

Binary thinking, category mistakes, and building power

By Tim Wallace

A few months ago, I was advised by a program officer at a national foundation to be careful when describing Legal Aid Justice Center because we might get pigeonholed as a direct service provider. They said that national foundations typically aren't interested in funding direct services. They want to fund system change. This advice was prompted by my simply mentioning that we do direct services *in addition* to system change via community organizing, policy advocacy, impact litigation, and communications.

On one level, I get it. Direct services vs. system change is a useful binary, especially as progressive philanthropy has had to communicate its increasing focus on the root causes of injustice. But taken too rigidly, that binary can be dangerously reductive in ways that work

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against the goal of getting more resources and power into the hands of directly impacted communities.

This essay explores that central claim by examining how that binary has operated and continues to operate to shift accountability for system change work away from the people most directly impacted by oppression. Keeping to the theme of this issue, it'll end with a reflection on what this means for how we understand civic engagement and some suggestions for concrete steps philanthropic institutions can take to place accountability for the work where it belongs, with directly impacted

communities and not with traditional centers of wealth and power.

THE TRADITIONAL USE OF THE BINARY

Traditionally, philanthropy has used the binary of direct services vs. system change explicitly to deny resources for system change. Foundations would say they don't fund "advocacy" or they only fund "direct services." The U.S. tax code reinforces this exclusionary use of the binary with its prohibition on foundations giving funds for lobbying.

Where accountability comes into play is in the natural consequence of funders saying they will fund one thing but not another, which is that organizations tend to specialize in one or the other. This is especially driven by philanthropists

who say outright that they won't support organizations that do system change in any way.

What results is the ivory tower of policy advocacy. Because their organizations do system change work and NOT

direct services, the people doing system change work end up a step removed from the people who have daily, personally accountable relationships with directly impacted persons.

THE LEGAL AID EXAMPLE

This weaponization of the binary has been particularly devastating in the legal advocacy space.

The federal Legal Services Corporation (LSC) is the single largest funder of civil legal services in the country. They fund a nationwide network of legal aid organizations such that every city and



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county in the United States is covered by an LSC-funded legal aid. Prior to 1996, those organizations were free to do both direct individual services and system change work.

That changed in 1996 when, as part of welfare reform, Congress put in place a "super restriction" on LSC-funded legal aid programs. Essentially overnight, federally funded legal aids were prohibited from lobbying at the federal, state, or local level, employing community organizers, filing class-action lawsuits, engaging in voter registration, or representing undocumented people³ or people who are incarcerated. And it isn't just that they can't use federal dollars to do these things. Any organization that takes a dime of funding from LSC cannot spend any of their money on those activities, no matter the source of the funds.

In response to the new super restriction, many legal aid programs split into two programs, one federally funded to do direct services and the other giving up LSC money to do systems change. Some programs, like ours at Legal Aid Justice Center, sought private funding in order to continue doing both. Many others, particularly in communities that didn't have as much access to private funds, just stopped doing the systems change work entirely.



Sheba Williams at NoLef Turns Expungement Rally

So federal enforcement of the binary resulted in a massive loss of local system change capacity and helped ensure that in many places, the lawyers working to help individuals survive systems of oppression were artificially separated from the lawyers directly fighting those same systems.

BUT WHAT ABOUT TODAY?

So the binary of direct services vs. system change has been weaponized by those who oppose progressive system change resulting in that system change work being less connected to and less accountable to directly impacted individuals and communities. But what does that have to do with the way that progressive foundations are using the binary today? Aren't they just trying to correct for that divestment of system change advocacy?

Absolutely they are. But using that binary not only to justify changing their priorities but also in a rigid sense to divide non-profits into one or the other kind, risks perpetuating the ways that the

binary functions to separate those working against oppression from those most proximate to it.

Allow me to introduce you to Sheba Williams. Sheba is exactly the kind of person that progressive funders are looking for and exactly the kind of person that advocacy organizations should be accountable to. She is a Black woman with lived

experience of the kind of oppression she organizes to address. She is politically savvy and absolutely at the center of criminal system reform efforts in Virginia. But if you had to fit the non-profit she founded and leads, Nolef Turns (www.nolefturns.org), into the binary in order to determine whether it was a fit for your priorities, it would be direct services.

Nolef Turns's mission is to reduce recidivism by supporting and advocating alongside those with court and justice involvement. When we talked about this article, Sheba said to me, "the advocacy comes last for our organization, which is 'interesting.' The direct service is what really made it abundantly clear that we needed to participate in the advocacy."

For directly impacted leaders like Sheba, their advocacy would not happen but for the direct services, and the impact of the advocacy on individuals' need for direct services is the ultimate measure of the advocacy's success. This makes perfect sense, because she is directly and personally accountable to the people on whose behalf she advocates.

Put another way, Sheba's identity as an advocate and her effectiveness as an advocate are inseparable from her role providing material support to individuals in her community. So when national funders, as one did this past year, insist on Sheba spending their grant on advocacy and not on direct services, they are committing a category mistake. Sheba's advocacy is inseparable from the direct services she provides.

SO WHAT SHOULD PHILANTHROPY DO DIFFERENTLY?

- 1) Look within the ranks of direct service organizations for ones whose leaders are directly impacted themselves and who view their work through a systems lens. Find leaders, like Sheba, whose work both mitigates the harm of oppressive systems and strategically informs transformative change. When you find them, give them substantial, unrestricted, multi-year grants so they can sustain their operations, allowing them space and stability to engage in advocacy.
- 2) If you're serious about investing in historically divested communities, stop asking them, "How will you sustain this work long-term?" You are the newcomer, not them, and you can afford the risk.
- 3) Do ask all of your potential grantees, "Who are you accountable to and in what ways?" Give them enough space to be as specific and individual as possible, and if they don't have robust and intentional structures in place to center their accountability within directly impacted individuals and communities, be wary.
- 4) Examine your own practices for ways that you shift accountability away from communities and towards yourself. For example, the more your RFPs resemble contracts that state exactly what goals and tactics will be employed, the more the staff funded

by the grant will feel they have to adhere to what was written even if what community is asking for has changed and even if you tell them you will be flexible. Ask them instead, “What are your goals and tactics at the moment? How and why might they change?”

- 5) Be wary of rigid binaries. For example...

CIVIC ENGAGEMENT VS. ADVOCACY:

In certain contexts, civic engagement vs advocacy can be another category mistake. The goal of civic engagement cannot simply be to get more sympathetic politicians elected. The measure of political power is not in the number of politicians you help elect, it's in whether

or not those politicians actually act on your community's behalf. To build political power, you must be able to do more than elect politicians, you must be able to influence those politicians and hold them accountable to your community between elections as well.

If progressive philanthropy holds too rigidly to the binary of civic engagement vs. advocacy, then like in direct services vs. system change, they risk shifting accountability and power away from communities facing oppression. The end goal is NOT to build power for a particular political party. The end goal is to dismantle systems of oppression and build a better world for everyone.

In both binaries, it cannot be either/or. It must be both/and.

Tim Wallace is the Development Director of the Legal Aid Justice Center (LAJC), headquartered in Charlottesville, Virginia. LAJC's mission is to partner with communities and clients to achieve racial, social, and economic justice by dismantling systems that create and perpetuate poverty. To accomplish our mission, we integrate individual legal representation, community organizing, policy advocacy, group & class litigation, and communications into multifaceted campaigns to accomplish community goals. We are committed to building and living within systems of accountability to individuals and communities directly impacted by oppression. More at www.justice4all.org.