based primarily on statuses that assume great inequalities of wealth and power".[63]

So, if the English model indeed contains aspects of CED lawyering as practiced in the United States, CED lawyering can thus address the concerns of Whyte in relation to seeing the

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[60] ibid.

[61] Although some may argue that it does not necessarily entail the economic development of the community, recent scholarship from the United States indicates that CED may not necessarily entail the economic development of the community but it would be based on what the focus of CED is. Is it the Community, on the Economic or on Development? It can be argued that Ireland's CED focuses more on Community and Development rather than on the Economic aspects. *See* Carmen Huertas-Noble, 'Promoting working-owned cooperatives as a CED empowerment strategy: A case study of Colors and lawyering in support of participatory decision making and meaningful social change' (2010) 17 *Clinical L. Rev.* 255–284.

[62] Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (n 1) 223–224.

[63] ibid. 225.

legal issues from a more political angle as well as addressing the issue of community participation.

Whyte proposes that the strategic model of legal aid is better as it "does not confine itself to the conventional methods of lawyers in private practice as a means of advancing the interests of marginalised clients but also embraces such tactics as political lobbying, public education and community action."[64]

(2) The role of sustainable development

The changing nature of CLCs in Ireland, as shown by the last ten years of the NCLC and the birth of BCLC under a regeneration scheme (both case-studies found in chapter six), act as an example of how the concept of sustainable development has made its way into the community law centre discourse. Moreover, the way CED lawyering developed in Ireland when compared to the United States[65] shows that despite their parallel 'lives'[66] arising out of their shared origins (as shown in Figure 7.2.1 (1) in an earlier section of this chapter), they find themselves at the same cross-roads, aimed at facilitating sustainable development and the creation of healthy communities thus further providing for the creation of a new type of community law centre. This is because CED focuses more explicitly on small businesses and the creation of healthy and sustainable communities which in turns helps to form the basis for this new category of CLC in Ireland.

(a) CED lawyering and sustainable development: the birth of a new type of CLC

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[64] The strategic model is part of the spectrum of how legal aid services are delivered. At one end is the pure service model. Whyte has indicated that,

> "the strategic model does not confine itself to the conventional methods of lawyers in private practice as a means of advancing the interests of marginalised clients but also embraces such tactics as political lobbying, public education and community action."

Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 34) 280.

[65] It is submitted that CED law in the United States, as seen on chapter two, evolved via the Community Development Corporations (CDCs) using the law as a tool to combat poverty and in Ireland, the embryonic development of CED law has been via the Community Law Centres (i.e.: the law has been used towards the same – to help community groups).

[66] This is because CED law in Ireland and the United States have their origins in the Neighbourhood Law Centres of the War on Poverty of the 1960s as explained on chapter four (and also on chapter two in the case of the United States).

The CED experience in the United States has shown that the NGO sector plays a leading role in creating opportunities and strategies aimed at addressing issues of poverty such as unemployment, homelessness and others.[67] In Ireland, the NGO sector has also played a vital role in tackling issues of poverty[68] but more importantly, it has become an actor in the development of civil legal aid[69] as exemplified by the establishment of independent legal aid organisations such as NCLC, FLAC, and others[70]. Sustainable development, through government policy, for its part, has allowed for the idea that community law centres are indeed needed if we are to created sustainable communities, such as the case of BCLC in Ballymun.

Because of these experiences, it is submitted that a new type of community law centre can be created and added to Garth's categories.[71] More importantly and highly relevant to this is the fact that NCLC has also seen that its role within the community has evolved[72], supporting the argument that CLCs are part of sustainable development - albeit this time it is not under a "regeneration" initiative such as BCLC or Limerick but is a natural evolution of the role the community law centre has within communities. BCLC, due to its place within the regeneration scheme, further supports the argument of the role played by sustainable development in their development.

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[67] William H. Simon, *The Community Economic Development Movement: Law, Business, and the New Social Policy* (2nd edn, Duke University Press 2001) 3.

[68] The number of NGOs working in this area is vast. *See* for example networks such as The Wheel <www.thewheel.ie> [Accessed last 26 October, 2012]; Dochas <www.dochas.ie> [Accessed last 26 October, 2012; Changing Ireland <www.changingireland.ie> [Accessed last 26 October, 2012].

[69] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 34) 302–336.

[70] To date, there are seven independent community law centres in Ireland and two other are currently in the process of confirmation. *See* chapter one at footnote 2 and also chapter four at section 4.1 (particularly footnotes 3-13 inclusive). Although they receive State funding, they are non-for-profit organisations thus they are associated with the NGO sector. As indicated in the introduction of this thesis, the correct differentiation (to avoid confusion in relation to their sources of funding) given in this research is State controlled versus non-State controlled law centres. For example, Ballymun and NCLC receive government funding but are not controlled by the State (there are no restriction as to the type of service they can provide) whereas the law centres run by the Legal Aid Board (which are funded by the State) have restrictions as to the type of services they can provide, thus controlled.

[71] This does not mean that Irish CLCs do not fall within Garth's analysis, as they do, but they also go beyond his analysis, hence the call for a new category of CLC.

[72] *See* chapter six at section 6.2.4 for more information on this.

Moreover, what I have discovered by carrying out the research is that legal aid and access to justice overall are no longer just part of the legal environment but rather they are part of a number of efforts towards creating sustainable communities for the future, that is, communities need to have access to a law centre in order to be sustainable. Ballymun, by emerging out of the need for regeneration, not only in infrastructural terms but also in social ones, has paved the path for a new type of law centre.

This new type of community law centre model is what I call the sustainable development/sustainable communities model. Under this model, CLCs can be part of main-stream government policy, thus addressing the failure of FLAC of having been unable to "persuade the State to adopt a strategic model for the delivery of legal services, despite investing considerable energy in this issue over the years."[73]

Now, more than ever, government should see how useful the role of CLCs and the added value CLCs give to the government. The main problem however, is one of funding, as there is no overall funding policy for them. The next section deals with this issue.

7.4.2 The creation of an over-reaching scheme for the funding of independent community law centres in Ireland – the impact CED can have

This section calls for the further interaction between CED lawyering and sustainable development, suggesting that this interaction can form the foundations of an over-reaching scheme where issues of funding can be addressed.

Based on the experiences of BCLC and NCLC, it can be argued that for CLCs to reach their full potential and establish themselves as a new category of community law centre (championed by the practice of CED lawyering), an over-reaching scheme that recognises the importance of CLCs within Irish communities and within the goals of sustainable development[74] is imperative. It is also important that issues of funding are addressed within

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[73] Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 34) 320.

[74] Due to the current state of the public finances, funding for CLCs is unlikely to be a priority. However, it does not take away the fact that if funding becomes part of a wider scheme, other advancements can take place, such as addressing the issue of the piece-meal development of CLCs.

this scheme if communities are going to be given a chance to combat poverty in their own terms (with the help of government and other third parties of course).

Because of the important role performed by CLCs such as NCLC and BCLC, it is argued that CLCs are better placed, for funding and development purposes, under the umbrella of community programmes that combat social exclusion and attain sustainable development rather than just under the umbrella of providing "access to justice". This is because this new model of community law centre does much more than providing access to justice but rather it helps to tackle the root causes of poverty in legal and political terms.

Given that CLCs have always been outside the scope of government (despite the fact that some of them are State funded and/or originate in a State proposal such as NCLC and BCLC respectively and that are nevertheless non-State controlled yet work with government services/departments) recognition of their role should be placed on a statutory footing so funding can be guaranteed.[75]

Finding ways of how to provide for legal aid is always going to be an issue, no matter the type of government we have or how many resources are available. The issue therefore becomes how best we can provide for improving the legal aid system and that is why collaboration and permanency of the existing CLCs is important. Moreover, if we are to provide for an over-reaching scheme that can provide for funding, making better use of the integrative approach is also essential.

(1) The Integrated Approach

An integrated approach to legal services is one that provides not only legal services to an individual but also addresses the non-legal needs of that person, such as health or social welfare. This approach offers the legal service provider the opportunity to work in

[75] At present, recognition for independent law centres is found within *The Solicitors Acts, 1954 to 2002 (Independent Law Centres) Regulations*, 2006 (S.I. No, 103/2006) but it is to allow for independent law centres to employ solicitors rather than for any other purpose so sections 59 (which prohibits a solicitor to act as an agent for an unqualified person) and 62 (which does not allow to reward such unqualified person for the introduction of the legal business) of same Act do not apply to a solicitor employed by an independent community law centre. The list of independent law centre is found in the Second Schedule.

collaboration with other non-legal services, such as local government agencies and NGOs[76] thus allowing for the further interaction between law and community development.

(a) The International experience

At an international level, having an integrated approach to legal services is not something new.[77] For example, Australia[78] first experimented with the concept in 1978 when a CLC, the West Heidelberg Community Legal Service,[79] opened within a community health centre in order to address issues of poverty faced by the community.[80] The idea was to have quality service at a low cost that combined health and welfare services with,

> "a range of preventive and diagnostic medical services and programme, stimulate community health welfare education programmes, [and] provide counselling and a location for community activities and groups [including legal aid]."[81]

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[76] *See* for example, Mary Anne Noone, '"They all come in one door" The transformative potential of an integrated service model: A study of the West Heidelberg Community Legal Service' in *Transforming Lives: Law and Social Process* (The Stationary Office 2007) 93–112; J Michael Norwood and Alan Paterson, 'Problem-Solving in a Multidisciplinary Environment? Must Ethics Get in the Way of Holistic Services?' [2002] 9 *Clinical L. Rev.* 337; and Alan Paterson, 'Multi-disciplinary partnerships – a critique' (2001) Vol. 8 *International Journal of the Legal Profession*, 161.

[77] *See,* Moling Ryan, 'Access to Justice. A Study of the Legal Needs of Clients of the Citizens Information Service", Dissertation for Doctorate of Governance degree (unpublished 2008)' (n 42) 158–161.

[78] The West Heidelberg Community Legal Service (WHCLS) is located in a disadvantaged neighbourhood outside Melbourne, in the State of Victoria, Australia. Redfern Legal Services is another example. For an up-to-date recommended reading guide for community law centre workers in Australia, *see* Federation of Community Law Centres Victoria, 'Reading Guide for CLC Workers' (20 November, 2012) <http://www.fclc.org.au/cb_pages/files/CLC%20Reading%20Guide.pdf> [Accessed last 27 November, 2012]

[79] <http://www.communitylaw.org.au/clc_westheidelberg/cb_pages/about_west_heidelberg.php> [Accessed last 26 October, 2012].

[80] Mary Anne Noone, 'They all come in one door" The transformative potential of an integrated service model: A study of the West Heidelberg Community Legal Service' (n 76) 94. This idea was a direct recommendation from the Commission of Inquiry into Poverty of the 1972 Government.

[81] ibid.

By using this approach, over the years, the Australian experience has shown that "an integrated approach to provision of legal services provides a better service for the client that addresses their multiple needs in an efficient and effective manner."[82]

In the UK, commentators have named the integrated approach as "holistic"[83] or "multi-disciplinary"[84] and in 2000[85], the UK government also experimented with a model that placed all of the advice and legal services under partnerships which sought to coordinate and facilitate public access to legal aid and advice. These partnerships brought together CLCs, Citizens' Advice Bureaux, local authorities, solicitors and other organisations. Their task was to assess the level of need in their areas and to ensure the services meet the priorities of the community.[86] However, this "Community Legal Services Partnerships" approach (hereafter "CLSPs") was short lived, as in 2005 the Legal Services Commission stopped facilitating them due to some issues of effectiveness as there were reservations in relation to their "clarity of purpose and accountability and control".[87]

In Canada[88] and the United States[89], the integrated approach is known as the "collaborative"[90] approach or "social justice collaboratives"[91] but the work is done in

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[82] ibid. 107.

[83] J Michael Norwood and Alan Paterson, 'Problem-Solving in a Multidisciplinary Environment? Must Ethics Get in the Way of Holistic Services?' (n 76).

[84] *See* for example, Alan Paterson, 'Multi-disciplinary partnerships – a critique' (n 76).

[85] The Community Legal Service (CLS) concept was launched by the UK government in 2000, as a way of bringing providers of information and legal advice under one "roof"

[86] Private conversation, M Ryan, Chief Executive, Legal Advice Board (Ireland 14 March 2011).

[87] Moling Ryan, 'Access to Justice. A Study of the Legal Needs of Clients of the Citizens Information Service", Dissertation for Doctorate of Governance degree (unpublished 2008)' (n 42) 160.

[88] Such as Parkdale Community Legal Services <http://www.parkdalelegal.org/> [Accessed last 27 November, 2012].

[89] CED law is a good example showing how some services have become integrated.

[90] *See* for example, Lucie E. White, 'Collaborative Lawyering in the Field? On Mapping the Paths From Rhetoric to Practice' (1994) 1 *Clinical L. Rev.*, 157.

[91] *See* for example, Louise G. Trubek and Jennifer J Farnham, 'Social Justice Collaboratives: Multidisciplinary Practices for People' (2000) 7 *Clinical L. Rev.*, 227.

collaboration with university clinics based in their Law Schools. These clinics combine casework with community development and coalition-building techniques to ensure results "as a whole" rather than just on one area.[92] However, these are now coming under the heading of "community lawyering" and as such, the practice of CED law and CED lawyering is part of it.

Thus, by providing an over-arching framework which not only recognises the integrative approach but also the role CED lawyering plays within the sustainable development model of CLCs (and as such it is linked to sustainable development) and within communities, different funding opportunities can be pursued and not just those targeted at access to justice issues.

(b) The Irish experience: the start of an integrated approach?

An important element that has played a key role in creating the basis of an integrated approach in Ireland, at least in the physical sense, has been the construction of the Northside Civic Centre (hereafter "NCC") and the placing of NCLC within its premises. Because the main objective of the NCC was to bring "statutory and community services together in one building" in order to provide "easier and better access to services for people in the area"[93], the start of an integrative approach can take place. In 2003, NCLC moved from its shopping centre premises to the newly built NCC[94] and has physically shared its space with a number of governmental bodies and NGOs (as tenants of NCC[95]), namely: the Irish National Training and Employment Authority (FÁS, which has now been renamed SOLAS)[96]; the Health

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[92] Dianne L. Martin, "A Seamless Approach to Service Delivery in Legal Aid: Fulfilling a Promise or Maintaining a Myth?" (Department of Justice Canada 2002) at pp15-16.

[93] CCLC, 'CCLC Annual Report 1996-1997', c1997 14.

[94] The NCLC was involved from the beginning, having also representation on the Board of Directors.

[95] <http://www.dublincity.ie/YOURCOUNCIL/LOCALAREASERVICES/NORTHCENTRALAREA/Pages/NorthsideCivicCentre.aspx> [Accessed last, 27 November, 2012]

[96] FÁS is the acronym for Foras Áiseanna Saothair. More information can be found at <http://www.fas.ie/en/> [Accessed last November 19, 2012]. SOLAS is the acronym for Seirbhísí Oideachais Leanunaigh agus Scileanna and although it replaced FAS, its website is under construction so no further information is available. It indicates to visit the FÁS' website <http://www.solas.ie/> [Accessed last November 19, 2012].

Services Executive (HSE)[97]; Local Social Welfare office[98]; the Money Advice & Budgeting Service (MABS)[99]; the Northside Citizens Information Centre[100]; the Northside Local Employment Services[101]; and Near90fm Radio[102] and Mediation Northside[103]. Although the NCLC has no formal integrated approach arrangements with these bodies, an informal arrangement does exist, which is facilitated by the role the Civic Centre plays within the community, that of a "one-stop shop"[104] for all statutory and community service needs.

BCLC also has had talks to provide its services under a more integrative approach and be part of a range of services located under one roof; however, talks have stalled due to the collapse of the economy but the idea remains in place.[105]

(i) Suggestions for further experimentation

It is submitted that the applicability of the integrated approach in the delivery of other services, such as for example, making a community law centre part of an integrated approach in the delivery of other services such as health can be an interesting area for further experimentation.

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[97] <http://www.hse.ie/eng/Find_a_Service/Local_Health_Offices/NorthDublin/> [Accessed last November 19, 2012].

[98] <http://www.welfare.ie> [Accessed last November 19, 2012].

[99] <http://www.mabs.ie> [Accessed last November 19, 2012].

[100] <http://www.northsidecic.ie> [Accessed last November 19, 2012].

[101] <http://www.northsidepartnership.ie/content/view/104/139/> [Accessed last November 19, 2012].

[102] <http://www.near.ie> [Accessed last November 19, 2012].

[103] <http://www.nclc.ie/free-advice-clinics/mediation-northside.asp.> Mediation Northside came under the umbrella of NCLC around June 2012 (the exact date is not available), so now it is not a separate body [Accessed last November 19, 2012].

[104] Currently (2011) there is a similar Civic Centre in Ballyfermot (does not have an independent CLC though) and In Letterkenny, Co. Donegal (it is uncertain if this was a local authority driven initiative). Source: Meeting with Colin Daly, Managing Solicitor NCLC, 4 November 2010.

[105] Email and conversation with Paula McCann from BCLC (October 24th and email correspondence October 25th-26th, 2012).

Recently, the Irish Government indicated that it will be carrying out a health review policy by seeking to engage leaders and policy-makers across the Government and society,

> "to recognise that, because many of the causes of health and wellbeing lie outside the health sector, *improving the public's health is the responsibility of all sectors of society*, and not just the responsibility of the health service public health workforce".[106]

Therefore, if Ireland is to have a healthy population that can live in a more "sustainable environment with increased social and economic productivity and greater social inclusion,"[107] a holistic or integrated approach should be taken.

Academic commentary[108] looking at the links between health problems and legal issues has indicated that integrating legal services to health and to wider public services makes the "adverse health consequences" such as stress-related illnesses less likely, adding to the overall wellbeing of the person once the legal event has concluded.[109]

It is submitted that CLCs through the interaction of CED and sustainable development can also become part of a public health policy that integrates some of the work the CLCs do to the provision of integrated/holistic health services, promoting their role to a wider audience[110] (which would also be able offer access to different types of funding CLCs had not considered before). For example CED law could offer assistance to community groups that work with

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[106] Martin Wall, 'Government to Carry Out Health Review Policy', *The Irish Times,* June 7, 2011 <http://www.irishtimes.com/newspaper/health/2011/0607/1224298495708.html> [Accessed last 26 November, 2012] (my emphasis).

[107] ibid.

[108] *See* for example Ab Currie, 'Civil Justice Problems and the Disability and Health Status of Canadians' in *Transforming Lives: Law and Social Process* (The Stationary Office 2007) 44–66; and Pascoe Pleasance, Nigel Balmer, Alexy Buck, Marisol Smith, and Ash Patel, 'Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems' in *Transforming Lives: Law and Social Process* (The Stationary Office 2007) 67–92.

[109] Pascoe Pleasance, Nigel Balmer, Alexy Buck, Marisol Smith, and Ash Patel, 'Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems' (n 108) 86.

[110] Although some of their counterparts in Australia offer legal services within a health facility, as seen in section 7.4.2(1)(a) above, it is uncertain if they practice CED law and CED lawyering.

drug-addicts or ex-parolees such as creating economic opportunities for re-entry into society.[111] CLCs could also open within local health centres thus adding to the creation of better and more sustainable communities.

(2) The issue of funding

As discussed in the case-studies, funding for NCLC and BCLC does not come from the Department of Justice, but rather from the Department of Social Protection in the case of NCLC[112] and the Department of Environment via the BRL in relation to BCLC.[113] This is because the provision of legal aid services by NGOs has been largely funded by government departments (other than the Department of Justice[114]) under anti-poverty strategies[115] and also by philanthropy, the legal professions and through charitable donations.[116]

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[111] Susan Bennett, Brenda Bratton Blom, Louise Howells, and Deborah Kenn, *Community Economic Development Law: A Text For Engaged Learning* (n 13) 335–391.

[112] In relation to the NCLC its funding has never been consistent although it recently secured a three year funding from the Dept. of Social Protection. The Department of Justice, Department of Health, Department of Community Rural and Gaeltacht Affairs and Department of Social Protection have all contributed, at some point or another, with funding, although contributions from the Department of Justice were only given at the beginning (1974-1980) and for the period 1980-1981 there was no funding at all. The Stardust Tribunal also offered a source of income for the year as the CCLC was remunerated by representing clients Funding has also come from the Bar Council and the Law Society of Ireland, donations, and more recently, through income-generating schemes such as community legal education activities and membership subscriptions.

[113] However, once BRL winds down, there will be no further funding for BCLC.

[114] Although FLAC received funding from the Department of Justice for a number of years and at present it still receives some funding from this government department. *See* for example, FLAC, 'FLAC Annual Report 2011', (c2012) 32.

[115] *See* Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (n 34) footnote 151 at page 313 describing FLAC's funding from the late 1980s to the late 1990s. *See* also pages 304-305 and 307-308. For an example of NCLC's funding, *see* Appendix II.

[116] The research showed that out of the six CLCs initially found on this research, all of which completed the questionnaire (except FLAC as FLAC, as explained, it was outside the remit of this research) as shown in Appendix I, only two received funding from government (NCLC and BCLC), one was completely funded by philanthropy (ITM legal services), one was fully funded by the Sisters of Mercy (MLRC) and one was a mixture of philanthropy and EU funding (ICI). NCLC and BCLC also receive other types of funding from non-government sources. If FLAC were to be counted the split would be 50-50 as it also receives government funding.

Given that all of the CLCs in Ireland are in fact funded by different sources and government departments[117], a proposal for ensuring there is a coherent policy in relation to funding is needed so as to ensure they can develop in a coordinated fashion.

Moreover, government politics and the different roles and priorities given to different government departments makes constant funding for the CLCs even harder. For example, the main core funder of the NCLC is the Department of Social Protection, a department not many would associate with funding civil legal aid and advice schemes.[118] Therefore, proper recognition of the work of the CLCs within the government is needed in order to ensure proper funding.[119]

It is submitted that the impact CED lawyering can have in relation to funding is the acknowledgment that CLCs should be seen as part of State policy for creating sustainable communities and not just in relation to access to justice. This is also a reason why using the integrated approach can further help with funding issues as discussed before.

One suggestion is that POBAL[120] may be a good source of funding as it supports "communities and local agencies towards achieving social inclusion, reconciliation and equality"[121]. This organisation can be a constant source of funding for the future of this type of CLCs in Ireland. After all, the Department of Social Protection indicates that under their

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[117] For example, NCLC is funded by the Department of Social Protection and by different bodies including the Law Society of Ireland and the Bar Council; the Mercy Law Resource Centre is funded by the Sisters of Mercy but until 2013, then they have to look for other sources of funding; the Immigrant Council of Ireland receives no government funding but rather from philanthropy (50-75%), fundraising and other types of specific programme-based funding under the EU. *See* also footnote 115 above.

[118] In 1947 Department of Social Welfare was established and has been renamed a few times ever since. In 1997 it was renamed Department of Social, Community and Family Affairs; In 2002 it became Department of Social & Family Affairs and since 2011, it is known as Department of Social Protection <http://www.welfare.ie/EN/AboutUs/Pages/dsp_overview.aspx> [Access last 6 June, 2011]

[119] For a time-line of funding for NCLC, *see* Appendix II.

[120] POBAL is "a not-for-profit organisation with charitable status that manages various funding programmes on behalf of the Irish Government and the EU"<https://www.pobal.ie/Pages/Home.aspx> [Accessed last 25 October, 2012]

[121] <https://www.pobal.ie/Pages/Home.aspx> [Accessed last 25 October, 2012].

Scheme of Community Services Programme (hereafter "CSP")[122] one must apply to POBAL for funding for community services programmes. Similarly, the Department of Environment also directs any type of queries in relation to CSP to POBAL. EU funding may also be available under sustainable development and social inclusion.

(3) Vision for the future

The changes within the political[123], economic[124], social[125] and technological[126] landscape of Ireland and within the community throughout the years have helped to germinate the seeds of CED within CLCs. Thus, CED lawyering can further help to translate their ideas into an ever-evolving vision for the future, adapting to the social and economic realities of the time as well as comparing its practice with those from other jurisdictions. According to the NCLC, strategies that seek to attain a more integrated approach (such as research, campaign and law reform together with community education and support[127]) under which law is not just part of the legal landscape but of a more broad concept that "facilitate integrated development"[128] are essential.

It is argued that the basis for an integrated approach in Ireland exists, particularly when looking at how the NCC provides a one-stop shop for its community although there is plenty of room for improvement and coordination between services. Moreover, calls have also been made to provide for a more co-ordinated provision to legal services in recent times.[129]

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122 <http://www.welfare.ie/EN/Schemes/RuralandCommunitySupports/Pages/ruralandcommunitysupports.aspx> [Accessed last 25 October, 2012].

123 Such as EU and different political parties.

124 Such as the recession and economic downturn.

125 Such as unemployment, immigration, demographic, legal profession.

126 Such as online sources, the use of emails and other social media.

127 NCLC, 'NCLC Annual Report 2009', c2010.

128 ibid.

129 *See* Moling Ryan, 'Access to Justice. A Study of the Legal Needs of Clients of the Citizens Information Service", Dissertation for Doctorate of Governance degree (unpublished 2008)' (n 42) particularly at chapter seven at pages 132–162.

Issues of funding may define the type and the amount of work done by CLCs and what they can do, but if CLCs become part of the sustainable development argument then funding can be provided under a different framework. Moreover, the concept of what CLCs are supposed to do has clearly influenced their role in the development of the communities they serve. While there are not many independent CLCs in Ireland, they carry enough weight capable of creating a new community law centre model based on the mixture of CED lawyering and sustainable development. It is important to highlight that the idea is not for them to merge into one organisation but to access government funding through one organisation. This does not mean they cannot do fundraising and obtain other sources of funding but at least one umbrella organisation could provide for them by fence-ringing funding specifically targeted to the work of the CLCs.

Sustainable development and CED lawyering therefore can work together in creating something new, a new form of community law centre which can also create further avenues of collaboration between the Legal Aid Board law centres, the independent CLCs and other services. This new model can also facilitate the opening of new CLCs among clusters of electoral constituencies across the country,[130] based not on access to justice but on how to build sustainable communities.

Therefore, the potential of establishing a community law centre within the concept of sustainable development and based on the experiences of NCLC as a CED law organisation is within reach.

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[130] For the 2011 general election there were 43 constituencies representing almost 5 million people (latest census indicates the total population in Ireland as of April 2012 is 4,584,400 <http://www.cso.ie/en/media/csoie/census/documents/populationestimates2012/popmig_2012.pdf> [Accessed last 28 November, 2012]) (for the data on the 2011 general election and its constituencies *see* <http://www.statusireland.com/statistics/population/14/Population-By-Electoral-Constituency-In-Ireland.html> [Accessed last 28 November, 2012]). To date, the only CLC servicing any electoral constituencies is NCLC (Dublin North-Central and Dublin North-East) and although there are other CLCs that service different communities within different constituencies as well as State-controlled law centres run by LAB around the country (LAB has 32 full-time law centres and 12 part-time law centres. For more information, *see* LAB, 'Legal Aid Board Annual Report 2010', c2011 65–70), many people and communities still have problems "accessing justice" (for example, the waiting times to see a solicitor under the State-controlled law centres in February 2012 was up to 10 months. *See* Fiona Gartland, 'Delays of up to 10 months to see Legal Aid Board solicitor', *The Irish Times,* February 25, 2012) and CLCs cannot service people outside their catchment area (such as NCLC or BCLC) or area of expertise (such as ITM Law Centre or the MLRC).

7.5 Section Four: Overall Conclusion

This research focused on the use of CED as a lawyering strategy, or what is known as "CED lawyering". The idea was to look at this concept from a legal stance and assess if it was solely a phenomenon that took place in the United States, and if not, could it be of any help to the way public interest law is practiced in Ireland through the use of the strategic approach of legal aid. As argued throughout, the answer was in the negative, CED lawyering does take place in other jurisdictions, as evidenced by Ireland. And it also does help to implement the strategic approach to legal aid as it not only offers public interest lawyers, either in practice or in the academic field, a new area of law but also helps with the alleviation of poverty and the tackling of inequality and social inclusion through its three-pronged approach of law, social policy and community development. As such, CED lawyering can help to strengthen the strategic approach by placing an emphasis on the tackling of poverty and community empowerment (and also economic justice), objectives which the strategic approach has found hard to achieve.

In relation to public interest law in general, this research only touches upon the surface of a number of issues some of which have been highlighted either in the main body of this thesis or in footnotes. This is especially true of community empowerment. As indicated on the introduction in chapter one, community empowerment was not discussed in this research as in order to make a proper assessment, detailed research (particularly from a socio-legal point of view) would be needed and as such, it was deemed to be outside the scope of this thesis.

The main finding of this research, therefore, is that the practice of CED lawyering has always been embedded within the concept of what community law centres do.

The impact of CED as a concept and as a lawyering strategy on the Irish legal CLCs landscape has also provided for the creation of a new category of CLCs. This thesis has argued that NCLC and BCLC are forming a new type of community law centre aimed at building sustainable communities and promoting social inclusion. NCLC, by developing its strategic planning in the past few years, is helping to shape a new type of community law centre model that combines CED lawyering and sustainable development. BCLC's history also combines

CED lawyering and sustainable development but founded on regeneration. Both however are linked to sustainable development.

Therefore, calls for a new model are posited because these CLCs are no longer part of the "unmet legal need" but rather are based on the need of creating sustainable communities under the concept of sustainable development. These CLCs are government funded but at the same time are independent. Because they can be based on the concept of sustainable development, they can also help in tackling other social problems which have a legal element such as the legal issues associated with drug-addiction for example. Thus, by using CED lawyering, the push for a new model of law centre can ensue. I call this the "regeneration/sustainable development" model and it is exemplified by BCLC and NCLC.

The practice of CED lawyering could also be used to measure outcomes in relation to access to justice efforts.[131] For example, how do we know if access to justice efforts – in whatever shape of form – effect change in people's lives? Measurements of outcomes, by its very definition, tend to be tangible, to be seen in numbers and in graphs. Although helpful, they do not provide the 'full picture'. For example, how do we measure the subjective or intangible effects of access to justice efforts within communities?

It is proposed that by the use and practice of CED lawyering, the right balance between tangible and intangible measurements can be achieved, thus providing for the 'full picture' of how access to justice efforts can help to improve the socio-economic infrastructure and the lives of people within those communities. As provided in the definition of CED lawyering,

> "CED lawyering has been described as a strategy for redressing urban poverty, in which economic justice initiatives can receive input from lawyers, where points of legal intervention can be addressed and where issues of accountability can make progress. CED lawyering, therefore, acts as a facilitator by building and empowering communities through the use of different legal tools and

[131] An abstract titled "Measuring outcomes within communities: The use and practice of community economic development lawyering" was presented and accepted at the 9th Legal Services Research Conference, 'Rights and Wrongs: Developments in Access to Justice', 12th-14th September, 2012 Magdalen College, Oxford, England. However, due to health issues I was unable to attend.

approaches which can be directed towards the improvement of the socio-economic infrastructure and development of those communities."[132]

Because CED lawyering is designed to improve the socio-economic infrastructure of the community, the effect of CED lawyering can be measured (which is an intangible outcome) as well as improvement in the socio-economic infrastructure of the community where it is practiced (a tangible outcome), thus its effects within the community as a whole may also be seen by reference to the tangible outcomes. For example, by using 'the law' as variable - such as an individual awareness of the law through community legal education- the effects of access to justice efforts in the community, such as the realisation of the rights and responsibilities a person has as a citizen, can provide for tangible and intangible measurements.

CED lawyering may also have an impact on clinical legal education. In relation to the Irish experience, the law centre movement and its ideas were inspired by the neighbourhood law centre experience of the United States. However, in wanting to obtain the same results as to what "the law" had accomplished in the United States, no one stopped to think about how the teaching of law, the role of law schools and the profession had played in Ireland and how these factors could interact with legal aid, not to mention the political and policy environment of how CLCs were been developed. Moreover, the further importance clinical legal education will play in the Irish legal education landscape[133], an understanding the way CED lawyering

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[132] *See* chapter two at section 2.5.

[133] For example, with the advent of a new *Legal Services Regulation Bill* (No. 58/2011) which seeks to transform the legal profession, provision for the introduction of clinical legal education at university level is coming to the fore, as evinced by Section 9 of the Bill as it shows an interest on the part of the State in the provision of clinical legal education by university law schools. Part 2 of Section 9 titled "Legal Services Regulation Authority" explains the functions of the authority. Within this, subsection 9(2)(a)(ii)II refers to legal education, which makes it easier to ensure clinical legal education components are part of the curriculum. An abstract titled "The Implications of the New Legal Services Bill in Clinical Legal Education in Ireland" was presented and accepted at the 10th International Journal of Clinical Legal Education Conference, 11th –13th July 2012, Durham, England. However, due to health issues I was unable to attend. To access the Bill and follow its stages, go to: <http://www.oireachtas.ie/viewdoc.asp?DocID=19208&&CatID=59> [Accessed last 29 November, 2012].

works and how it has developed is essential, as it also can help to create clinical legal education modules.[134]

This conclusion, therefore, is intended to lead the way in relation to CED lawyering in Ireland, and while some of my assertions may prove incorrect in the future, my research has nevertheless has thrown some light on a hitherto 'undiscovered' area of law in Ireland.

Throughout this thesis, I have argued that CED lawyering exists in Ireland, albeit it is not known under that name. The argument started by presenting a general background as to what is meant by CED as a whole, including its origins and how it developed in the United States, which meant that in the 1990s, CED became part of their public interest law arena. This was then followed by a discussion, found in chapter three, of some theoretical and practical examples of what is meant by CED lawyering in the United States, including some current examples as to how the practice of CED has helped immigrant initiatives and their quest for economic justice.

Chapter four then acted as a bridge linking CED in the United States with that of Ireland by the analysis of how the influences of the CLC movement (including the access to justice approach) created a fertile ground upon which the seeds of CED could be sown, thus adding to the argument that CED lawyering does take place in Ireland. Although the research of CED from an international perspective was presented briefly in chapter one, this chapter has also shown how the United States has influenced the practice of legal aid practiced abroad, particularly from the point of view of CLCs, something that has receive little attention from the legal research arena. This chapter further argued that because of the CLC movement, there was the creation of a paradox as to how CED developed in the United States when compared

[134] For example, modules on CED lawyering or community lawyering can be created which can also have a comparative component. For example, the creation of a trans-Atlantic curriculum in Social Justice, Community Lawyering, and Community Economic Development Law can come to the fore. To test the waters, a joint abstract written with Professor Susan D. Bennett from the Washington College of Law and I, titled "Regeneration/Renewal: Towards a Trans-Atlantic Curriculum in Social Justice, Community Lawyering, and Community Economic Development Law" was presented and accepted at the 10th International Journal of Clinical Legal Education Conference, 11th –13th July 2012, Durham, England. However, due to health issues I was unable to attend and Professor Bennett had to present it on her own. The feedback from other clinicians was very positive and encouraging.

to other jurisdictions such as Ireland. As for Ireland, CED lawyering became embedded into the every-day work of CLCs whereas in the United States it was something separate.

To fully understand this, chapter five then places CED into an Irish context, discussing the legal, social and policy frameworks upon which it operates. It also mentioned the work of Fr. McDyer in county Donegal, as indicative of the idea of an Irish CED concept viewed from a community development perspective (rather than a legal one) which in turn influenced the way community development grew in Ireland (affecting indirectly, the community development framework of CED). Chapter five also discussed the way of poverty is measured and how it affects the development of policies targeting social exclusion, suggesting that CED lawyering has to understand these concepts if it is to help in the alleviation of poverty. Chapter five further discussed public interest law in Ireland and how the strategic approach to legal aid and how CED lawyering fitted into the equation.

Chapter six then strengthened the argument by illustrating how CED lawyering had developed in Ireland through the use of two case-studies, namely NCLC and BCLC. It argued that although their origins were very different (one rooted in access to justice the other in regeneration) their day-to-day work was very similar. It also argued that for the past ten years or so, NCLC has moved away from its access to justice origins and approach to one based more on sustainable development, supporting the idea that CED lawyering therefore has always been part of what CLCs do and albeit it exists, not knowing about it has stalled its potential until now. Its potential can be found in the argument that CED lawyering can provide for the creation of better and sustainable communities while at the same time strengthening the strategic approach to legal aid.

By using, for example, an argument under sustainable development rather than a purely legal one, CED lawyering can help to influence policy in a different manner as it does not equate the use of the strategic approach with access to justice but with something more (i.e.: the redressing of urban poverty by the creation of healthy and sustainable communities), so the promotion of the strategic approach is more accessible to people, including politicians.

In relation to CED law, albeit it has not been fully analysed or discussed in the course of this research, it can add value to the Irish situation by expanding the area of scope of CLCs.

For example, by focusing on how CLCs can interact with other NGOs that work to provide jobs, housing and business opportunities for local and for different types of communities, substantive areas of CED law can be further developed.

Finally, as indicated in the introductory chapter, in Ireland, lawyering approaches used within public interest law have received little attention within the academic field. Other than the usual words indicating that Ireland uses the "strategic approach" to legal aid, research as to how it can be improved is scant to say the least. This is why CED lawyering presented itself as a good point for comparison and although there were no road marks nor signals that indicated from where the research could start, it is hoped that this thesis has opened the road for that questioning to take place. Thus, I would like to conclude by using the words of the old Spanish poet, Antonio Machado which I feel exemplify the inspiration for this research, "wanderer there is no road, the road is made by walking".[135]

[135] Antonio Machado was a Spanish poet (1875-1935).The poem is called *"Caminante no hay camino"* (Wanderer, there is no road) (my translation).

APPENDICES

Appendix I Sample CLCs' Questionnaire

Purpose of questionnaire: *The purpose of this questionnaire is to obtain an overview of the independent community law centres in Ireland in order to inform further research. The questions are divided into a number of subsections to make overall comparisons. I would appreciate if you could please complete the questions as accurately as possible.*

I: Basic Information:

1. Name of Law Centre:
2. Location:
3. Year it opened:
4. Amount of population it serves (please specify if it is an electoral area):

II: Practice areas:

5. Areas of Practice:
6. Is legal aid offered to i) individuals

   ii) groups

   iii) both

III: Legal Education (legal education is understood as that involving live interaction with a group):

7. Legal education provided yes/no
8. Is it Long-distance via "virtual setting or just to the local community?
9. What areas of legal education do you cover?
10. Are you partnered up with other institutions such as universities, institutes of

technology? (please specify)

IV: Legal Information (legal advice is self-evident thus it was deemed unnecessary to ask):

11. Do you provide legal information: yes/no

12. If yes, do you offer: i)leaflets/flyers

ii)other (please specify)

V: Community Involvement:

13. Do you do any other type of work involving the community/community groups (e.g.: offering advice for political campaigns)?

    i) If yes, what type?

    ii) If not, why not?

VI: Use of human capital (students and volunteers):

14. Do you involve students in your practice? If not, why not? If yes, are they university students? Trainees?

15. Do you have the help of volunteers? If yes, what type?

16. Do you offer any type of training to students and/or volunteers?

17. Do you think you would benefit from extra involvement from students and/or volunteers?

V: Funding:

18. Type of Funding - how much from:

    i) Government? (1%-25%; 25%-50%; 50%-75%; 75%-100%)

        a) What Government Department? (e.g.: Justice, Social Protection)

b) Has it always been the same Department? If not, please indicate which other Department has funded you and length of time

ii) Philanthropy? (1%-25%; 25%-50%; 50%-75%; 75%-100%)

iii) Fund-raising? (1%-25%; 25%-50%; 50%-75%; 75%-100%)

iv) Other? (1%-25%; 25%-50%; 50%-75%; 75%-100%)

VI: Physical and Administrative/Management Structure:

19. Location:

i) new building (e.g.: civic offices) (please specify)

ii) converted flat ex-local authority

iii) other (please specify)

20. Type of management: do you have a Board of directors? Yes/no.

i) If yes, how many directors?

ii) How many of them are from the legal profession?

21. Do you have people from the community as part of the Management/Board of directors?

If not, why not. If yes, what role do they perform?

22. Number of staff: How many solicitors, barristers, secretaries, others do you have?

23. How many work part time? Full time?

24. How many of them are from the local community?

VII: Referrals

25. Do you refer clients to other services or groups? yes/no

26. If yes, where?
    i) MABS?
    ii) HSE?
    iii) Drugs-Rehab?
    iv) Housing?
    v) Other?

27. If not, why not?

VII: Future expansion

28. Are there any areas you would like to expand? If yes, what areas?

29. Do you think there is an unmet need legal that law centres can meet but do not have the resources? Please specify

30. Do you obtain ideas for further development from other law centres,
    i) Within Ireland?
    ii) Abroad (e.g.: England and Wales, Northern Ireland, Australia, Canada, etc.)?
    iii) By attending national/international conferences? (please specify)

31. Any other issues/questions you would like to share?

Appendix II NCLC Funding Time-Line

- 1975-1977: CCLC was set up with grant from Department of Justice given to FLAC[1].
- 1977-1980: The Department of Health via the Combat Poverty Agency gave the funds to hire the CLO (£5000). The Department of Justice gave the rest (£20,000).
- 1980: Two grants financed the CCLC. One from the Department of Justice and the other from the Department of Health via the Eastern Health Booard to cover the salary and expenses of the CLO.
- 1980-1981: Crisis (December 1980) as there was no funding. CCLC was able to keep going because of the cases involving the next of kin representation at the Stardust Tribunal.
- 1981-1982: Department of Justice gives funding in September (£20,000) and Department of Social Welfare also gives a sum (£5000).
- 1983: Department of Health and Social Welfare gives £30,000 plus £11,000 following representation money barely kept law centre opened.
- 1984: Anti-poverty interim committee also gives funding (£15,000).
- 1985 and 1986: Department of Welfare gives £50,000 per year while awaiting official establishment of Combat Poverty Agency, which awarded £50,000 per year to the CCLC.

- 1986-1989: Combat Poverty Agency gives £60,000 per year. The request was made by the Minister of Social Welfare "on the understanding that the project would be evaluated and that long-term funding arrangements would then be negotiated with the Dept. of Social Welfare and the Dept. of Justice. In 1988: £10,000 additional funds are given by the Combat Poverty Agency to clear the long-standing overdraft of the centre.
- 1989-1991: Uncertain if the Combat Poverty Agency funds the centre for this period (records do not show exact source of funding but make reference to this agency).
- 1992-1997: Funding given by the Department of Social Welfare.

[1] For 1975-1989 *see* Brian Dillon, 'A Review and History of the Coolock Community Law Centre' (Combat Poverty Agency 1989), Report Series No.3 26–27.

- 1997-2004: Funding obtained via the Department of Social, Community and Family Affairs (through the National Services Board until the year 2000 when it was repealed and its functions taken over by Comhiarle).
- 2004: Dept. of Social, Community & Family Affairs are the core founders, as well as grants from "the Bar Council, and the Department of Community Rural and Gaeltacht Affairs (for the training and mentoring project as well as for equipment and refurbishment grant) and the Community Foundation of Ireland (for mediation training)."[2]
- 2005-2006: Department of Social & Family Affairs, Department of Community Rural & Gaeltacht Affairs, the Combat Poverty Agency and the Northside Partnership all give funding.[3]
- 2007: Department of Social & Family Affairs, the Law Society of Ireland, the Bar Council of Ireland, the Department of Community, Rural & Gaeltacht Affairs, the Northside Partnership and various donations and subscriptions[4] are the sources of funding. The Law Centre also generated funds through our case work and community education activities.[5]
- 2008: Department of Social & Family Affairs, the Law Society of Ireland and the Bar Council of Ireland are the main sources of funding. The Law Centre also generated funds through our case work, community education activities, and our work with MABS, various donations and our usual subscriptions and Membership.[6]
- 2009: Department of Social & Family Affairs, the Law Society of Ireland, the Bar Council of Ireland and the Courts Service Project grants were also received from the Northside Partnership, Dublin City Council, the Community Foundation of Ireland and the Loreto Foundation[7] and from the Women's Flora Mini-Marathon and donations.

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[2] NCLC, 'NCLC Annual Report 2004', c2005.

[3] NCLC, 'NCLC Annual Report 2006', c2007.

[4] NCLC, 'NCLC Annual Report 2007', c2008. The report indicates that in matters of membership, "28 organisations and 7 individuals became associate members of the Law Centre."

[5] ibid.

[6] NCLC, 'NCLC Annual Report 2008', c2009.

[7] NCLC, 'NCLC Annual Report 2009', c2010.

- 2010-to date: funding threatened. Uncertain if Department of Social Protection will renew funding (however recent offer of three year funding was received, but it needs to be made official).

Appendix III BCLC The Evaluation Reports (2003 & 2009)

In order to assess the levels of demand for the law centre, the impact of its work and the levels of efficiency and quality, an evaluation process to assess the first six months of the running of BCLC took place.[8]

Then, a few years later, a second evaluation report took place, which compared the Action Plan with the activities carried out at the time the second evaluation report 2009 was published. The comparative analysis carried out a public survey in the same way as the one carried out in 1999, finding the main legal needs to still be housing and family law. However, when comparing the data of the first study (1999) with that published in 2009 (Action Plan) the level of needs seem to reduce drastically. For example, the needs of housing between 1999 and 2009 fell from 90% to 31% and family law between 88% in 1999 to 27%. The evaluation report in 2009 indicated that because the 1999 survey did not provide information as to what the percentages were based on, no conclusion or suggestion was made as to why there were significant differences in the figures.[9] These differences, however, highlight an important issue as it is uncertain if the way unmet legal needs are measured truly reflect the legal needs of the community. For example, to date, not all the community is aware of the existence of BCLC. It is submitted further research in this topic is needed such as monitoring the level of awareness of BCLC.

In relation to the organisational structure, because of resource issues, BCLC, until 2009, employed only one solicitor rather than two, and it was assisted by a legal executive. The solicitor's work load by 2009 was divided between individual casework and education/information. Thus case work meant "½ time solicitor"[10], yet in relation to housing, the area was developed and significant advances in legal precedent were made in relation to this.[11] Employment has also been represented[12]; social welfare/health board services:

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[8] Community Legal Resource, 'Ballymun Community Law Centre: Evaluation Report 2003', (August 19, 2003) 6.

[9] Ursula Halpin, Sylvia Mooney, Katrin Todt, and Bernadette Walsh, 'Ballymun Community Law Centre: Evaluation Report 2009' (BCLC 2009) 18–19.

[10] ibid. 20.

[11] ibid. 23.

[12] ibid.

information, advice and representation were done in this area but no test-cases as proposed in the Action plan.[13] In relation to equality, education of young people about their legal rights was important. School visits, field trips and encouraging students to participate in court debating competitions were some of the activities done.

[13] ibid. 24.

Appendix IV Tables for assessing similarities and differences between the two CLCs

Appendix IV- Table 1: Legal Services Comparison

Type of Service	BCLC	NCLC
Consumer Law	X	X
Debt	X (core)	X
Employment	X (core)	X
Equality	X (core)	X
Family Law	X (advice only in preparation to attend LAB's appointment/join LAB's waiting list or consult a solicitor) Pilot scheme started only recently as it was felt there was a need in need of attention. (annual report 2010 p.1)	X (advice and information only. Client representation in emergency cases only. Referral to LAB or private solicitor)
Housing Law	X (core)	X
Social Welfare & Health	X	X (albeit they do not mention health, certain issues may be covered under "community care". This type of service has been running for the four past years and it includes [...to be completed]
Other Civil Legal Matters:	Advice only	Advice only (Their free will

• Wills & Inheritances		drafting service no longer available. Wills now done by Citizens Information Service)

Appendix IV- Table 2: Advice Clinics Comparison

Advice Clinic Type/time	**BCLC**	**NCLC**
Outreach (not on the office)	Yes	No
Office location	No	Yes
Time	10-1pm	6-7:30 pm
Once a week	Yes	Yes
Staff or Pro-bono	Staff	Pro-Bono

Appendix IV- Table 3: Mediation Service Comparison

Mediation Service	**Mediation Ballymun**	**Mediation Northside**
All kinds of conflicts	Yes	No **Parental Mediation**: access & maintenance **Community Mediation**: neighbours causing a nuisance

		Conflict within families: families in disputes **Community group disputes** **Work place** **Conflict coaching**
Peer mediation (aimed at children 5th & 6th class)	Yes	No

Appendix IV - Table 4: Management Staff/Structure

Management/Staff	**BCLC**	**NCLC**
Board of Directors	x	x
Staff:		
Managing Solicitor	x	x
Second/Third Solicitor	x	x
Mediation Coordinator	x	x
Community Law Officer	No	No (only for Dave's duration. After that the management structure of the law centre changed)
Project Officer	Yes	No
Education & Volunteer Coordinator	No	Yes

Office Administrator	Yes	Yes

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