

What is a Worker Self-Directed Nonprofit?

**Intro to Implementing Workplace
Democracy in Nonprofit Organizations**

Presented by the



**Sustainable
Economies
Law Center**

What does worker self-direction mean?

Here's one crack at a definition:

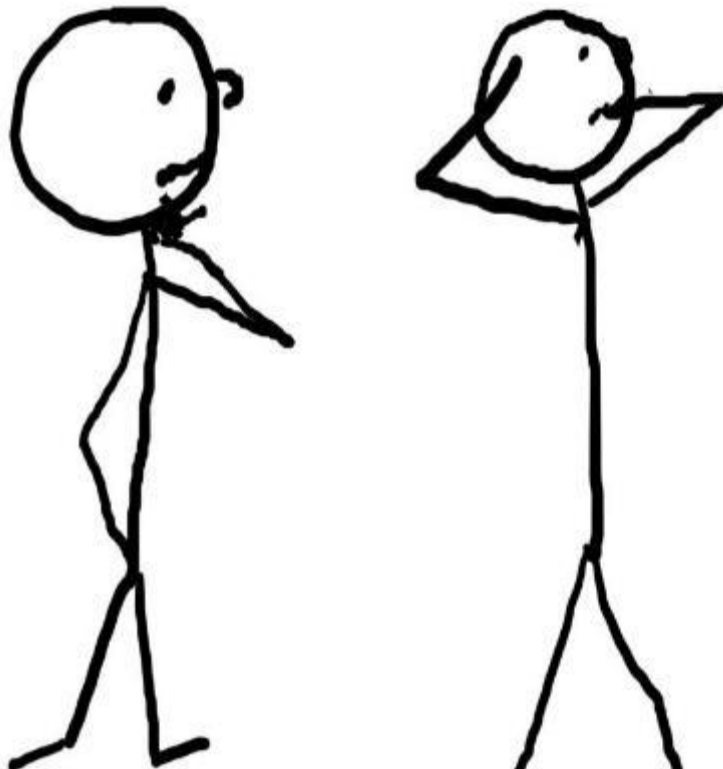
- **All workers** have power to influence:
 - The realms and programs in which they work,
 - The conditions of their workplace,
 - Their own career paths, and
 - The direction of the organization as a whole.
- The organization's goals, strategies, and activities emerge primarily from the observations, experiences, insights, proposals, and decisions of workers throughout the organization.

Important:

It's not that every decision needs to be made by everyone.



Later, we'll talk about nonprofit corporations law
and how worker self-direction fits in...
It's not as scary as it sounds...

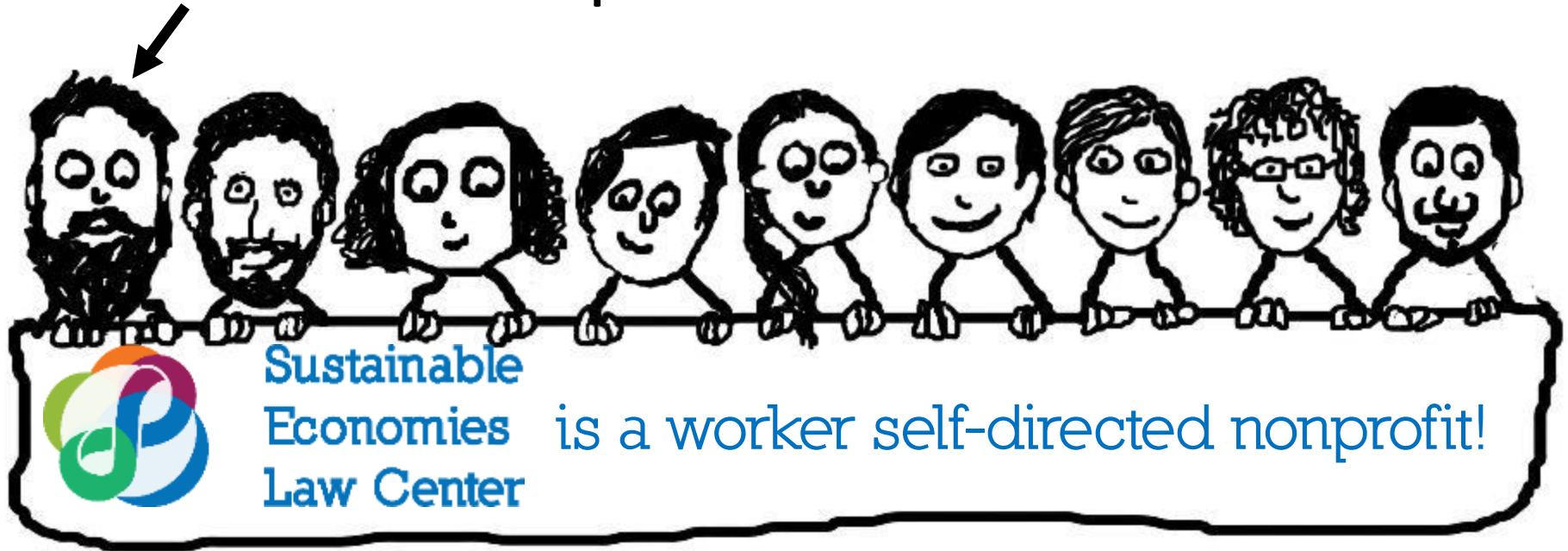


Corporations Code

"heretofore,
theretofore,
blah, blah, blah!"

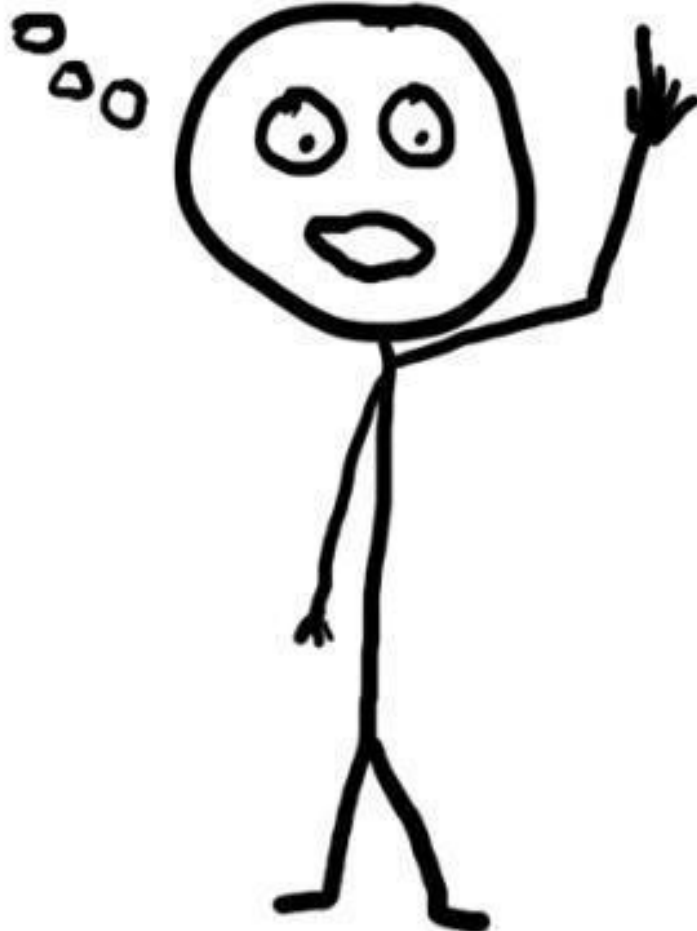


And in a few minutes,
Chris Tittle will provide details on how the



But first, some thoughts about why we think
this is an important subject! Maybe even the
beginning of a revolution...

**Whoa! Have we been going about
nonprofit governance all wrong?**





Lotsa people think
nonprofit
organizations are
slow and clunky...

Important person who raises money

Underappreciated person who keeps track of stuff

Underappreciated person who raises money

Person who evaluates things

Meeting organizer

Person who keeps track of money

Person who also raises money

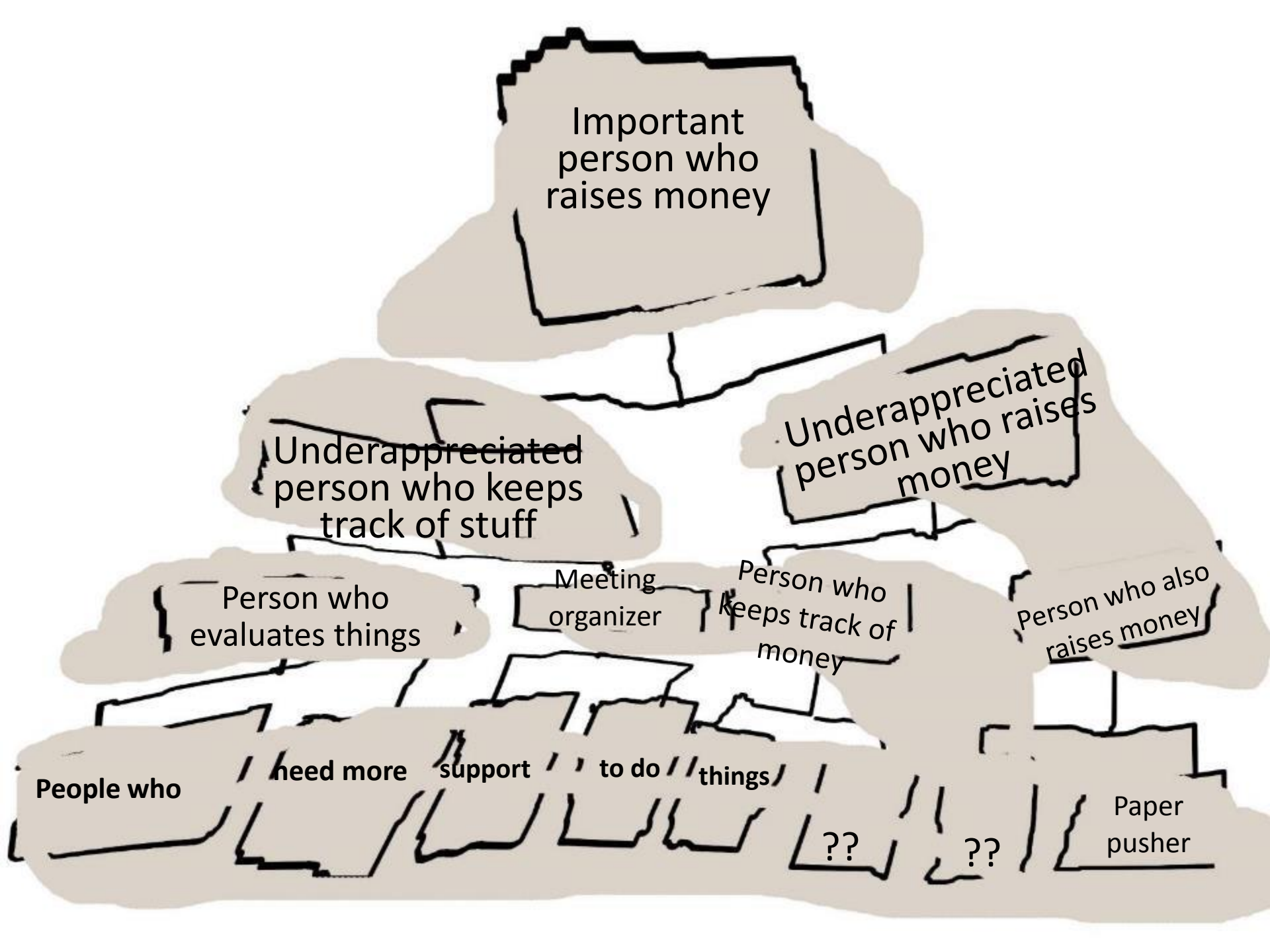
People who

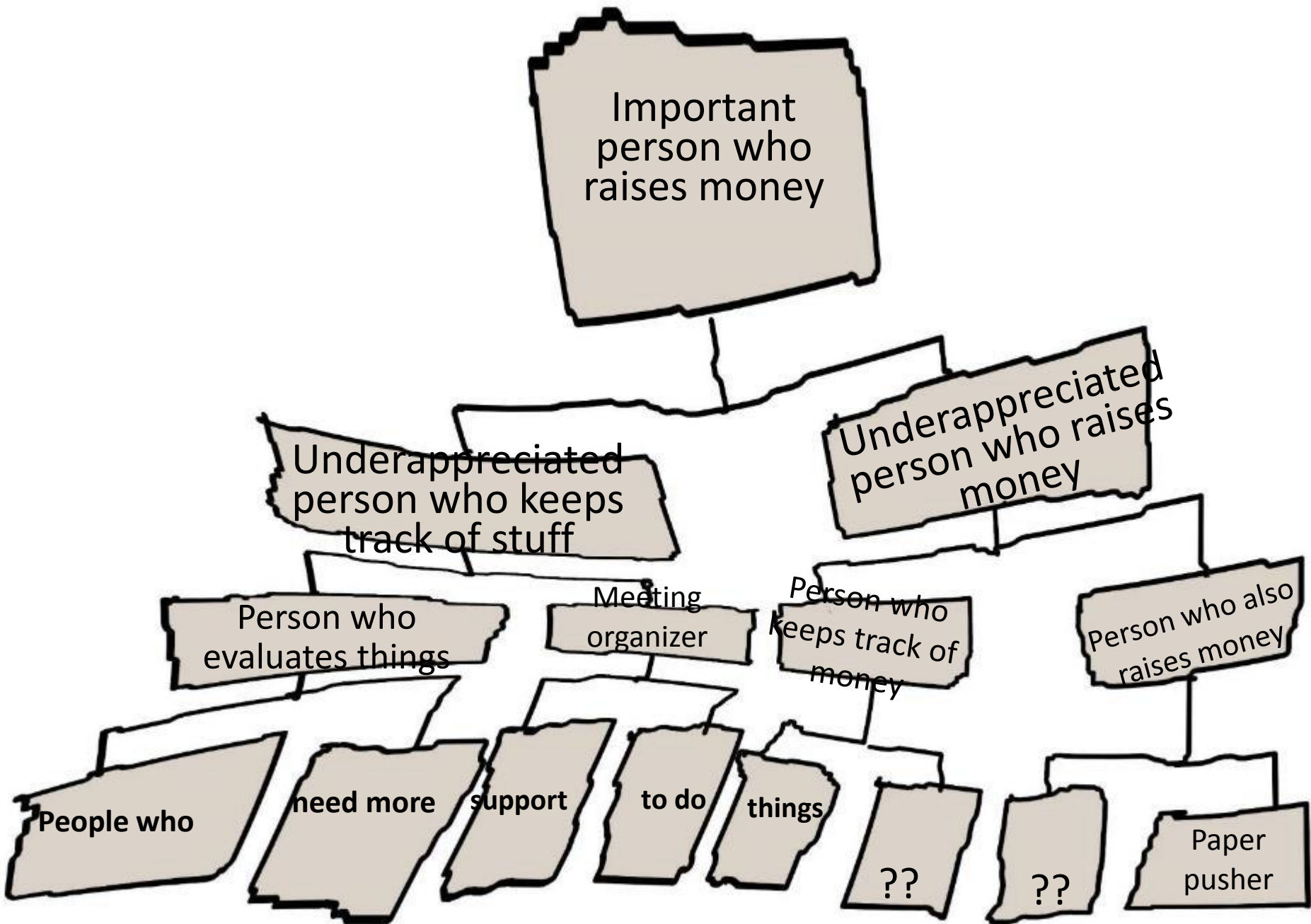
need more support to do things

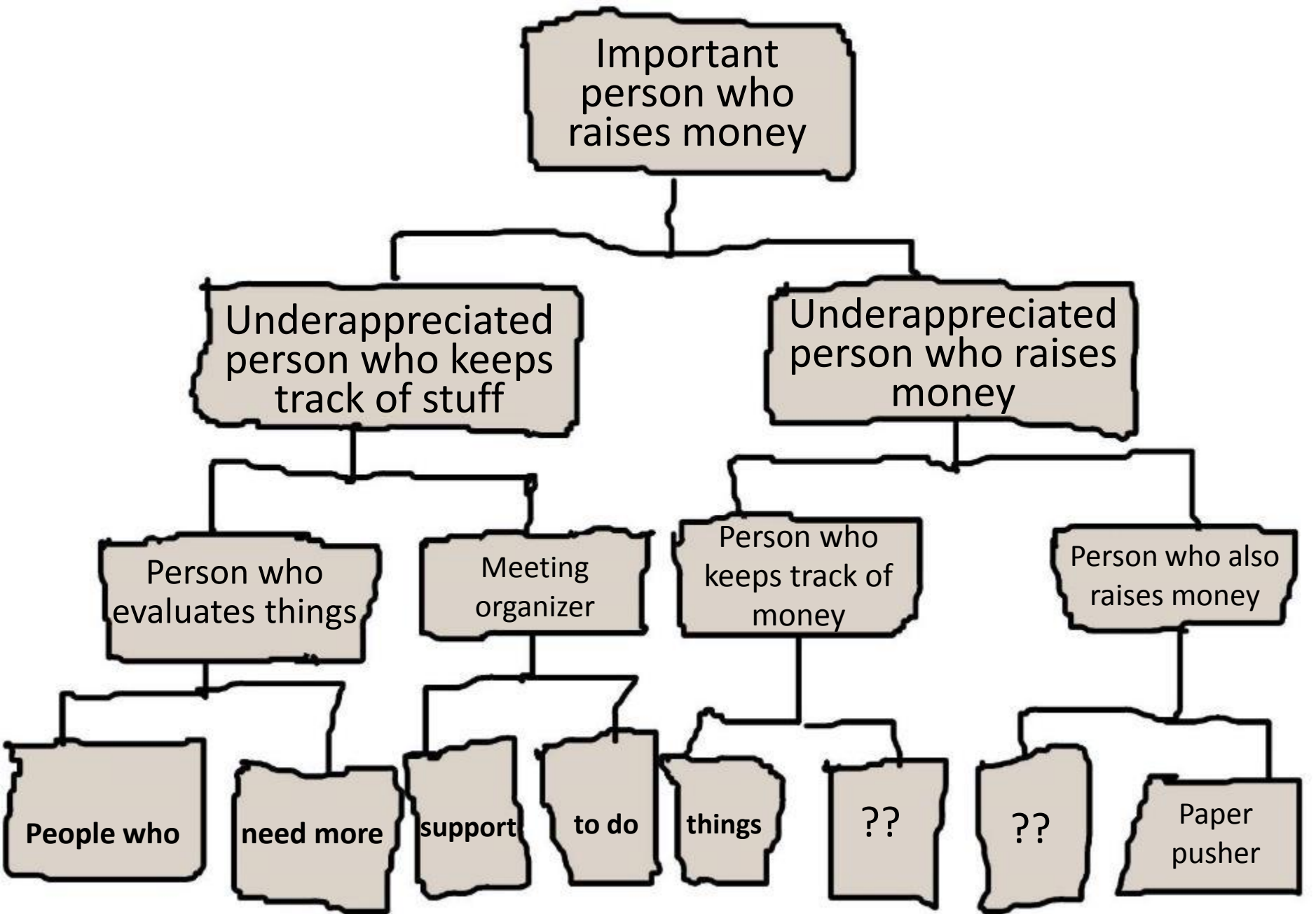
??

??

Paper pusher







**And some wisdom from
workingatanonprofit.tumblr.com:**

How I really feel during our team meetings:

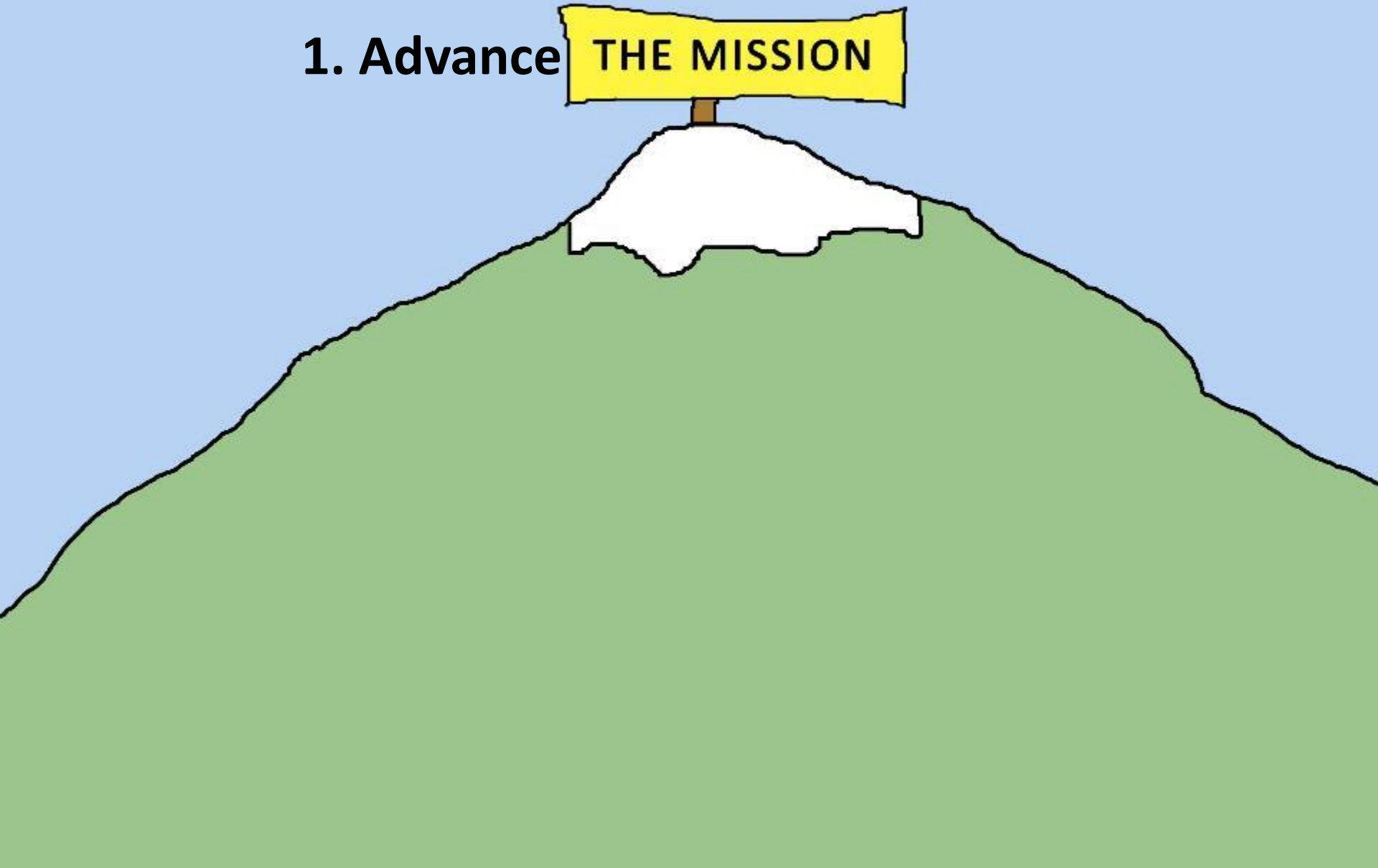




A better world

Worker self-direction can help nonprofits to:

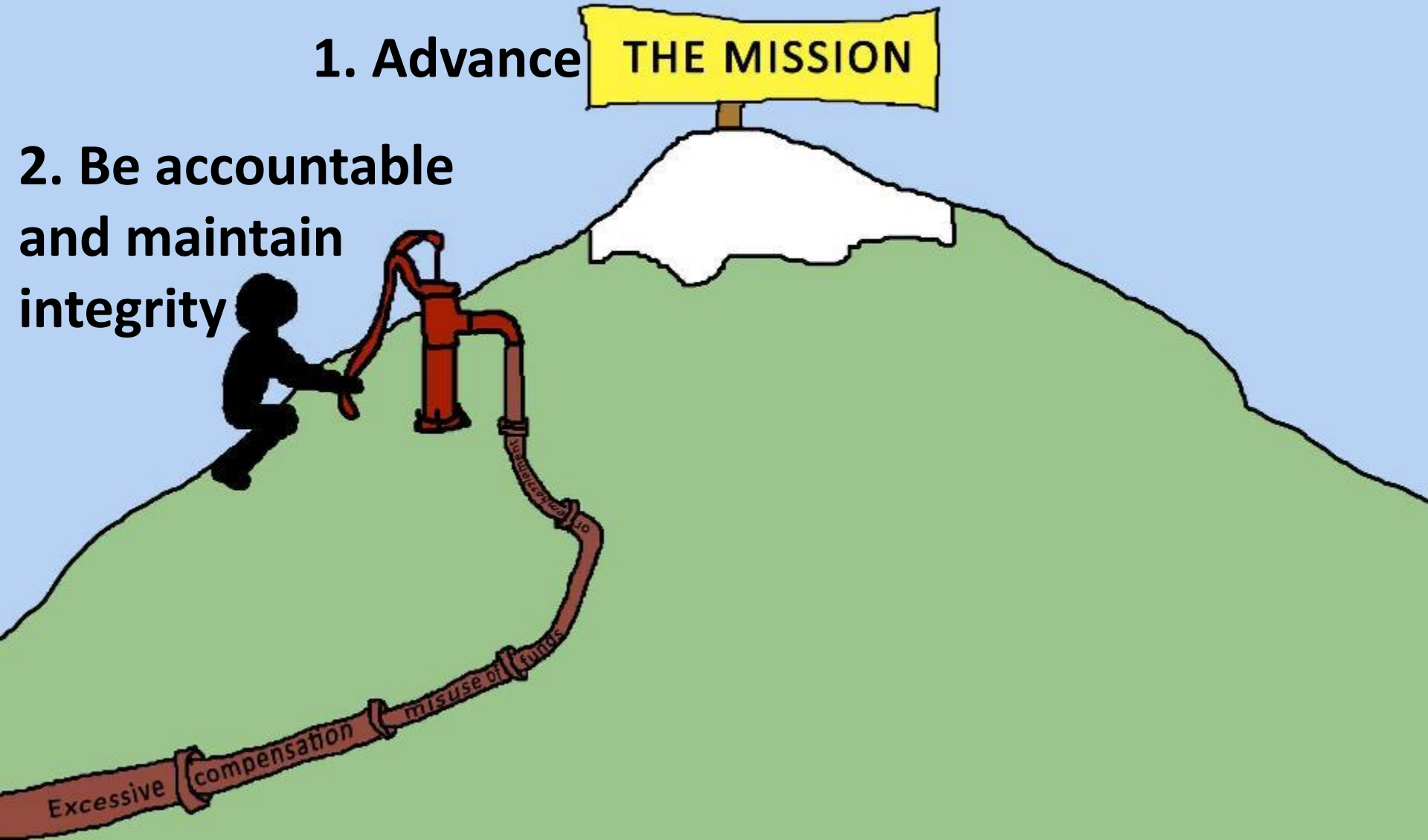
1. Advance **THE MISSION**



Worker self-direction can help nonprofits to:

1. Advance **THE MISSION**

2. Be accountable
and maintain
integrity



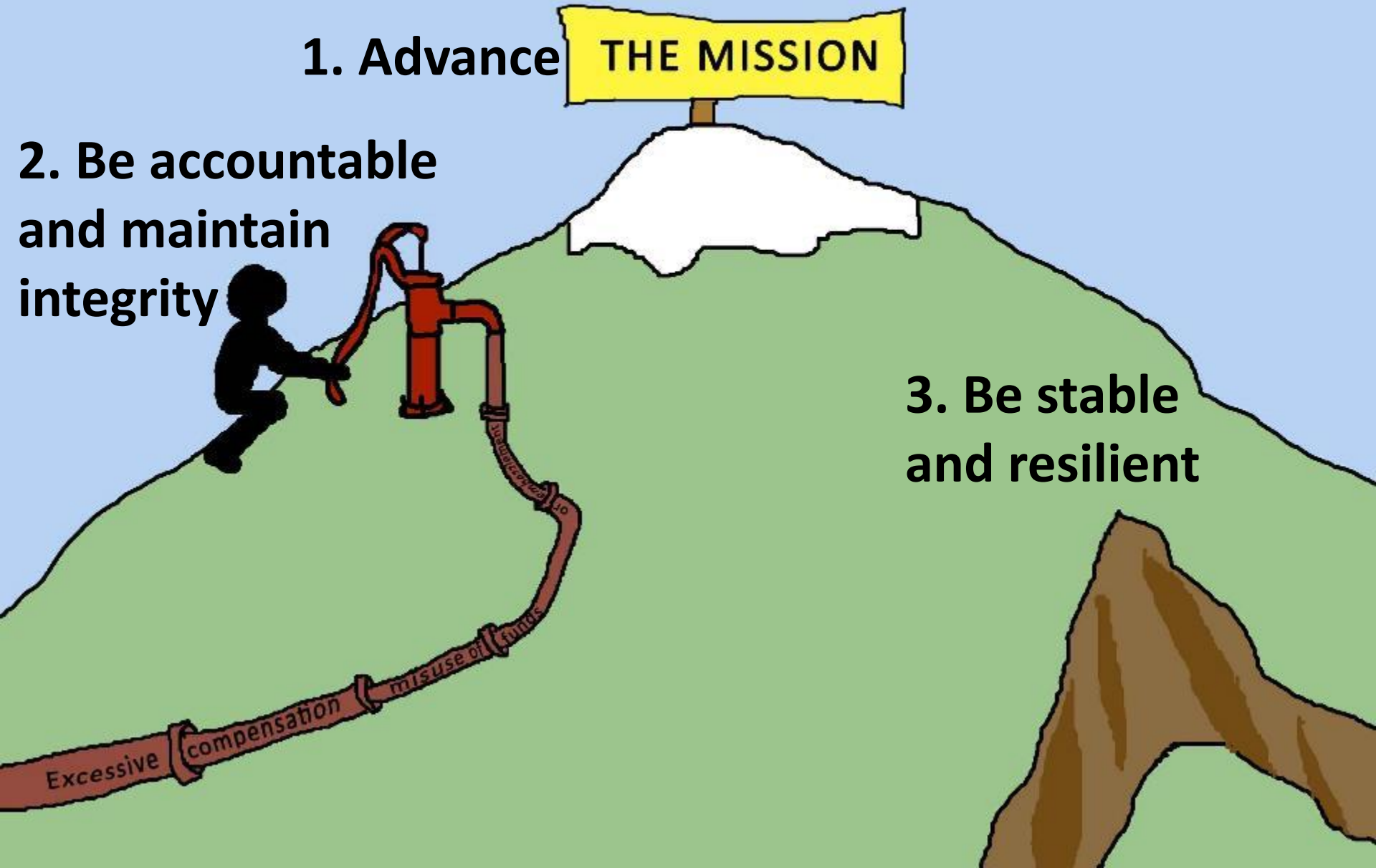
Worker self-direction can help nonprofits to:

1. Advance **THE MISSION**

THE MISSION

2. Be accountable
and maintain
integrity

3. Be stable
and resilient



Worker self-direction can help nonprofits to:

1. Advance **THE MISSION**



2. Be accountable and maintain integrity



3. Be stable and resilient

4. Be good to employees



A better world



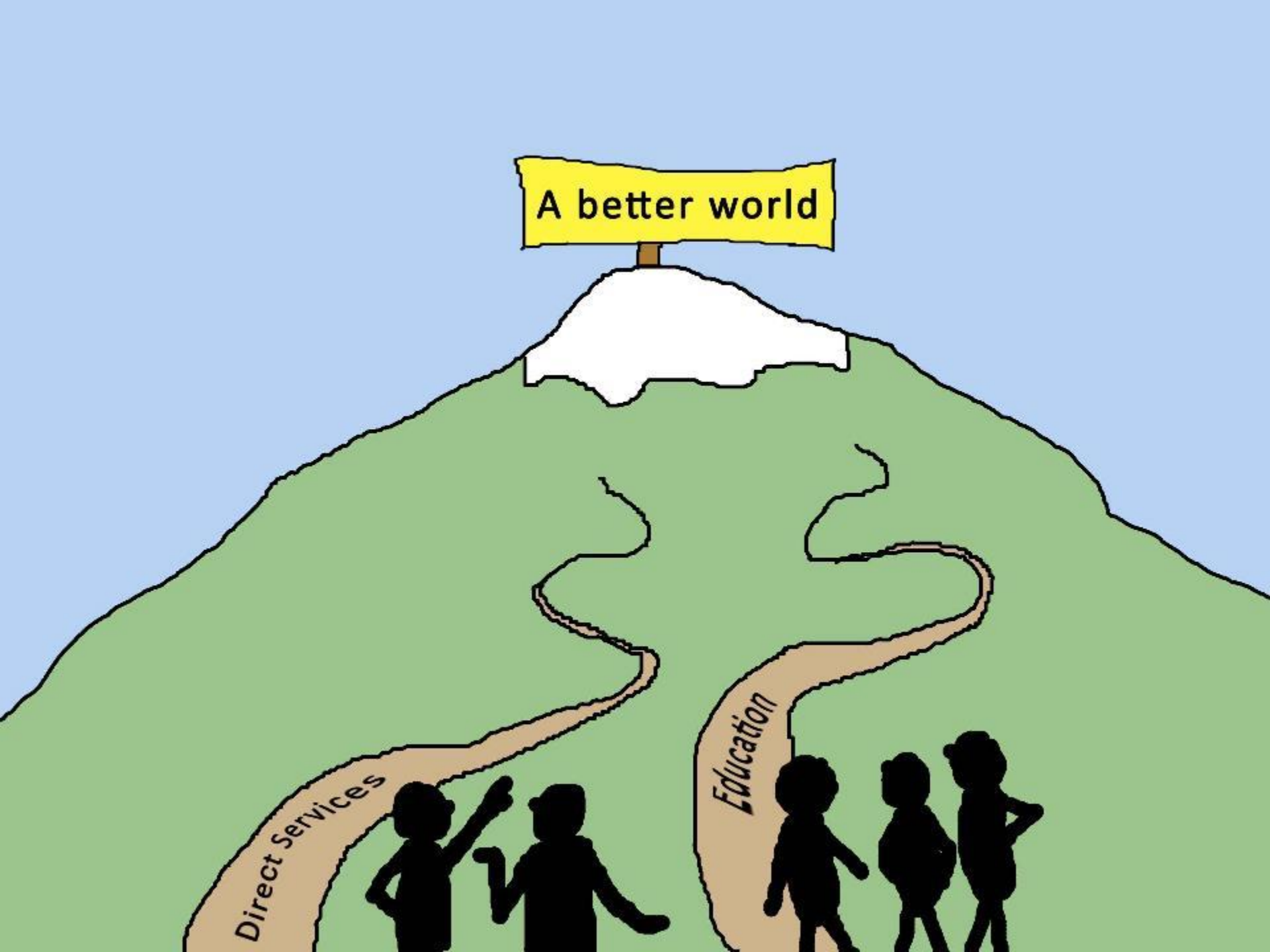
A better world

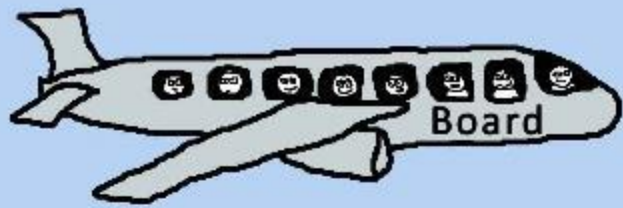


A better world

Direct Services

Education



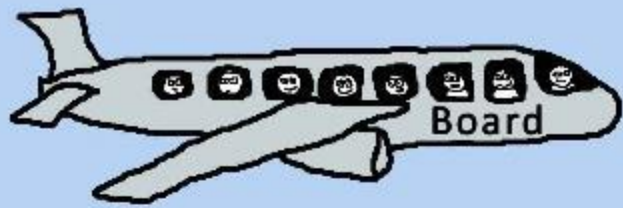


A better world

Direct Services

Education





A better world





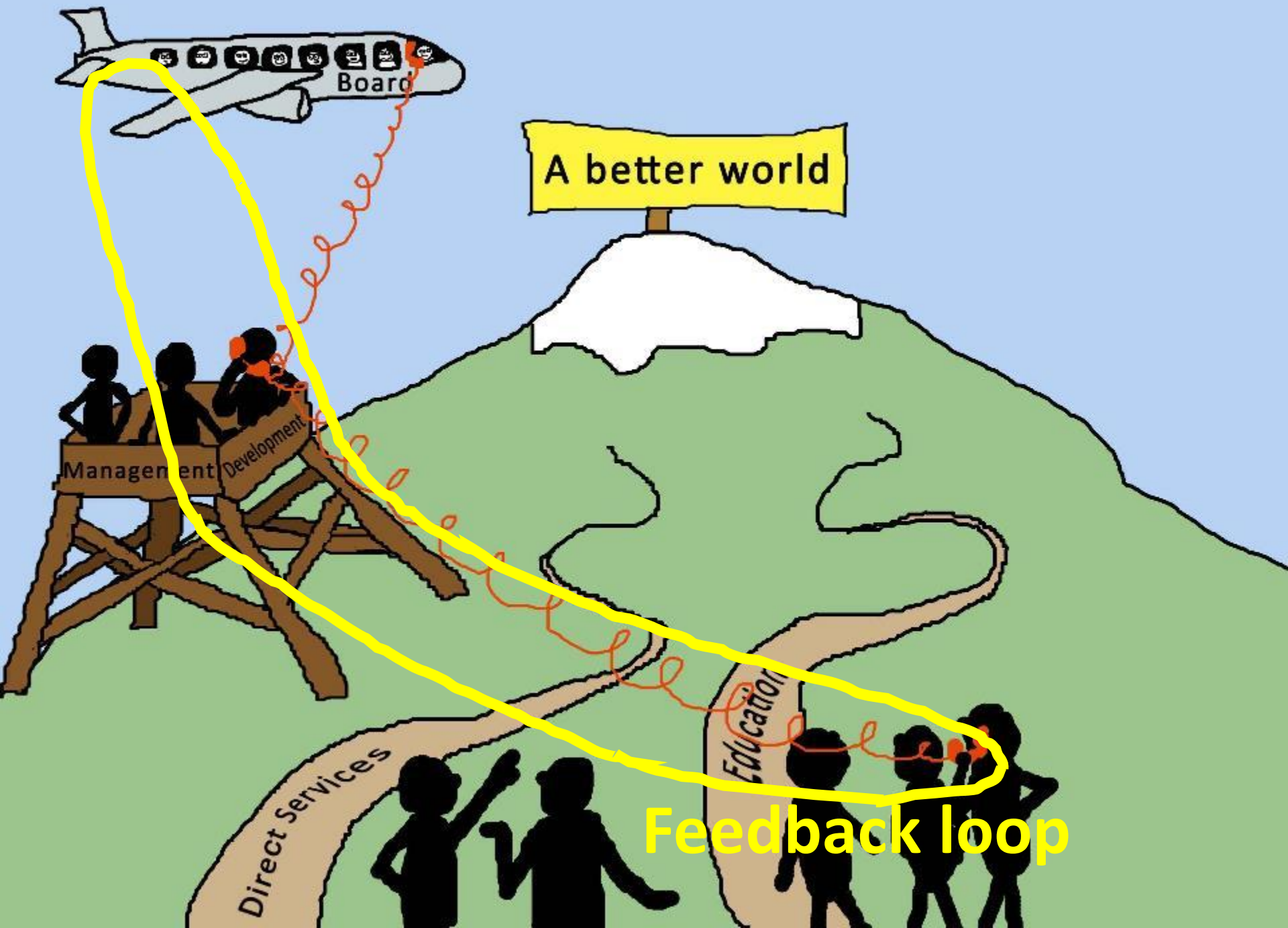
A better world

Management Development

Direct Services

Education

Board



A better world

Management

Development

Direct Services

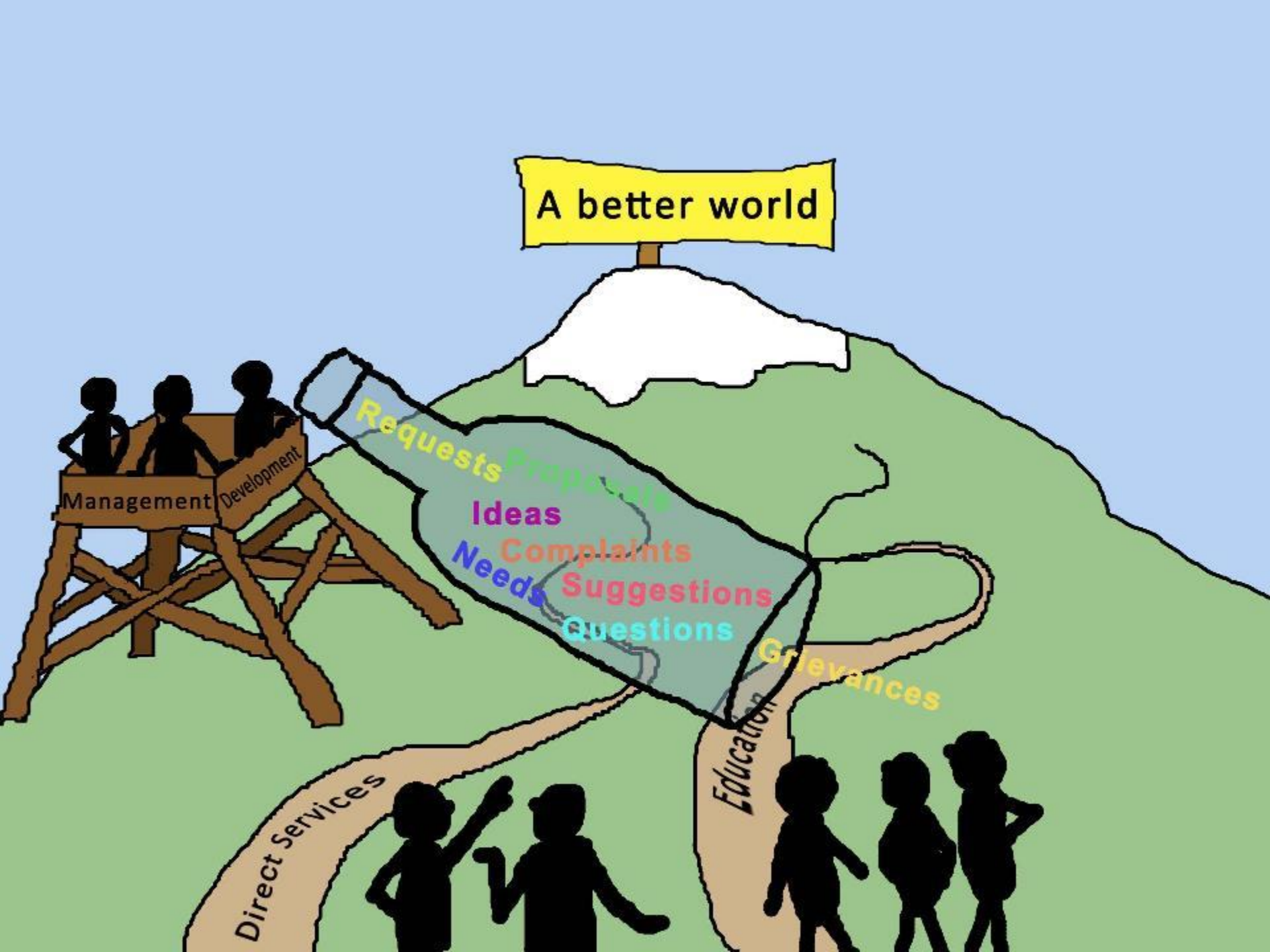
Education

Feedback loop



When something that was resolved last year becomes an issue one year later.





A better world

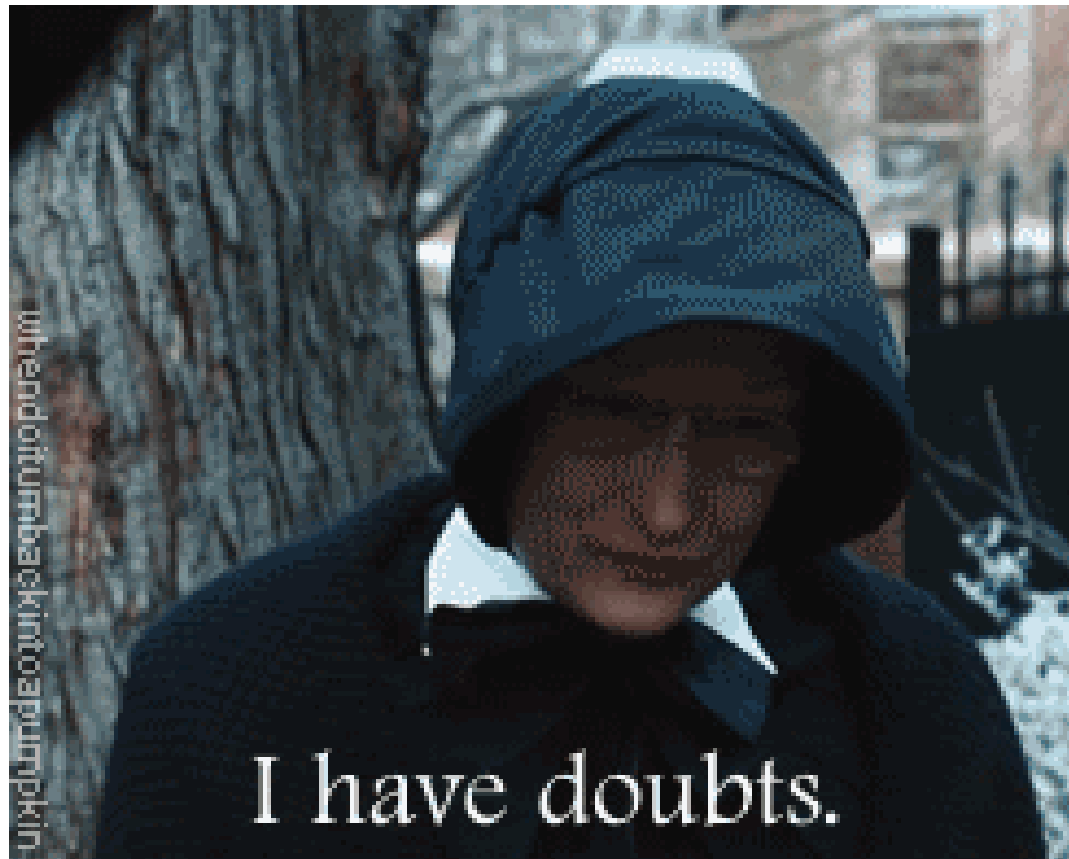
Management Development

Requests
Proposals
Ideas
Complaints
Needs
Suggestions
Questions

Direct Services

Education
Grievances

When your boss says she appreciates your feedback and is going to implement some changes.



There is too much responsibility on me. I don't get paid enough.

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Management Development

Requests

Proposals

Ideas

Complaints

Needs

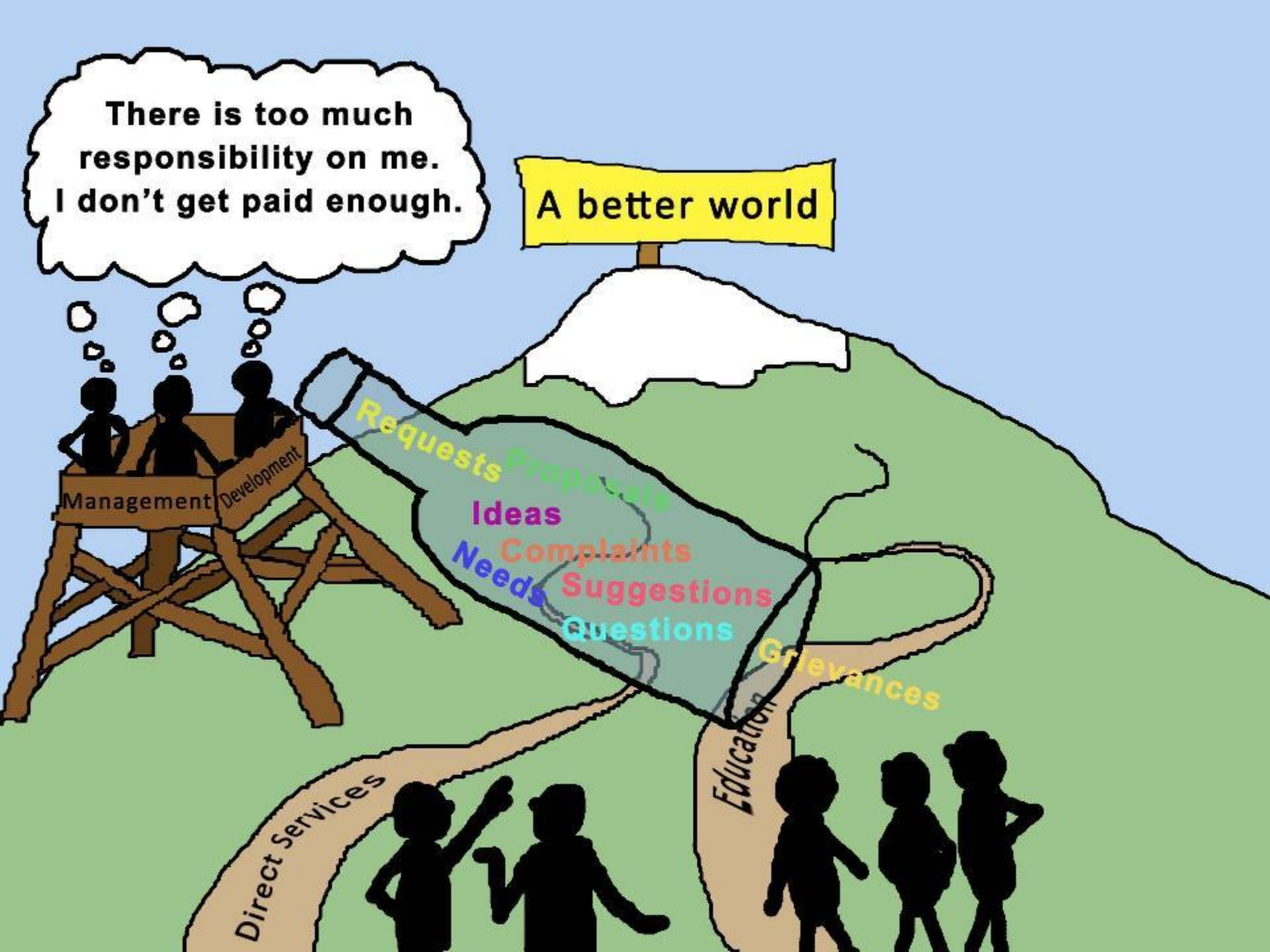
Suggestions

Questions

Grievances

Direct Services

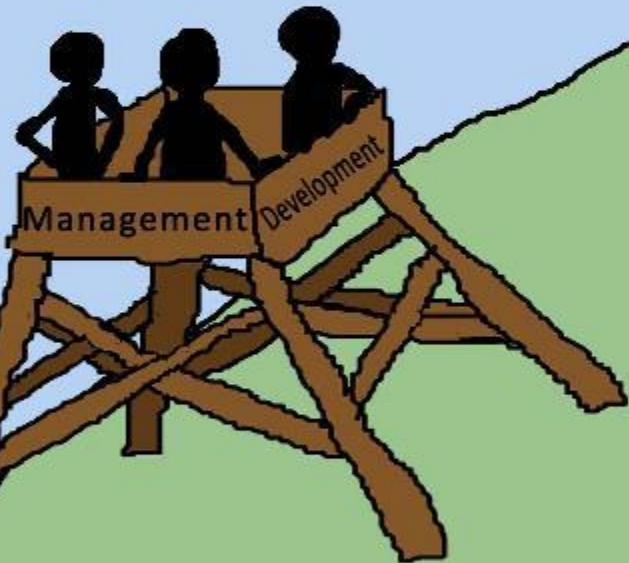
Education





Ideas
Complaints
Suggestions
Questions
Proposals
Mandates

A better world



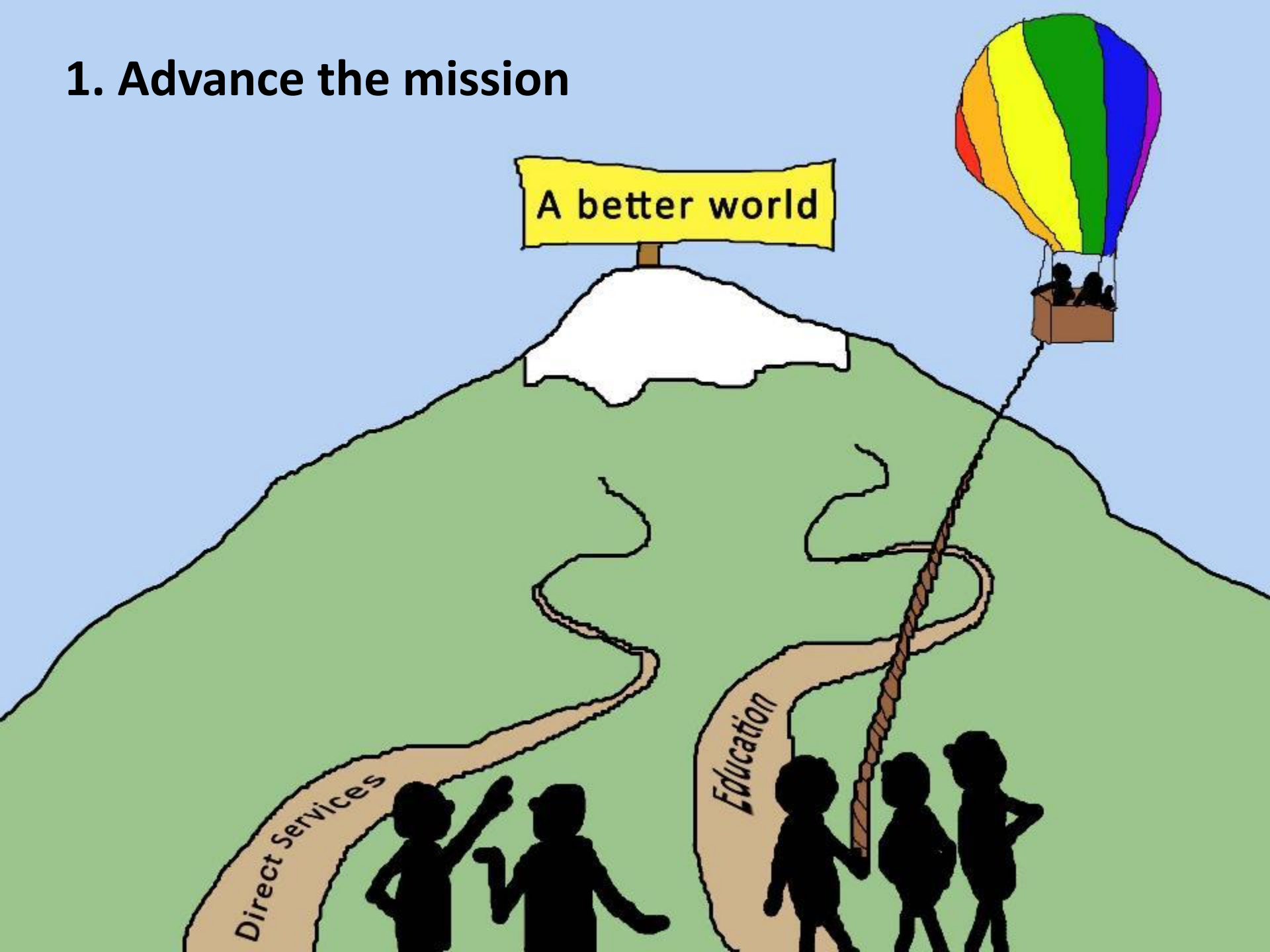
When you spend three solid weeks working on one project and your board decides they want to take the campaign in a “new direction.”



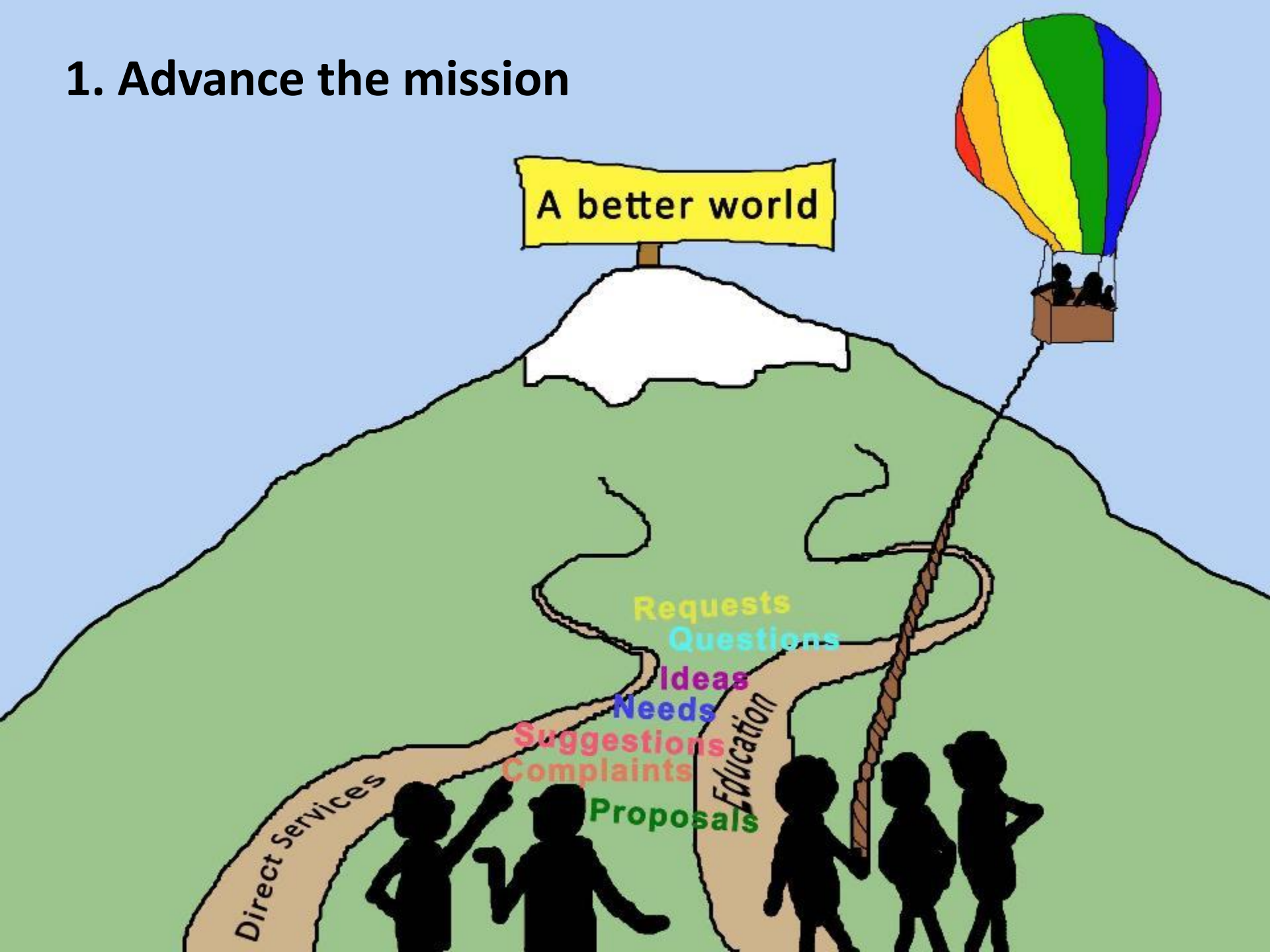
1. Advance the mission



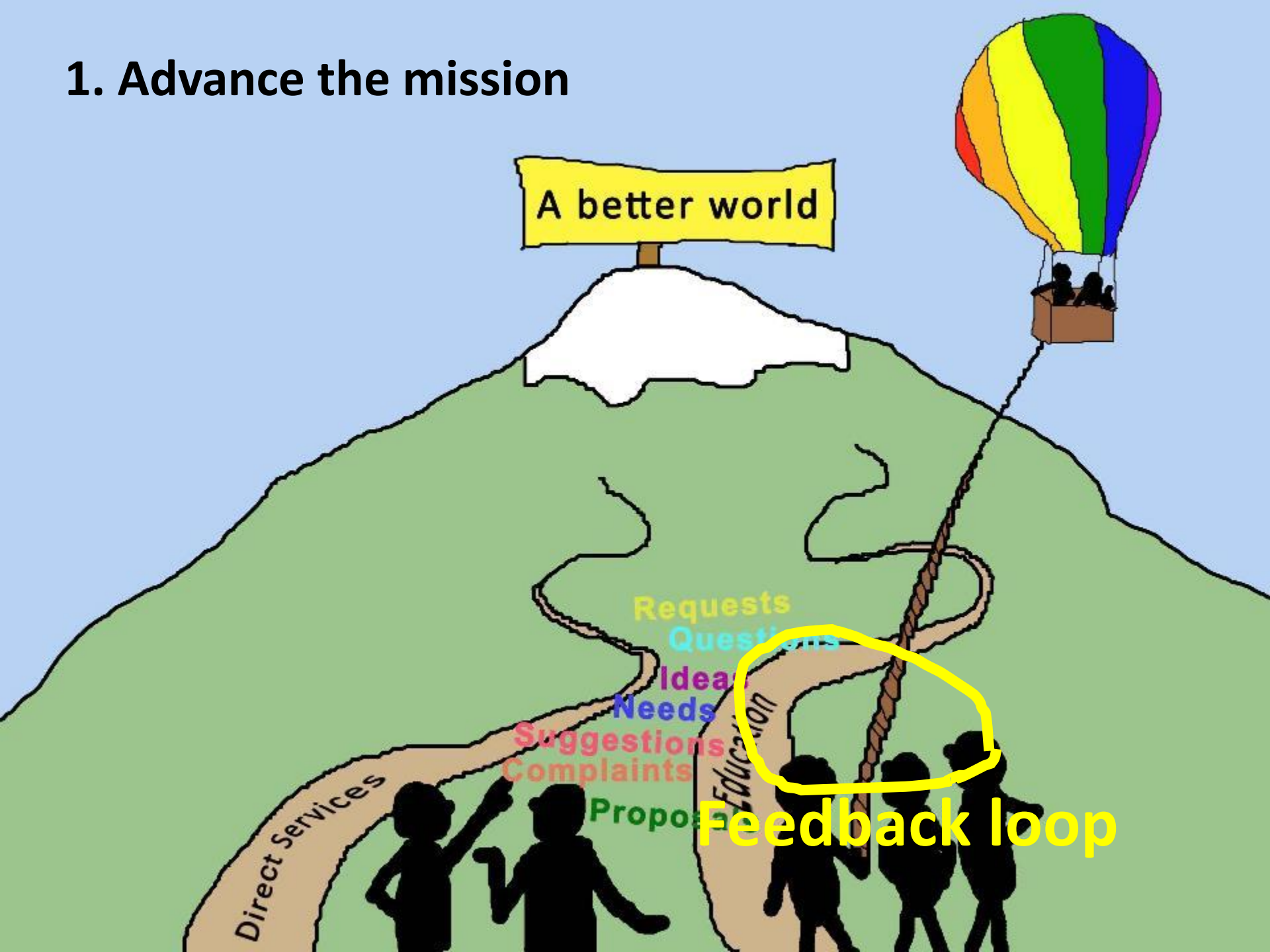
1. Advance the mission



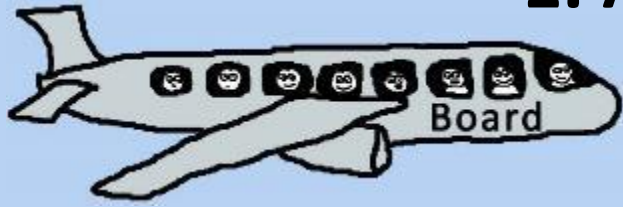
1. Advance the mission



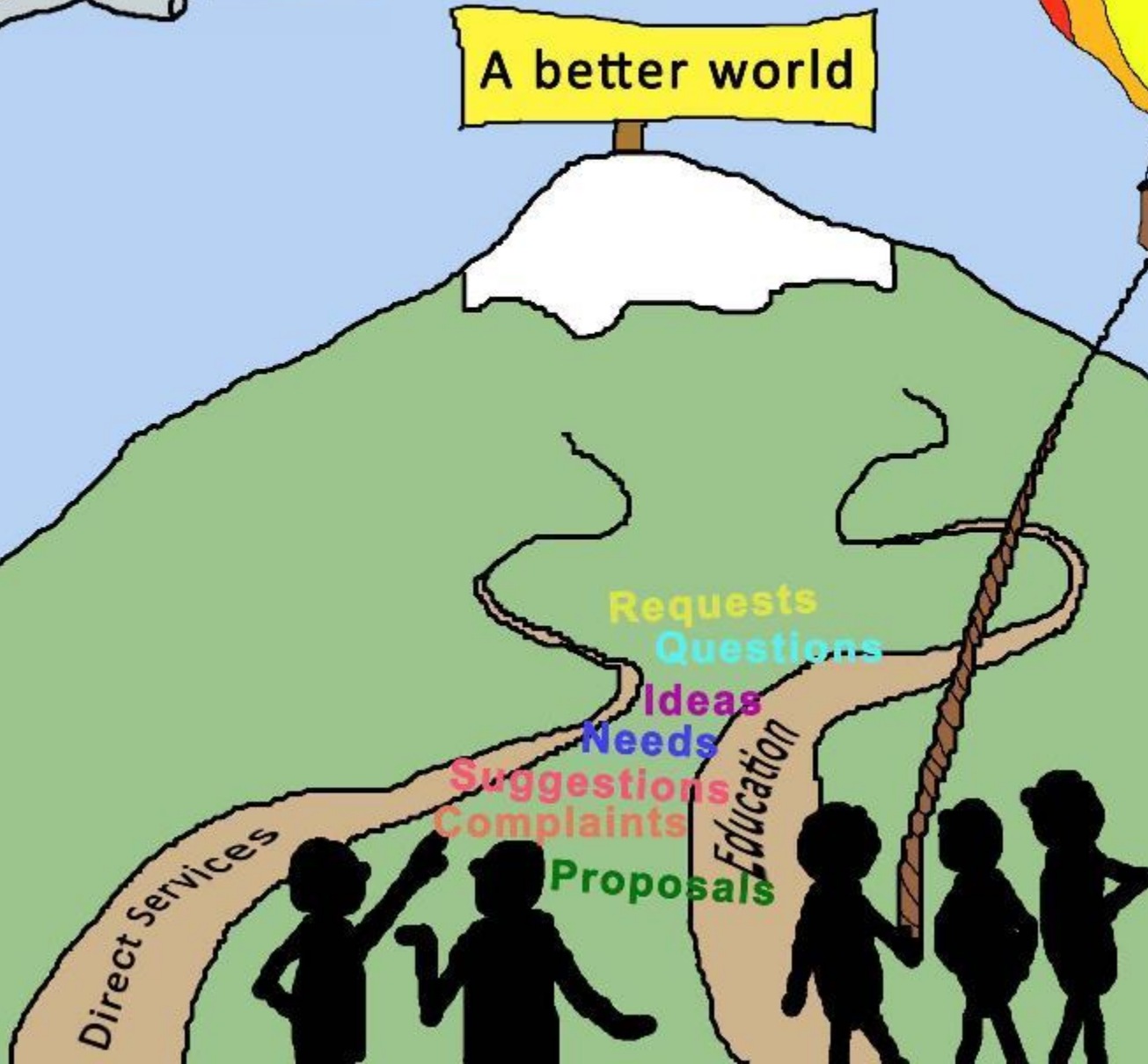
1. Advance the mission



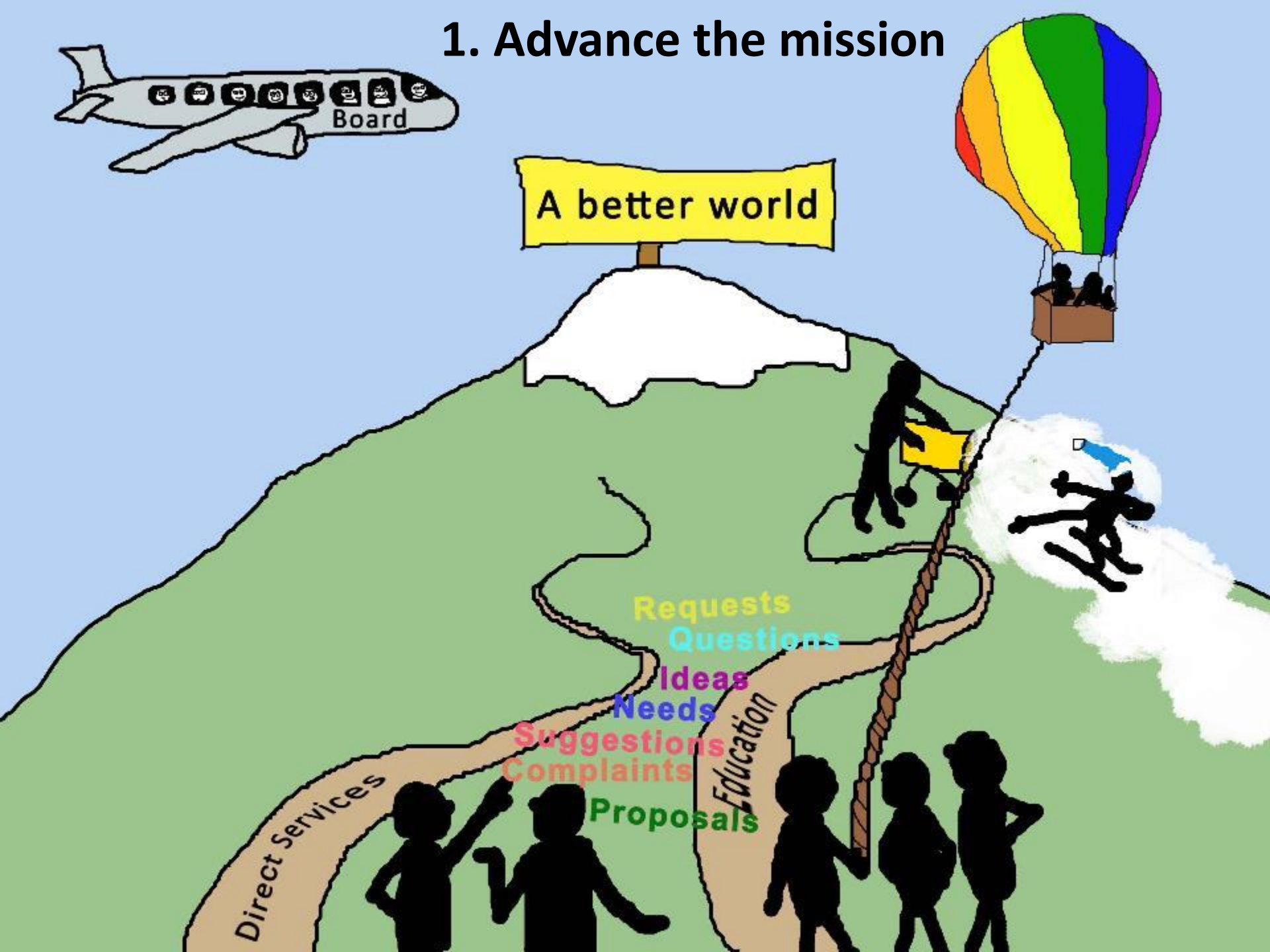
1. Advance the mission



A better world



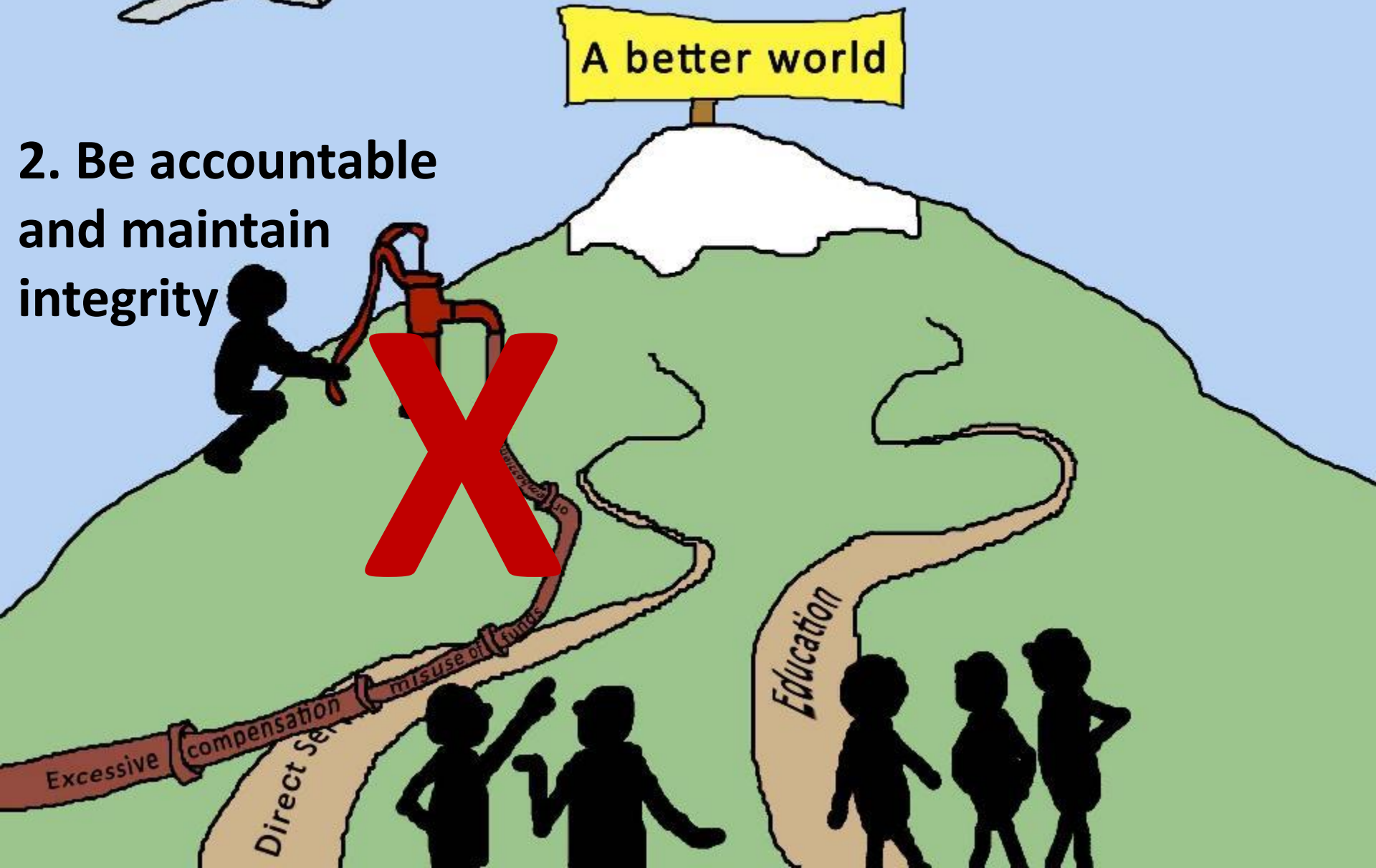
1. Advance the mission





A better world

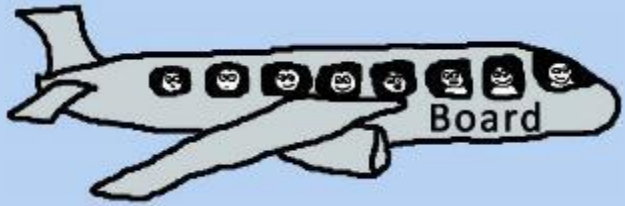
2. Be accountable
and maintain
integrity





A better world

**3. Be stable
and resilient**



A better world

**3. Be stable
and resilient**



A simple illustration of a green mountain with a white snow-capped peak. At the top of the peak is a yellow sign with a black border that reads "A better world". The background is a solid light blue color.

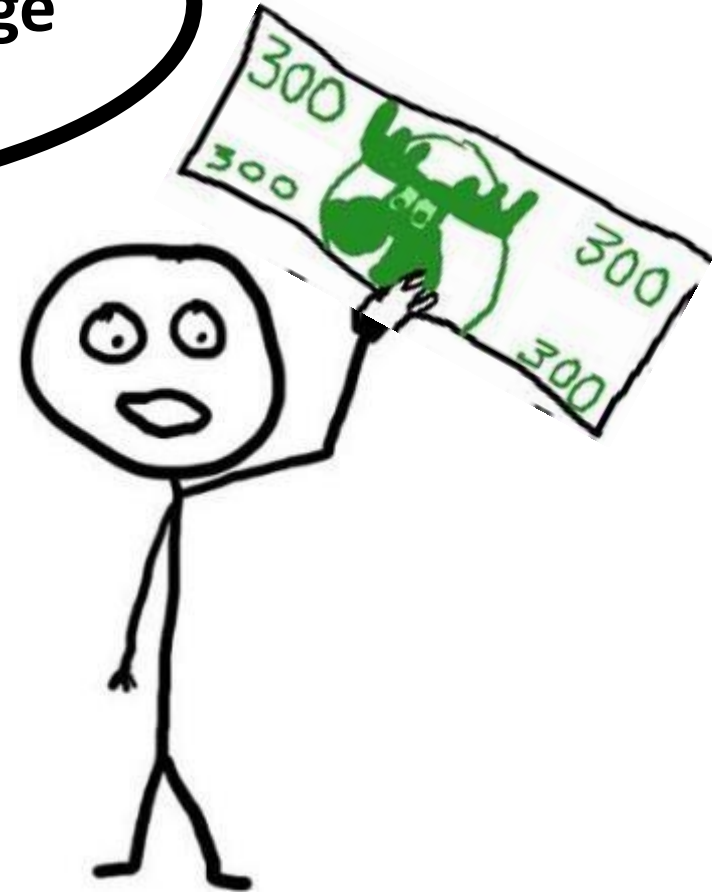
A better world

4. Be good to employees



What motivates people to work in the nonprofit sector?

I can make three times as much money as the average person!



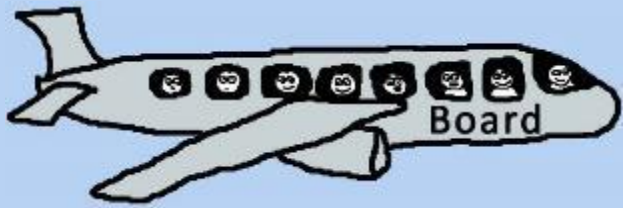
I want **satisfying work**, in a place where **my voice matters**, I have **control** over my work, I **learn and grow**, I can use my **creativity**, build **community**, advance **equity**, and have **fun!**

Best
accomplished
through worker
self-direction?



**Everyone is
behind a wheel!**





A better world

4. Be good to employees



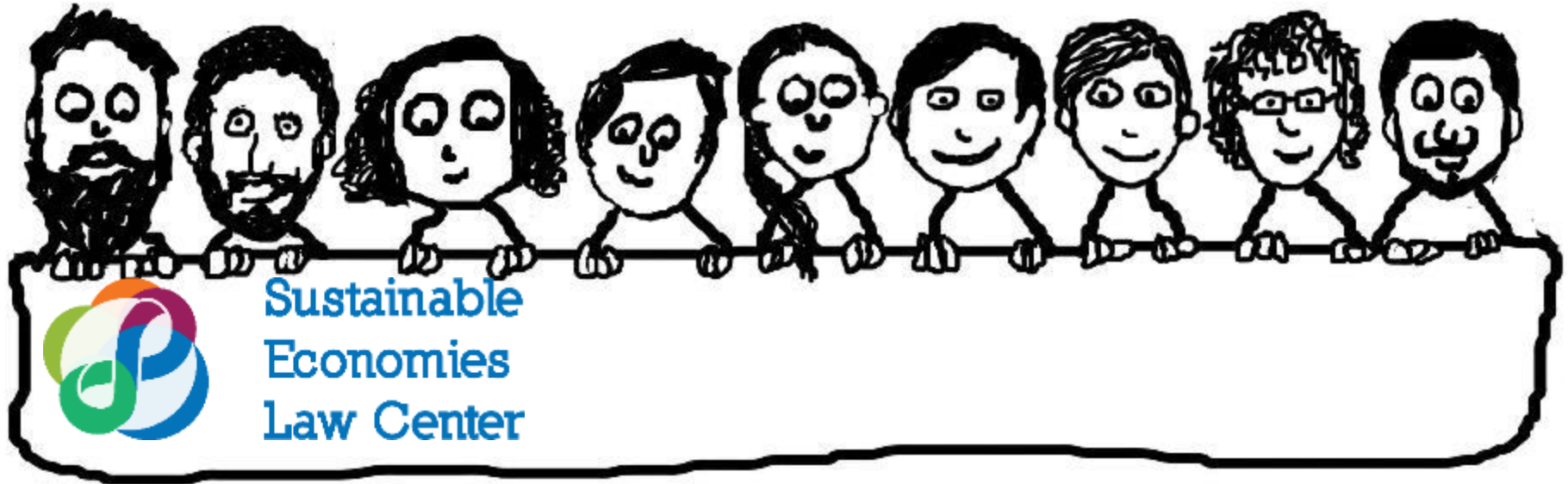
Beware of the Tyranny of Structurelessness Rex



There are already millions of nonprofits, and new nonprofits forming every day!

Let's see if worker management can make many of them more effective!

So, how has SELC done this?



Worker self-direction can help nonprofits to:

1. Advance

THE MISSION

Governance

2. Be accountable
and maintain
integrity

**Transparency and
Accountability**

3. Be stable and resilient

Communication

4. Be good to employees

Staff Rights & Responsibilities





Distributed Governance

Liberating Work Schedule

Open Communication

Collective Decision-making

Transparency

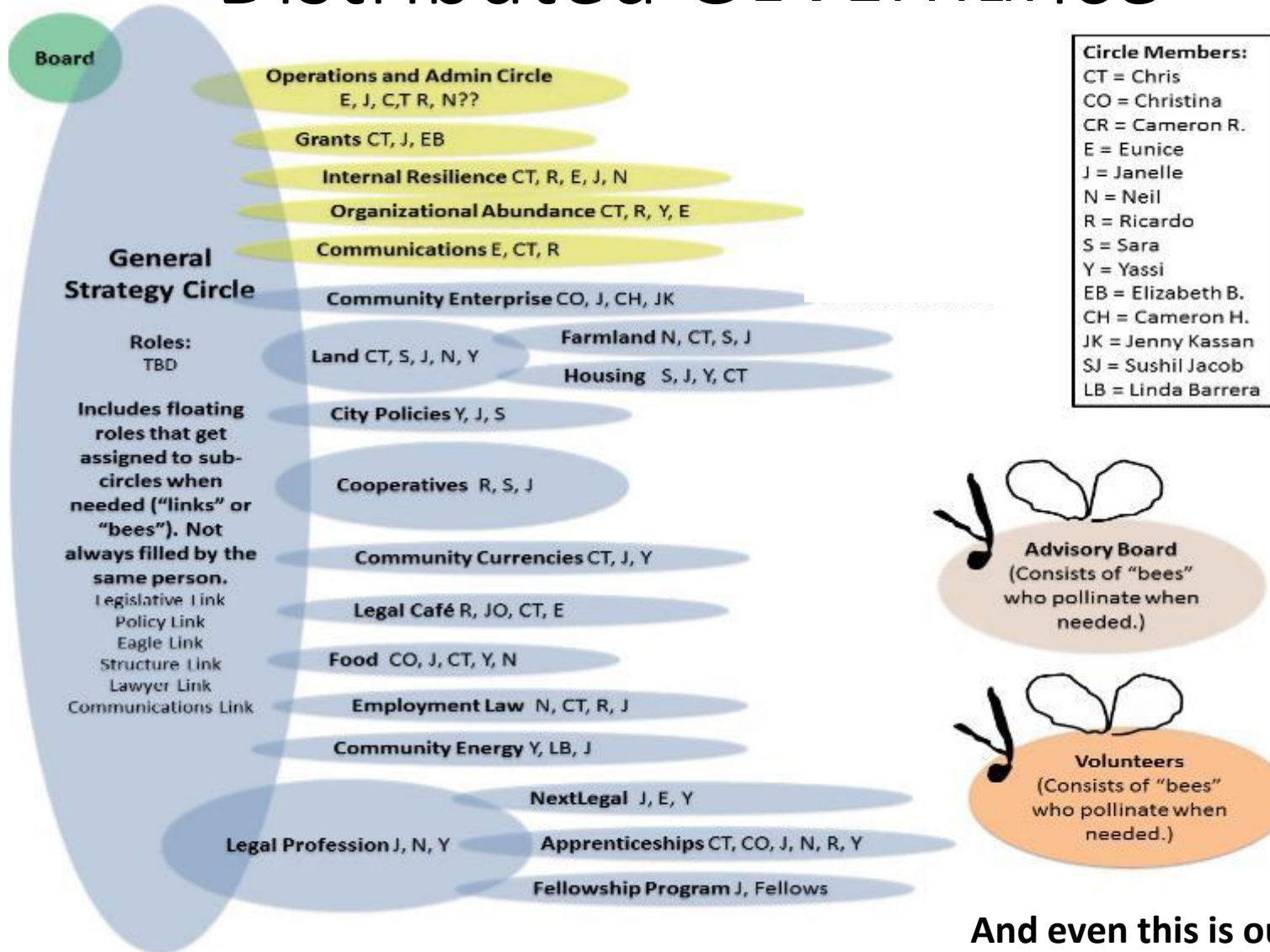
Dynamic Roles

Ethos of Upskilling

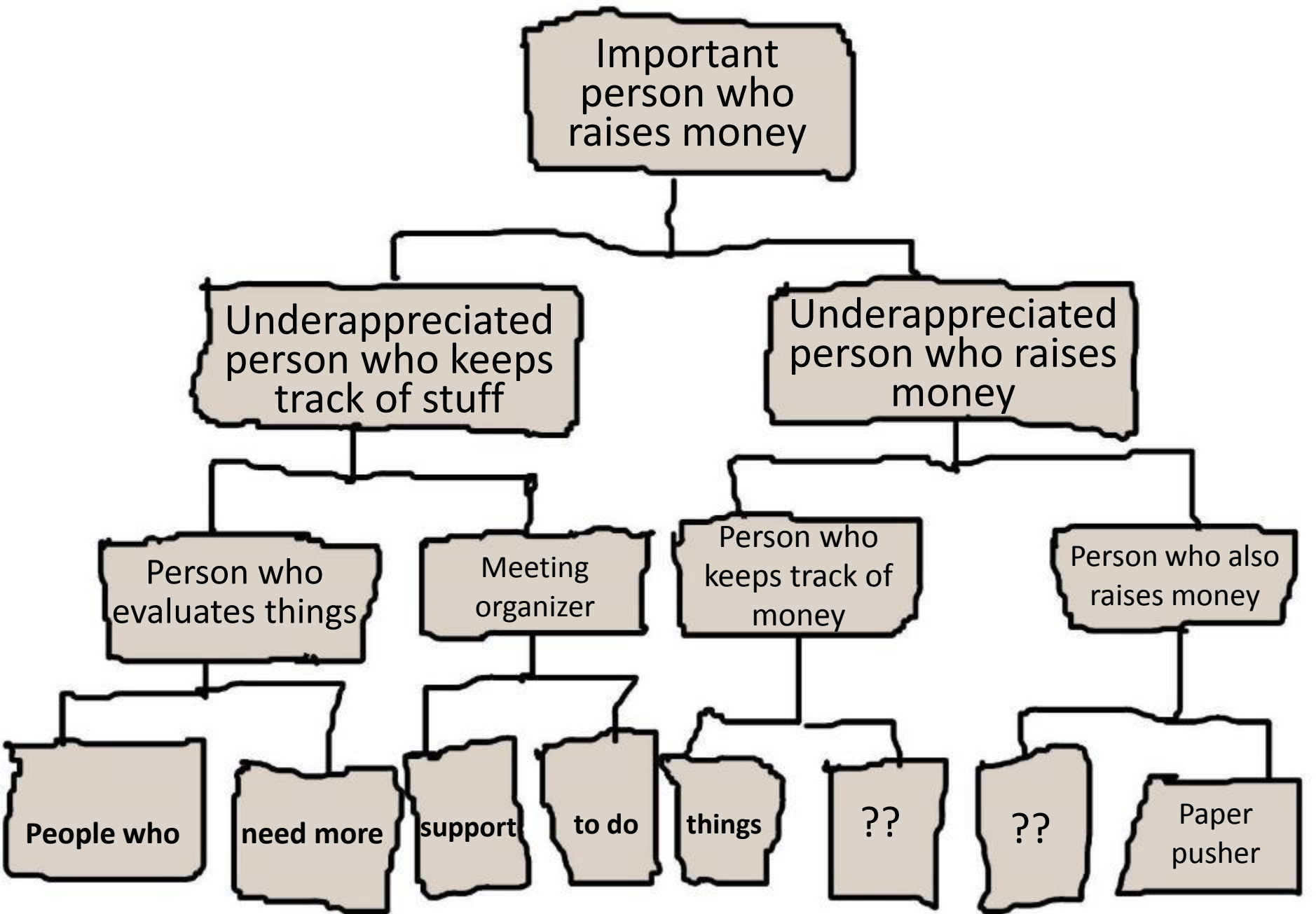
Pay Rate

Governance, Decision-making, & Meeting Processes

Distributed Governance



And even this is out of date....



Meetings don't have to be like this:

That reminds me
of something related
that happened when
I was a kid.....

**OMG! What
time is it???**



Highly Structured Meetings!

- **Everyone Has a Voice:** Most meetings are held by going in a series of circles, which helps to ensure that everyone has a voice.
- **Keeps Personality Politics at Bay:** The high level of structure keeps personality politics from dominating organizational culture, and keeps individuals from taking up too much space with too much talking.
- **Different Meeting Process for Different Types of Meetings:** Governance meetings, strategy meetings, and tactical meetings.

With well-defined meeting processes, they could actually look like this...



Beware of the Tyranny of Structurelessness Rex



Staff roles, Responsibilities, & Rights

Dynamic Roles

Each person in the organization fills multiple roles and can move in and out of the roles somewhat flexibly, rather than filling a single position with a single job description. Within a role, people have a lot of autonomy.

Role:

Accountable to:

Recycling

Building Management Circle

Grant Writer

Fundraising Circle

Cartoonist

Communications Circle

Window Washer

Building Management Circle

Legal Advice

Legal Services Circle

Happy Hours

Fun Circle



Ethos of Upskilling



Liberating Work Schedule

- 30 Hour Work Week
- Flexible Work Hours
- Free Time Off policy



Transparency & Accountability

Accountability to a wider community

Advisory Board



GREG JACKSON
Law Student, Radio
Show Producer at
KPI-A & KPI-B



STACY SULLIVAN
Policy Director,
Sustainable
Conservation



GOPAL DAYANENI
Staff Member,
Movement
Generation



JENNY KASSAN
CEO, Cutting Edge
Capital; President,
Community Ventures



LINDA SHEEHAN
Executive Director,
Earth Law Center



JOHN FARRELL
Director of Demo-
cratic Energy,
Institute for Local
Self-Reliance



MICHAEL SHUMAN
Economist, Attorney,
Author of *The Local
Economy Solution*



DAVID BOLLIER
Policy Strategist
and Author of
*The Wealth of the
Commons*



HANK HERRERA
President & CEO,
Center for Popular
Research, Education
& Policy

See full bios
and more
information
about our
board
members
here.

Financial Transparency

- Food
- Cooperatives
- Community Enterprise
- City Policies
- Community Currencies
- Community Renewable Energy
- Rethinking Home
- Work in the New Economy
- Legal Profession in the New Economy

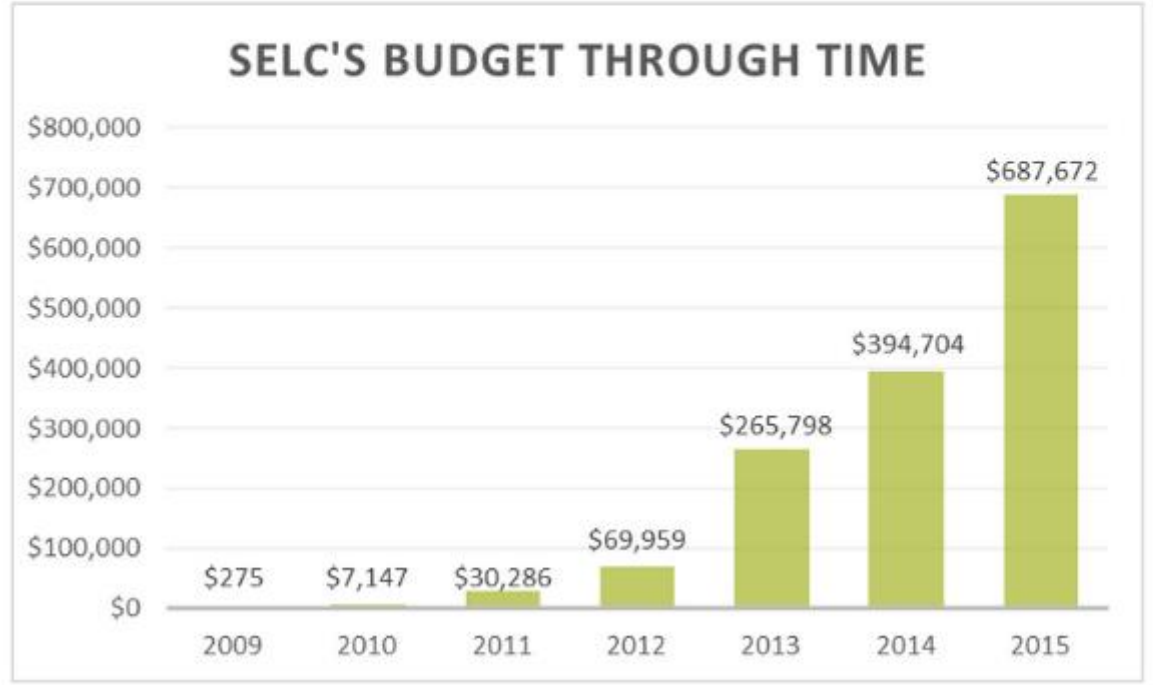
DONATE

eResources Libraries



Financial Transparency

SELC values transparency and we want you to know that we use our funds mindfully, even while the organization has grown over the past five years. Here are some charts to help you understand SELC's growth, fundraising goals, and how we spend our money:



Equal Pay



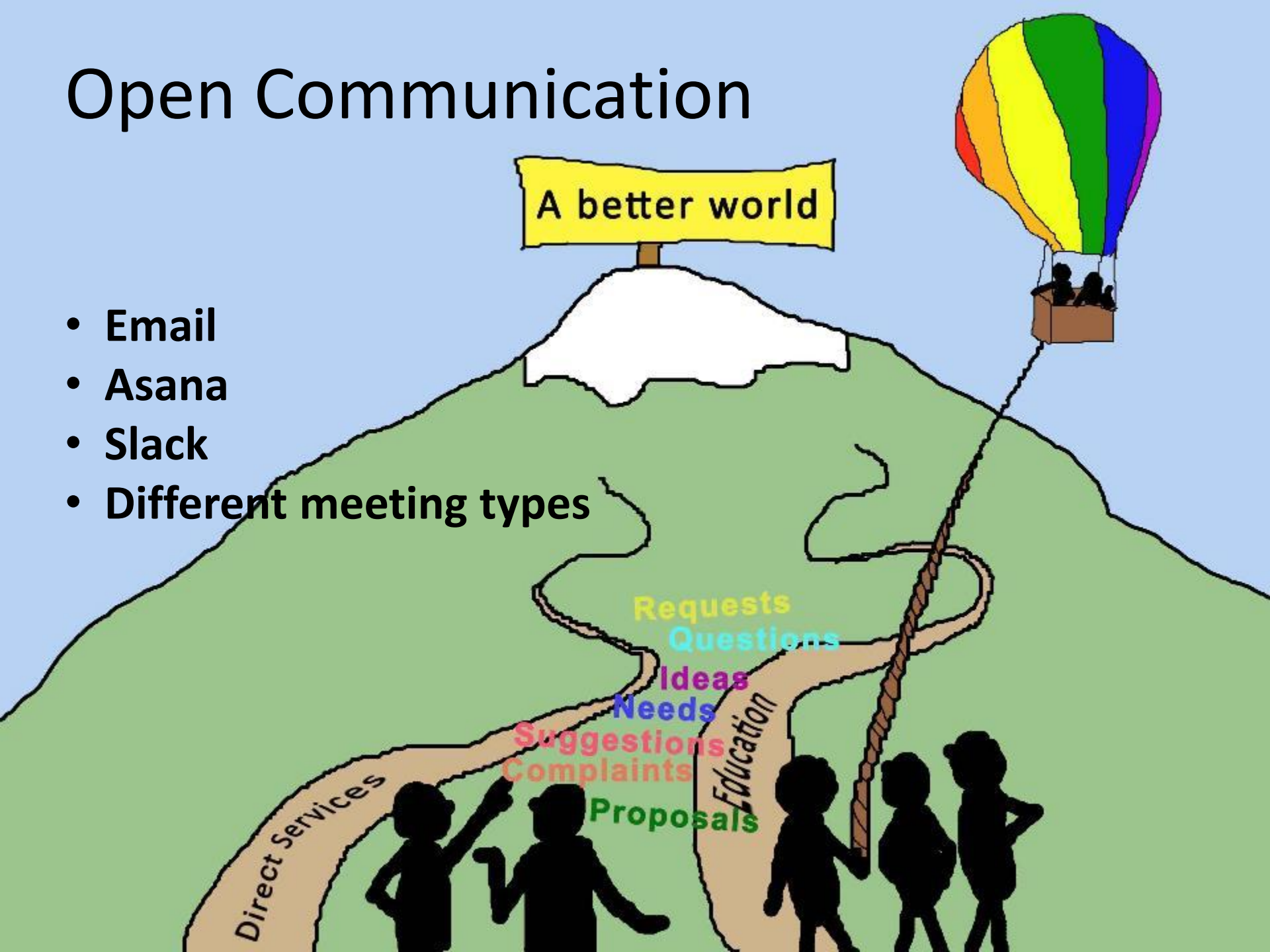
Internal Communication

Accountability to each other

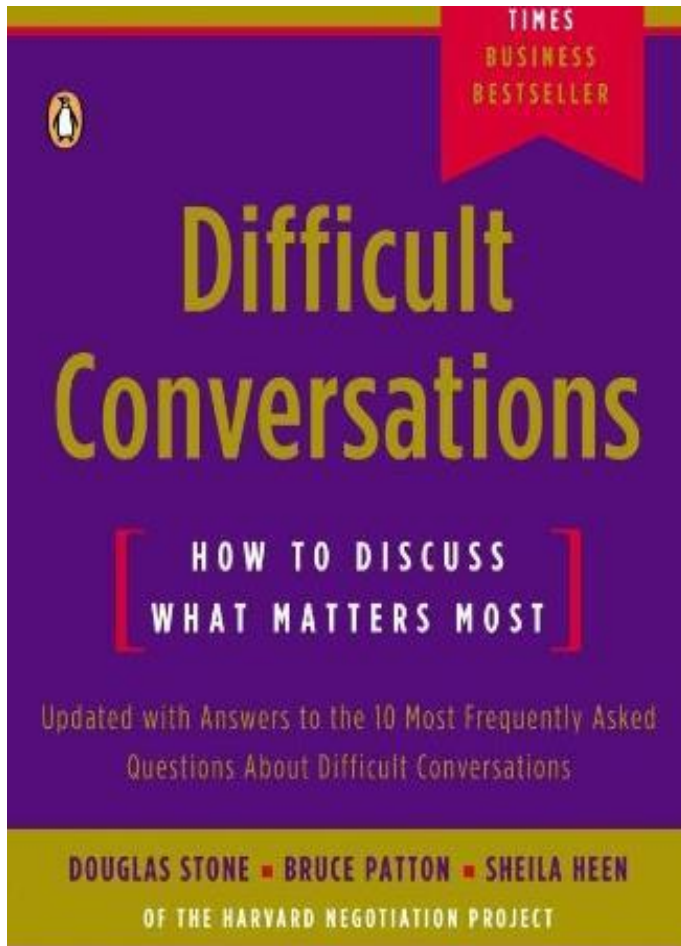


Open Communication

- Email
- Asana
- Slack
- Different meeting types



Open Communication



- “Collective Inquiry” process
- Conflict Resolution Team
- Peer Review Process
- Restorative Justice/Anti-
Oppression Trainings

And now,
the law...

What law?

- **Corporations law** – specifically, the code that governs your type of nonprofit corporation, and the cases that interpret it.
- **Tax law** – specifically, the code that governs your tax exemption, like section 501(c)(3) and related regulations, and the cases that interpret it.

Why you should worry about the law:

- Directors and officers can get sued if they don't fulfill their duty of care
- Directors and officers can get fined
- The corporation could lose its tax exemption
- The corporation could be fined

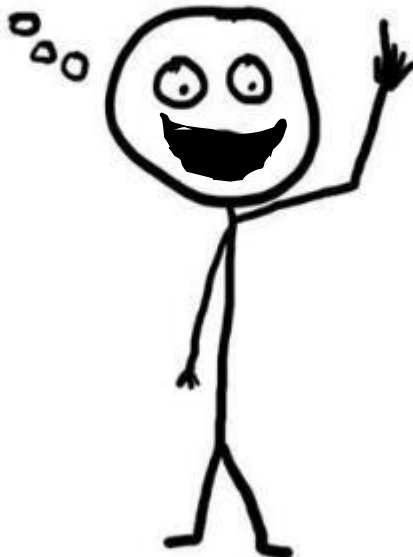
Some legal questions:

1. How much can the Board delegate its duties?
2. What are the legal mechanisms for giving power to workers?
3. What kind of oversight must the Board continue to provide and how?
4. What are the limits on involving “interested persons” in the governance of the organization?
5. How to identify and navigate conflicts of interest?

Stuff your corporations code might say:

(a) A director shall perform the duties of a director [...] in good faith, in a manner that director believes to be **in the best interests of the corporation and with such care**, including **reasonable inquiry**, as an **ordinarily prudent person in a like position would use under similar circumstances**. (CA Corporations Code 5231)

Worker self-governance is super prudent!
We have data to prove it!



Even the Nobel Prize committee thinks so!

Elinor Ostrom's principles for the management of common pool resources can even be applied to worker self-directed nonprofits!



1. Clearly defined boundaries
2. Rules regarding use of common resources
3. **Participatory decision-making**
4. Monitoring by people who are accountable to group
5. Graduated sanctions for exploitation of resources
6. Accessible conflict resolution methods
7. Recognition by the authorities of **group autonomy and self-governance**
8. For larger groups: **Multiple layers of nested enterprises** (to keep group sizes small)

More stuff your corporations code might say:

“[...]The **board may delegate** the management of the activities of the corporation to any person or persons, management company, or committee however composed, **provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.**” (CA Corporations Code 5210)

More stuff your corporations code might say:

(b) In performing the duties of a director, a director shall be **entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:**

(1) One or more officers or **employees of the corporation** whom the director believes to be reliable and competent in the matters presented; [...]

(CA Corporations Code 5231)

So....how much delegation and reliance
is too much delegation and reliance?

Stuff your case law might say:

“Total abdication of the supervisory role, however, **is improper** even under traditional corporate principles. A director who **fails to acquire the information necessary** to supervise investment policy or **consistently fails even to attend the meetings** at which such policies are considered has violated his fiduciary duty to the corporation”

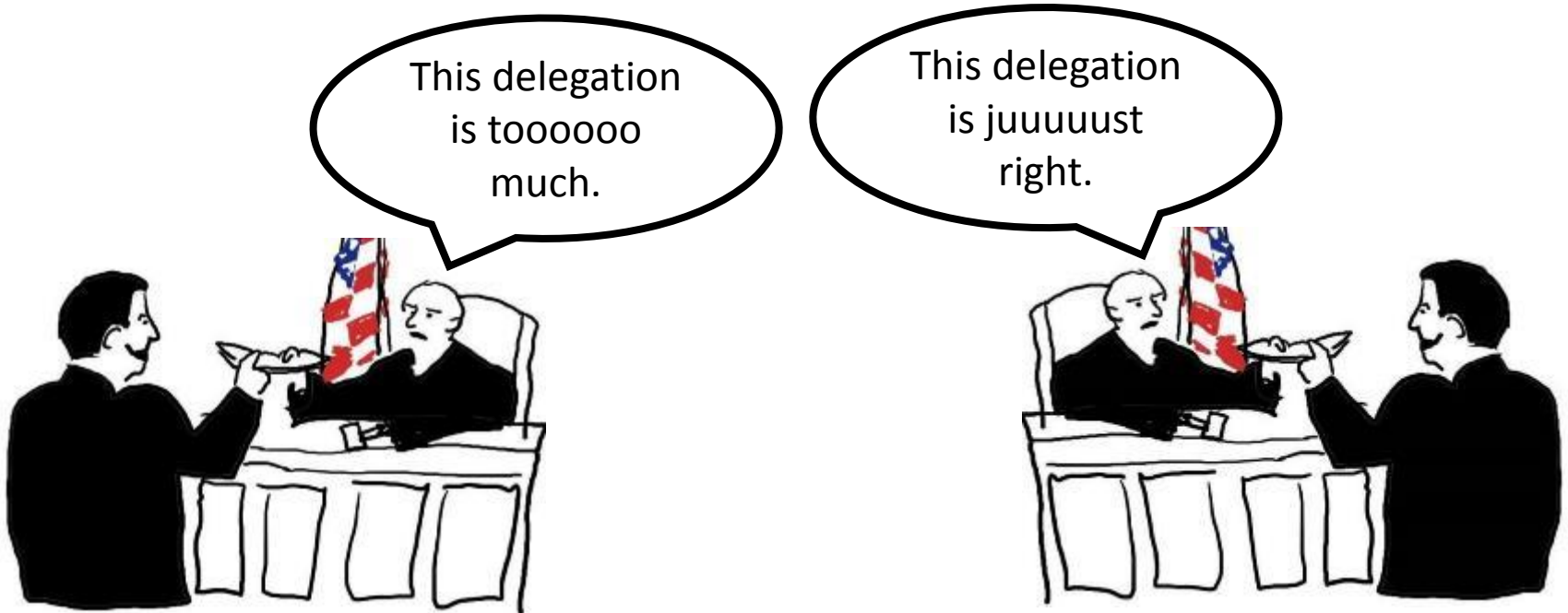
Stern v. Lucy Webb Hayes Nat. Train. Sch. for Deacon. & M., 381 F. Supp. 1003 Dist. Court, Dist. of Columbia 1974

More stuff your case law might say:

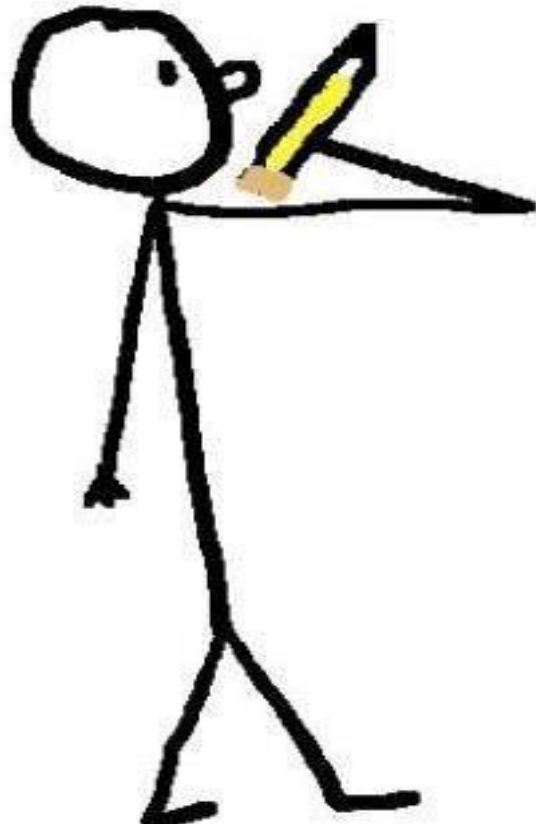
“California has recognized the rule that the board cannot delegate its function to govern. [...] If it does so, the contract so providing is void. [...] This also seems to be the general rule in this country.”

“Kennerson cites cases [...] where contracts delegating some authority were upheld. But none of them involved the **quantum of delegation** here presented. **The problem is, of course, one of degree.**”

Kennerson v. Burbank Amusement Co., 120 Cal. App. 2d 157, 173Cal: Court of Appeal 1953



Designing your governance structures....



Bylaws

Might look like regular boring bylaws...

Probably shouldn't delegate power to workers in the bylaws, but you can express a preference for worker self-governance.

Sample Board Resolution

*The Board hereby resolves that, based on the successful **track record** of ORGANIZATION's staff and activities, in view of the **talents and skills** of current staff, based on ORGANIZATION's **robust set of internal policies and procedures** for worker governance, and based on **emerging principles and best practices for the management** of nonprofit organizations, **it is in the best interest of ORGANIZATION and most effectively and efficiently advances ORGANIZATION's mission if ORGANIZATION employees primarily direct the strategy, policies, and tactics of the organization.** The Board affirms that ORGANIZATION staff may make day-to-day decisions and set longer-term policies strategy for the organization **until May 1, 2016**, at which time the Board shall review and may re-affirm or revoke this resolution, in view of the best interests of the organization.*

*Regardless of the above, the role of the Board shall always be to fulfill its duty of care by **closely monitoring the activities of the organization**, regularly reviewing financials and budgets, monitoring compliance with the law, reviewing internal policies adopted by staff, and intervening in decisions it believes to be harmful, overly risky, illegal, threatening to the organization's tax exempt status, or contrary to the mission of the organization.*

*In addition, **all decisions about staff compensation, benefits, and hiring shall be made by the Board**, with staff input. Such decisions shall ultimately be discussed and voted on by the Board without staff present. The Board shall also review and approve any other decision that could result in financial benefit or other form of private gain for employees.*

More stuff your corporations code might say:

(a) Any other provision of this part notwithstanding, not more than 49 percent of the persons serving on the board of any corporation may be interested persons.

(b) For the purpose of this section, “interested persons” means either:

(1) Any person currently being compensated by the corporation for services rendered to it within the previous 12 months, whether as a full- or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; or

(2) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

(CA Corporations Code 5227)

Even if your corporations code doesn't say that, it's probably *thinking* that. And so is the IRS...



There is a lot of legal literature on integrity and accountability in the nonprofit world. And lot of it was written after:



....to keep people from exploiting their positions of power.

The IRS scrutinizes bylaws and transactions, and it expects you to have policies and standards in place to ensure independent judgment by the Board....and independence is somewhat context specific.

Think about personal relationships, business relationships, donor relationships, etc...

Hmmm. Baby out with the bath water?

Board independence is considered a key safeguard against corruption, but can it actually undermine the nonprofit's efficacy at advancing its mission?

The people with the most interest in the organization's success are also most likely to be "interested persons."

What if we shift our focus away from this somewhat unrealistic idea that nonprofits can be governed by non-interested persons, and focus on procedures that ensure integrity and accountability?

Create clear conflict of interest policies and procedures, and stick to them!

Both corporations laws and tax laws contain procedures for reviewing transactions.

In a worker self-directed nonprofit, for the purpose of reviewing transactions, it's possible that all workers could be considered **“disqualified persons,”** which is:

“any person who was, at any time during the 5-year period ending on the date of such transaction, **in a position to exercise substantial influence over the affairs of the organization,** [...]” (From the U.S. Tax Code Section 4958)

“The term **‘excess benefit transaction’** means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if **the value of the economic benefit provided exceeds the value of the consideration** (including the performance of services) received for providing such benefit.”

Other legal considerations:

- How to write fiscal sponsorship agreements for worker self-direction?
- You can create a class of member and/or specified board seats for workers.
- How might worker self-direction play out in mutual benefit organizations?
- In the case of membership nonprofits, what is the role of members?
- Worker self-direction can affect employee classification for the purpose of overtime laws!
- Worker self-direction can undermine union participation
- Certain professionals must still retain ability to exercise professional judgment.
- Hmm, do we need new entities for democratic non-profits? And is it time for a 501(c)(30)?

Thoughts? Questions? Ideas?

How has this discussion prompted you to think about things related to your current or future work?

How do you see worker self-direction working in different kinds of nonprofits?

Questions to consider

- How can conventionally structured nonprofits transition to worker self-direction?
- How might worker self-direction influence pay at nonprofits?
- What kinds of support are needed to truly empower every staff to manage themselves when many people have come to expect a certain amount of direction from others?
- Does worker self-direction make fundraising easier or harder? In what ways?

Chat Question:

Please name some nonprofits that you believe either are worker self-directed or may be moving in that direction.

You can answer by writing in the question box.

We started a Google Group for further discussion of worker self-directed nonprofits.

We'll send you the link, but here it is:

groups.google.com/forum/#!forum/workerselfdirectednonprofits

F R E D E R I C L A L O U X

FOREWORD BY KEN WILBER



"Impressive! Brilliant!

*This book is a
world changer!"*

— JENNY WADE, Ph.D.
author of *Changes of Mind*

Reinventing **organizations**

A Guide to Creating Organizations
Inspired by the Next Stage of Human Consciousness

Read *Reinventing
Organizations*,
By Frederic Laloux

GOOD BOOK!

What is a Worker Self-Directed Nonprofit?

Intro to Implementing Workplace Democracy in Nonprofit Organizations

This webinar is brought to you by Janelle Orsi and Chris Tittle of the:



**Sustainable
Economies
Law Center**

Which, by the way, is trying to raise \$25,000 RIGHT NOW!

And you can help us!

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