

“READY FOR THE PHONE BOOTH”:

STRATEGIZING MOVEMENT LAWYERING FOR LOCAL CLIMATE JUSTICE POLICY

by Mary Claire Kelly¹

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I. INTRODUCTION

I wrote this article in quarantine, while the nation was under the first national lockdown due to the COVID-19 pandemic. I wrote this article during briefs bursts of productivity, which spiked through the monotony of scrolling Twitter for memes and bad news. I wrote this article as hospitals overflowed with the sick, as hastily dug graves swallowed the dead, as the government allowed the dried-up economy to starve the newly unemployed to feed the rich. I wrote this article in the first person because it did not feel appropriate to write it without placing it in its proper context: Within a fast-moving disaster that arose from, and crashed back into, the slower-moving crises of inequality and climate change that characterize our modern political economy.

This article is about lawyering with humility, trust, and honesty; so, I felt that I should not write this article with the pretense of objectivity — particularly during such a significant moment in time. Although I am mixed race, I am white-presenting in a profession in which 85 percent of practitioners are white.² I have health insurance, food, and stable housing. Like most current and future attorneys who create, interpret, and enforce this country’s laws, I

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2 American Bar Association, *Profile of the Legal Profession 2021*, 13 (2021), <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf>.

have been well-insulated from the unjust systems of poverty, incarceration, and extraction that those laws uphold.

That is unlikely to be true for the communities that I went to law school to serve: low-income communities, Black communities, and communities of color — the same communities that have been disproportionately hurt and killed by COVID-19.³ Maps showing majority-minority areas, low-income areas, and areas without convenient access to vital public infrastructure like hospitals looked familiar to researchers studying the initial spread and impact of the pandemic.⁴ Also familiar are maps of communities close to environmental hazards that can cause air pollution, water contamination, and excessive heat, exposure to which can increase a person’s risk of preexisting conditions and therefore their vulnerability to a contagion like COVID-19. As seen in New Orleans during Hurricane Katrina, Houston during Hurricane Harvey, Chicago during the 1995 heatwave, and countless other localities in countless numbers of fatal disasters — “geography [is] linked to destiny.”⁵

“Environmental justice communities”⁶ are those communities whose residents are geographically destined to be more vulnerable to environmental hazards because of systemic racism, income disparities, and language isolation. These communities are frequently denied the power to influence the policies that will determine their future, and to demand reparations for policies that have harmed them in the past. That power, when achieved, has historically been hard-won through grassroots organizing and movement-building. Such organizing has pushed policymakers and other powerful figures to action on ending legal Jim Crow segregation, penalizing polluters for poisoning neighborhoods, and other protective policy measures. Community organizers subscribe to the theory that “social justice can be achieved only when marginalized communities most affected by a problem are actively engaged and have a voice in making decisions and devising solutions that affect them.”⁷

3 See CDC, *Demographic Trends of COVID-19 Cases and Deaths in the US Reported to CDC*, <https://covid.cdc.gov/covid-data-tracker/#demographics> (last visited Nov. 7, 2021).

4 Rachel Ramirez, *How Vulnerable is Your Community to Coronavirus? These New Maps Reveal a Familiar Pattern*, GRIST (April 2, 2020), <https://grist.org/justice/how-vulnerable-is-your-community-to-coronavirus-these-new-maps-reveal-a-familiar-pattern/> (last visited Nov. 7, 2021).

5 Eric Klinenberg, *Denaturalizing Disaster: A Social Autopsy of the 1995 Chicago Heat Wave*, 28 THEORY & SOCIETY 239, 250 (Apr. 1999), available at <https://www.jstor.org/stable/3108472>.

6 I draw this definition from the state of Massachusetts’ definition, see *Environmental Justice Populations in Massachusetts*, <https://www.mass.gov/info-details/environmental-justice-communities-in-massachusetts> (last visited Nov. 7, 2021).

7 Betty Hung, *Law and Organizing From the Perspective of Organizers: Finding A*

Along with affected community members and organizers, social justice movements often include attorneys as the third leg of a “triad of actors,” but relationships between these groups can be prone to tension.⁸ When public interest attorneys – who are likely to share some of the privileges catalogued above – get involved in social movements, power imbalances can lead to conflict. Differences in education levels, race, income, and appearance may make it difficult to create trusting relationships. Organizers and community members have also found it difficult to work with public interest attorneys who prioritize legal action above other movement strategies more accessible to the community.⁹ A legal-centered approach changes the voice of the movement from the megaphone on the street to the brief in the courtroom and can thus constrain and dilute momentum.

The movement lawyering model of public interest legal advocacy is a theory of social change that addresses those power imbalances by prioritizing the experiences and expertise of affected community members.¹⁰ Under the movement lawyering model, lawyers are accountable to the group — not the other way around. Movement lawyers use “integrated advocacy strategies, inside and outside of formal lawmaking spaces” to “build the power of those groups to produce or oppose social change goals that they define.”¹¹ Movement lawyers recognize that legal action and policy changes are helpful tools to a social movement, rather than end goals. Legal professionals abiding by this theory have helped social justice movements push for healthier living environments, better workplace protections, and decarceration efforts.

As hard as environmental justice communities have had to push for recognition of their rights in the recent era of neoliberal economics and decentralization,¹² climate change will only intensify and increase the obstacles. Climate change raises all the stakes: It will intensify environmental hazards, exacerbate resource scarcity, and encourage gentrification and displacement. Because climate change is not a tangible, immediate hazard, organizing locally to protect environmental justice communities from suffering *Shared Theory of Social Change*, 1 L.A. PUB. INT. L.J. 4, 20 (2008).

8 *Id.* at 23.

9 *See id.* at 19.

10 “Movement lawyering” can also be referred to as “community lawyering” and “law and organizing.”

11 Susan D. Carle & Scott L. Cummings, *A Reflection on the Ethics Of Movement Lawyering*, 31 GEO. J. LEGAL ETHICS 447, 452 (2018).

12 *See, e.g.,* Klinenberg, *supra* note 4, at 256-259 (“The second cause of the local government’s failure, and also the mechanism that facilitates the rise of this new philosophy for urban governance, is the radical decentralization, fragmentation, and privatization of the social-service programs and downsized public agencies that they [sic] city has preserved.”).

its worst harms requires incorporating climate change into existing advocacy efforts for environmental, housing, and economic justice.

Attorneys acting in solidarity with those movements must adjust their tactics as well. Instead of distinguishing “climate justice” into yet another subgenre of public interest law, lawyers should view “climate justice” as a further evolution of the ongoing fight for all people to be able to live in a healthy environment in which they can thrive. Movement lawyers working for climate justice are not recreating the wheel; they can and should tackle the threat posed by climate change with the resources and techniques that have evolved through the interconnected movements for environmental, housing, and economic justice. On a local level, this work means bringing the experiences and expertise of advocates in those movements together to the field of climate resiliency policy.

In this article, I focus primarily on metropolitan Boston, an area with a deep history of housing and environmental justice movements that is actively planning for the effects of rising tides on property. I begin this article by explaining grassroots climate justice. Then, I analyze the movement lawyering theory of praxis and the challenges of applying it to climate justice. I then discuss movement lawyering strategies for assisting environmental justice communities that are pushing for climate justice on a local policy level, and I analyze challenges specific to that genre of lawyering. Finally, I conclude by summarizing my key findings and next steps for researching and implementing those findings.

I do not here claim to have developed a survey of all movement lawyering practices advancing climate justice on the local level. Instead, my goal is simple: to explore and define an area of law that is growing in necessity, but still absent from the typical law school curriculum. Climate change will only grow more pressing in coming years, and it will not affect all members of our dramatically unequal society in equal proportion.

Climate change has been accelerated by the same extractive economic practices that have made some people wealthy and powerful at the expense of others for centuries. Lawyers can help prevent the consequences from falling on those who have been hurt by this system, and they can do so in a way that empowers, rather than patronizes, them. I am writing this article because that is the kind of attorney I strive to be. The kind that follows the lesson of Luke Cole, as explained in a tribute to the famed environmental justice attorney written after his death: “[E]nvironmental justice isn’t about law anyway; it’s about power.”¹³

13 Laurence Lewis, *Remembering Luke Cole, Pioneer of Environmental Justice*

II. CLIMATE JUSTICE: ANOTHER TRIBUTARY OF THE MOVEMENT FOR SOCIAL JUSTICE

After decades of disinformation campaigns funded by polluting industries, politicians and pundits have, in public discourse, labelled climate change an “existential threat.”¹⁴ The term “existential threat” denotes an immediate level of severity, gravity, and danger. Climate change is indeed severe, serious, and dangerous, but it does not threaten all lives equally. It represents yet another challenge in which powerful interests have, through both action and inaction, rendered low-income communities and communities of color uniquely vulnerable to the negative effects of a rapidly warming climate.

In international migration and national security contexts, climate change is referred to as a “threat multiplier” because the environmental stress caused by a changing climate will aggravate already existing social conditions.¹⁵ As Elizabeth Marino writes in her anthropological case study of the Alaskan Kivalina tribe – which has been attempting to relocate for decades because of rising floodwaters – disasters do not happen merely because of heavy rain, hotter weather, or more violent storms: “The physical environment and social systems act in tandem as mechanisms for disaster. Disasters are produced when a hazard meets with a vulnerable population and produces negative outcomes and social dysfunction.”¹⁶ On international, domestic, and local levels, the communities that will continue to be hurt by climate change first and worst are those whose existences are threatened daily with other, more normalized ills: poverty, pollution, homelessness, and other systemic injustices that plague communities along racial and socioeconomic lines.

“Climate justice” describes the movement to prevent the burdens of a changing climate from disproportionately falling on those communities.¹⁷ As

Law, DAILY KOS (June 20, 2010), <https://www.dailykos.com/stories/2010/06/20/876375/-Remembering-Luke-Cole-pioneer-of-environmental-justice-law>.

14 Kelsey Piper, *Is Climate Change an “Existential Threat” — or Just a Catastrophic One?*, VOX (June 28, 2019), <https://www.vox.com/future-perfect/2019/6/13/18660548/climate-change-human-civilization-existential-risk>.

15 Julia Toscano, *Climate Change Displacement and Forced Migration: An International Crisis*, 6 ARIZ. J. ENVTL. L. & POL’Y 457, 460-61 (Nov. 23, 2015).

16 ELIZABETH MARINO, *FIERCE CLIMATE, SACRED GROUND* 28 (2015), Kindle Edition.

17 See Daisy Simmons, *What is ‘Climate Justice’?*, YALE CLIMATE CONNECTIONS (July 29, 2020), <https://yaleclimateconnections.org/2020/07/what-is-climate-justice/> (last visited Nov. 8, 2021) (explaining that “climate justice” is a term, and more than that a movement, that acknowledges climate change can have differing social, economic, public health, and other adverse impacts on underprivileged populations. Advocates for climate

Sofia Owen, an attorney with Alternatives for Community and Environment (“ACE”), explained, climate justice also requires tying the injustices of the past and present to the injustices of the future — acknowledging “the legacy of our legal systems being rooted in white supremacy and systemic racism in terms of which housing is where and what has been built.”¹⁸ Advocacy groups can demand climate justice, and they can also use the term as a frame through which to view the unprecedented impacts of climate change. For example, the United Nations’ sustainable development goals describe climate justice as “[looking] at the climate crisis through a human rights lens and on the belief that by working together we can create a better future for present and future generations.”¹⁹ For the purpose of this article, climate justice is a lens through which policy-makers, activists, and other change agents can view plans for the future of their communities, and it is also a demand that those plans result in a more equitable future.

Like in other social justice movements, affected communities can build their strategies around demanding climate justice on the streets, through the media, and in the courts. Movement leaders will typically plan to wage their battle in multiple arenas, because a protest, newspaper article, new law, or lawsuit is usually a means to the goal of the organization, not an end in itself. “These organizers and grassroots leaders do not think in terms of policy: They think in terms of power. Power, in this context, means the ability to shape the world.”²⁰

Governments are the primary targets for climate justice activists because governments have the most power to shape how societies react and prepare for climate change. As sociologist Eric Klinenberg wrote in his “social autopsy” of the 1995 heat wave in Chicago, governments,

with their unmatched resources and capacity to coordinate large-scale initiatives, will do more than any other institution to shape our response to the climate crisis. . . . They can help develop robust social infrastructure in vulnerable neighborhoods, promoting health and ex-

justice are striving to have these inequities addressed head-on through long-term mitigation and adaptation strategies.”),

18 Interview with Sofia Owen and Davis Noiles, Alternatives for Community and Environment Office (Feb. 26, 2020), on file with author.

19 *Climate Justice*, UNITED NATIONS: SUSTAINABLE DEVELOPMENT BLOG (May 2019), <https://www.un.org/sustainabledevelopment/blog/2019/05/climate-justice/> (last visited Nov. 8, 2021).

20 Alexi Nunn Freeman & Jim Freeman, *It’s About Power, Not Policy: Movement Lawyering for Largescale Social Change*, 23 CLINICAL L. REV. 147, 150 (2016).

tending life both every day and in disasters, or they can confine their heat-emergency plans to phone calls and home visits when the flood waters come or the temperature spikes.²¹

Organizing around climate justice can be difficult because climate change is not an immediate, tangible threat. For activists in communities that are facing daily emergencies like hunger, evictions, mass incarceration, and deportations, climate change can seem like a monster that looms in the future, not one that demands action now. As Esme Caramello, faculty director of Harvard's Legal Aid Bureau, explained, "it's not that [climate change] is not visible, but it's not a crisis point. It's not having a negative direct impact on individuals at enough of a level to motivate them to drop other things that are having a day-to-day impact." Climate justice demands action on a problem that most people will experience as an invisible factor in slowly shifting environmental systems and worsening disasters, not as a crisis in itself.²²

For example, "climate gentrification" is the theory that climate change will exacerbate trends in the real estate market that lead to people being displaced, because property that is more vulnerable to climate events like flooding will lose value.²³ David Noiles, director of the Roxbury Environmental Empowerment Project ("REEP"), explained the apparent lack of immediacy compared to other pressing problems as a difficulty in organizing youth activists around climate justice issues like this: "[It] makes climate gentrification seem like: What are you talking about? . . . I've already been displaced before that."²⁴ He said the local organizing work he has been doing with REEP since he was a teenager in the 1990s is just one iteration of a long history of justice movements, which includes the civil rights movement: "to me, it's the same movement just with a different name."²⁵

21 ERIC KLINENBERG, *HEAT WAVE: A SOCIAL AUTOPSY OF DISASTER IN CHICAGO* 35 (2d ed. 2015), accessed via Rokuten Kobo.

22 See Justin Worland, *Can Hurricane Ida Move Public Opinion on Climate Change?*, TIME (Sept. 2, 2021), <https://time.com/6094338/hurricane-ida-public-opinion-climate-change/> (last accessed Nov. 7, 2021) ("researchers who study public perception of climate change say climate change barely registers during an extreme weather event for the average American. Most people are likely to view a big storm as just another in a long string of them. In fact, the historical record over the past few decades shows little shift in national public opinion on climate change driven by the increased frequency of hurricanes, droughts and wildfires that we might have expected to turn the tide.").

23 See generally Jesse M Keenan, et al., *Climate Gentrification: From Theory to Empiricism in Miami-Dade County, Florida*, 13 ENVIRON. RES. LETT., article 054001 (2018), available at <https://doi.org/10.1088/1748-9326/aabb32>.

24 Owen & Noiles, *supra* note 17.

25 *Id.*

In that work, Noiles has worked with attorney Sofia Owen of ACE. Owens explained that in her experience of environmental justice activism, “It’s hard to parse out what is a climate issue and what is an [environmental justice] issue when it’s all interconnected and when everything in your life is impacted by environmental issues.”²⁶ Owen said she sees climate justice as a “rebranding” of previous social justice movements led by black, brown, and indigenous activists: a “buzzword for funders [and] big organizations that are white-led and not grounded in the grassroots.”²⁷

In *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement*, Luke Cole and Sheila Foster similarly describe the environmental justice movement as a river, with many different local organizing efforts and social justice movements feeding into it as tributaries. According to Cole and Foster, these tributaries are united by three characteristics: “motives, background, and perspective.”²⁸

With respect to motives, grassroots activists are often fighting for their health and homes [...] Second, with respect to background, grassroots environmentalists are largely, though not entirely, poor or working-class people. Many are people of color who come from communities that are disenfranchised from most major societal institutions [...] The third trait, perspective, is an outgrowth of the first two. Most environmental justice activists have a social justice orientation, seeing environmental degradation as just one of many ways their communities are under attack. [...] many view the need for broader, structural reforms as a way to alleviate many of the problems, including environmental degradation, that their communities endure.²⁹

Climate justice requires participants and protagonists in social justice movements to strategize based on how the changing planet will escalate the economic, environmental, and housing justice battles they are already fighting. Climate change will widen resource scarcity, intensify environmental

26 *Id.*

27 *Id.*

28 LUKE COLE & SHEILA FOSTER, *FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT* 32 (2001).

29 *Id.* at 32-33.

hazards and disaster events, and lead to further displacement of communities due to those economic and environmental pressures. This crisis is rooted in the same extractive systems that have created and continued what Klinenberg calls “the everyday crisis, the slow death, the normalization of collective insecurity in the most impoverished and stigmatized neighborhoods.”³⁰ As social movements incorporate climate justice frameworks into their advocacy, movement lawyers can use their policy and legal strategizing experience to empower activists and further the organization’s goals.

III. THE ROLE OF THE MOVEMENT LAWYER

When researching local movement lawyering, I first stopped by the office of ACE, an environmental justice community organization in Roxbury, Massachusetts, for a meeting with staff attorney Sofia Owen. Instead of the brief one-on-one interview I expected, my visit turned into an hour-long conversation with Owen, Noiles, and other people who stopped in and out of the office. Surrounded by flyers of past and future demonstrations, we discussed the relationships and tensions that often form between well-meaning individuals with similar goals in the social justice sphere.

Noiles has organized youth in the Roxbury neighborhood of Boston around environmental justice issues since he was a high schooler himself. When asked about the role of lawyers in the movement, he had one piece of advice:

Always be ready for the phone booth. . . .
Since you have the [legal] training, you have
the superman costume on underneath the suit
and tie. . . . Sometimes you’re going to have
to keep that shit under wraps and be here for
the community, but the community is going to
need you to be Superman at some point for us.
. . . We need you to be Clark Kent sometimes
[too].³¹

Noiles’ advice vividly explains the dual role of the movement lawyer, as both a professionally trained advocate and a movement participant. To be effective advocates, movement lawyers must be able to navigate both power centers and community centers with respect, trust, and honesty, and to build bridges between those spaces when appropriate and necessary. They must view the activists with whom they work as equals to whom they are account-

30 Klinenberg, *supra* note 4, at 283.

31 Owen & Noiles, *supra* note 17.

able, not as clients who need a lawyer to swoop in and save them: “People are not simply ‘clients’ or ‘members’ to be organized, but rather individuals with their own histories and hopes for achieving a measure of justice.”³² In social justice movements, lawyers may have the superpower of a legal license, but “in these narratives, groups or coalitions are the protagonists.”³³

The attorneys with whom I spoke named “humility” as one of the most important practices of an effective movement lawyer — an attribute not traditionally emphasized in the law school curriculum. Humility is important for individuals with the privilege of a legal education because social justice movements are, or should be, democratic in structure and philosophy, which means that they are, or should be, led by those most directly impacted by the problem. While a J.D. degree, a tailored suit, and a professional network may confer authority outside of the movement space, an essential piece of movement advocacy is checking elitism at the door of the interpersonal organizing space. In an essay about common conflicts between attorneys, activists, and affected community members in shared movements, lawyer Betty Hung explained the tensions that often arise when well-meaning, educated attorneys enter the organizing space:

The universal concept underlying almost every social justice movement is the innate value and worth of every human being. Given the structural inequalities and daunting challenges that we face, it is often difficult not to perpetuate the very types of hierarchies and oppressions we fight against, especially when winning seems so crucial.³⁴

Like other movement attorneys, Hung notes that the practice requires lawyers to be steadfast in recognizing that their legal skills contribute to a means, not an end, to the goals of the affected community members. Whether or not to include lawyers in the movement is a “utilitarian” decision by the protagonists of the movement, depending on whether they see a legal strategy as a force that will advance their goals or a sideshow that will distract from the main focus or drain momentum.³⁵ According to the organizers with whom Hung spoke, “rather than building the power of marginalized communities,

32 Hung, *supra* note 6, at 27.

33 Jennifer Gordon, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CALIF. L. REV. 2133, 2135 (2007).

34 Hung, *supra* note 6, at 30.

35 *Id.* at 11.

lawyers tend to create dependency on lawyers and legal strategies without altering structural inequalities and the status quo.”³⁶ In order to empower disempowered individuals, movement lawyers must know when to put on their metaphorical capes, as Noiles said, and also when others are best suited for saving the day.

Movement protagonists identified to Hung seven legal strategies as key to advancing their causes: “affirmative litigation; legislative advocacy; community legal education; strategic counseling and advice; defensive litigation; direct legal services; and legal drafting of agreements or legislation.”³⁷ These strategies are tools for which lawyers have special expertise, tools that can be brought into use when the movement needs them. Conversely, those tools also need the power conferred by a movement to effectively push for social justice, because “even the most progressive policies are little more than words on a page to their communities if the underlying power dynamics are not altered.”³⁸

Community involvement in clearly legal actions is important for building power as well as for adhering to movement ethics. Community involvement is the arsenal that allows movement attorneys to “walk into that room with the wealthiest and most politically powerful citizens and have their arguments and policy proposals prevail. Not because of the strength of their argument or their ideas; but because they represent a mighty, grassroots-led movement that the existing power structures can no longer ignore.”³⁹ Grassroots support is a social justice movement’s “one clear comparative advantage” over an opponent with more influence and money, so that support is an “essential” ingredient, not an accessory, in an effective legal strategy.⁴⁰ As Cole explained in the context of popular participation in the Environmental Impact Review process,

officials are far more likely to review an application carefully, and document its potential impacts adequately, if they know the community is actively involved in the permitting process. Bureaucrats in state and local environmental agencies respond to pressure, and when deciding between the desires of a community and those of a company, they will usually favor the

36 *Id.* at 6.

37 *Id.* at 9.

38 Freeman & Freeman, *supra* note 19, at 159.

39 *Id.* at 166.

40 *Id.* at 159.

interest putting the most pressure on them.⁴¹

Cole described three possible models to categorize the role of the attorney in environmental justice movements: the professional model, the participatory model, and the power model. The professional model is the traditional role of an attorney as a representative of the movement, with the attorney making decisions on behalf of their client. “Most environmental justice activists should agree that the professional model is a waste of time from the perspective of the community.”⁴² While this model has resulted in significant changes in law, Cole explained that it reinforces the power imbalances that lead to a community’s disenfranchisement in the first place: “By teaching communities that they have no role in solving the problems which affect them, the professional model reinforces powerlessness and is thus antithetical to environmental justice.”⁴³

Instead, Cole argues that legal advocacy for movements is only effective for environmental justice when lawyers use a combination of the participatory and power models. The participatory model describes a lawyer’s role as facilitating community involvement in the process by which decision-makers determine outcomes. For example, lawyers can help community members interpret dense policy, inform them about upcoming steps in a policy’s development, and involve community members in the formation of lawsuits beyond using them as named plaintiffs.

The power model, by contrast, is based on an inherent distrust of the process by which decision-makers make their determinations, an acknowledgement that “the public participation process is not designed to hear and address their concerns, but instead to manage, diffuse, and ultimately co-opt community opposition to projects.”⁴⁴ Under the power model, the movement’s focus is mostly on active community involvement and self-determination, so legal action necessarily plays an ancillary role. Under the power model, movement protagonists and organizers focus on pressuring decision-makers from outside the established system, not working within the system. Examples of the power model are protests, strikes, and other public demonstrations of dissent.

Although effective advocacy in the movement space requires an attorney to step back from the protagonist’s role, lawyers can be integral to or-

41 Luke W. Cole, *Macho Law Brains, Public Citizens, and Grassroots Activists: Three Models of Environmental Advocacy*, 14 VA. ENVTL. L.J. 687, 695 (1995).

42 *Id.* at 708.

43 *Id.* at 705.

44 *Id.* at 701.

ganizing strategies. Lawyers' value stems from their ability to be translators and liaisons between powerful actors and the community members who have been shut out of elite spaces by wealth disparities, racism, language barriers, and education gaps. Owen with ACE explained that this is a different sort of value than students are likely to learn in law school: "It's not just about writing the perfect white paper and designing a policy that looks good on paper, but thinking through and hearing from community about what are the things that are needed or what does it actually look like on the ground."⁴⁵

IV. LOCAL MOVEMENT LAWYERING FOR CLIMATE JUSTICE

In the scope of history, climate justice is a relatively new idea. Climate change has only been prominent in scientific study for half a century, and it has only become a household term in recent decades. Therefore, a conception of how to respond justly to climate change is also recent. However, limiting climate justice initiatives to address only issues that can be directly attributable to man-made climate change is like limiting a pointillist artwork to one section of painted dots. Climate justice, environmental justice, housing justice, and civil rights are each their own demands, but they are also part of a larger, older cause: fighting for a world in which everyone has the right to live and thrive with dignity in a safe and healthy environment. On the local level, movements and the attorneys that assist them can and must build upon the successes, and learn from the failures, of prior struggles in that larger fight. Specifically in Boston, deeply rooted social justice movements have established a tradition of advocacy that will be vital in maintaining pressure on city officials for policies rooted in climate justice. "Even though the thinking around climate crisis and catastrophe is new in the mainstream, these are issues that David [Noiles] and others have been fighting for years," Owen said, when I asked her about ACE's climate justice work, "the imbalance that there is as a result of the historic burdens from systemic racism."

Through the federal government's use of redlining to discourage investment in neighborhoods with non-white residents, systemic racism has guided the development in Boston over the past century.⁴⁶ Roxbury, the neighborhood where ACE and REEP are located, was coded "red" in the government's color-coded real estate maps for investors in the 1930s.⁴⁷ Property in those neighborhoods was undervalued compared to property in whiter neighborhoods. Decades after banks and real estate companies segregated

45 Owen & Noiles, *supra* note 17.

46 Stephanie Leydon, *How a Long-Ago Map Created Racial Boundaries That Still Define Boston*, WGBH (Nov. 12, 2019), <https://www.wgbh.org/news/local-news/2019/11/12/how-a-long-ago-map-created-racial-boundaries-that-still-define-boston>.

47 *Id.*

Roxbury into a neighborhood comprising almost completely people of color, land speculators are now buying up that undervalued property and putting many long-term Roxbury residents at risk of losing their homes.⁴⁸

Through organizations like ACE, REEP, and the housing justice group City Life/Vida Urbana (“CVLU”), Roxbury residents have organized for years against the policies and practices that have led their neighborhood to be more vulnerable to environmental hazards, displacement, and other consequences of low investment. As an example of the ways in which local residents have built power through organizing, Noiles and Owen pointed to the initiative to improve air quality in Roxbury in the 1990s and 2000s. That initiative was led by local youth, who named the problem and determined the path to a solution. Movement attorneys provided guidance and help along the way.

In 1996, a student at Phyllis Wheatley high school died from asthma. His classmates had been learning about environmental justice through REEP and ACE.⁴⁹ They were motivated after that student’s death to begin learning about the high rates of asthma in their community and to take action against the heavy presence of hazardous air pollution in their neighborhood. They mapped polluting sources, “including nail and hair salons, solid waste facilities, and bus and truck depots.”⁵⁰ They found “more than 15 bus and truck depots garaging more than 1,150 diesel buses and trucks within 1.5 miles of Dudley Square,” and decided to focus their energy on those vehicles. Along with youth from other neighborhood schools, they organized and marched in an Anti-Idling Day, drawing attention to diesel vehicles that violated Massachusetts’ anti-idling law. They monitored particular matter in the atmosphere near local residences. Their coalition brought attention to the issue from the media and from the EPA. Their work pressured the MBTA to replace their fleets with buses that run on cleaner fuel or compressed natural gas. In 2010, they began drafting the Diesel Emission Reduction Ordinance. Then-Mayor Marty Walsh signed that ordinance in June 2015.

Movement attorneys provided assistance at each step. Attorneys

48 Interview with Esme Caramello, Harvard Legal Aid Bureau office (March 2, 2020), on file with author.

49 Alternatives for Community & Environment, *Victory for clean air!* (June 3, 2015), https://web.archive.org/web/20200129203710/https://ace-ej.org/victory_for_clean_air.

50 Penn Loh, Jodi Sugerman-Brozán, et al, *From Asthma to AirBeat: Community-Driven Monitoring of Fine Particles and Black Carbon in Roxbury, Massachusetts*, 110 ENVIRON HEALTH PERSPECT 297, 297 (2002).

helped the students learn about the state's anti-idling law.⁵¹ They convened meetings between community members and city officials, and helped organizers prepare for those meetings. They drafted the ordinance and worked with partners for years to get it enacted. These actions align with the “participatory” and “power” models of movement lawyering described by Cole, and with the list of helpful legal actions detailed by Hung. Noiles, who was one of the local students working on this campaign, recalled that the “role of lawyers was to say, ‘Okay you brought me this issue, what are the ways that we could address what you’re talking about.’”⁵² He said that the trust built over the years between attorneys, organizers, and affected community members in this project continues to this day.

Staci Rubin was an attorney with ACE during this project, and she is now an attorney at the Conservation Law Foundation, an environmental law group. Looking back on her role after transitioning from work at a movement-based organization to a more traditional nonprofit, she recalled that a major part of her role in the movement was knowing “how to be at both tables in a respectful way.”⁵³ The most difficult part of movement lawyering, according to Rubin, was performing this role while “constantly swimming upstream,” because of the “wealth of laws and policies and regulations that favor development and corporate power at the expense of community power.”⁵⁴

In strategizing how and where to most effectively apply legal pressure, organizers usually begin by identifying the actors with the most power and inclination to help them. That decision-making is often aided with the practice of power mapping, in which movement stakeholders create a physical chart of the landscape of power that they are trying to influence and disrupt.⁵⁵ Owen noted that the city of Boston has a particularly strong mayoral office, so gaining the mayor's support is key for pushing forward new policies or pushing against old ones. In particular, the Boston mayor has control over the Boston Planning and Development Authority (“BPDA”), which has immense power over the city's plans for new development.⁵⁶ This political

51 *Id.* For information on Massachusetts's anti-idling law, see MASS. GEN. LAWS ch. 90, §16A (2020).

52 Owen & Noiles, *supra* note 17.

53 Interview with Staci Rubin, via Zoom (Feb. 3, 2020), on file with author.

54 *Id.*

55 Martín Diego Garcia, *Power Mapping: Understanding Your Political Landscape*, THE CAMPAIGN WORKSHOP: BLOG (Jan. 28, 2019), <https://www.thecampaignworkshop.com/power-mapping-understanding-your-political-landscape>.

56 Qainat Khan, The Office of Councilor Lydia Edwards, PLANNING FOR FAIR HOUSING: ADDRESSING FAIR HOUSING AND CIVIL RIGHTS THROUGH PLANNING AND ZONING 3 (2019) (“BPDA is a staggeringly powerful agency.”).

structure is especially significant after Michelle Wu was elected mayor of Boston in November 2021, since her campaign developed a “Boston Green New Deal and Just Recovery” plan that would enact climate justice policies on the municipal level.⁵⁷ Rubin pointed out that if a policy has the backing and public support of a key actor like the mayor, the city could turn into a powerful force for promoting policies in other cities and on the state level.⁵⁸

Within Boston’s municipal governance structure, Owen and Noiles also pointed to the importance of gaining city council support — particularly the support of the city councilor who represents the movement’s district. Before even getting to that stage, however, they said that it is important to the movement to elect a councilmember who truly represents the racial and economic diversity of the community. Noiles particularly pointed out the importance to environmental justice communities of having Black women and other people of color listening to and representing their interests. In particular, Owen and Noiles pointed to Lydia Edwards, who represents District 1 on the city council of Boston. Edwards’ office partnered with a Northeastern graduate student to produce a report on how the BPDA and other planning agencies have historically impeded fair housing in the city, and how those agencies could rectify that history.⁵⁹ The report gives a history of redlining in Boston and connects that history to the modern-day displacement of residents due to gentrification. In the analysis, the report emphasizes the importance of centering local community needs and opinions through “procedural equity,” which means “meaningfully engaging communities who are often not heard in the planning process.”⁶⁰

As previously discussed, climate change includes the threat of climate gentrification, the process by which property that is more insulated from natural events increases in value, thus causing residents to be displaced. This phenomenon is demonstrably happening in Miami, where residents of color who had previously been prevented from living near the coast by segregation are now being pushed out of the higher-elevation communities that they built

57 See Alissa Walker, *Michelle Wu Can Be America’s First Actual Honest-to-Goodness Climate Mayor*, CURBED, (Nov. 3, 2021), <https://www.curbed.com/2021/11/michelle-wu-boston-transportation-climate-mayor.html>.

58 Rupin, *supra* note 52. Of particular relevance here is that the state of Massachusetts passed legislation to “combat climate change and protect vulnerable communities” in March 2021. See *Governor Baker Signs Climate Legislation to Reduce Greenhouse Gas Emissions, Protect Environmental Justice Communities*, Mass.gov (Mar. 26, 2021), <https://www.mass.gov/news/governor-baker-signs-climate-legislation-to-reduce-greenhouse-gas-emissions-protect-environmental-justice-communities> (last visited Nov. 7, 2021).

59 See generally Khan, *supra* note 55.

60 *Id.* at 9.

over generations.⁶¹ Boston can similarly expect to see its shoreline property threatened by rising tides.⁶² Caramello sees climate gentrification as yet another issue that Boston housing advocates will have to confront while they simultaneously try to improve the conditions in their neighborhoods and prevent gentrification of their neighborhoods. “People fight for improvements to their communities, then those improvements lead to the displacement of the very families that fought for those improvements,” Caramello said. “In any environmental justice work you have to think about how you’re going to keep those benefits secured for the people who fought for them.”

Climate justice advocates in Boston can and should build upon the relationships, strategies, and tools honed in earlier struggles, particularly as the city prepares for rising coastlines, hotter heatwaves, and increased flooding as a byproduct of climate change. Under former Mayor Marty Walsh, the city of Boston developed a climate action plan for reducing the city’s carbon footprint and an initiative called Climate Ready Boston as a roadmap for preparing neighborhoods for environmental changes.⁶³ According to the city’s projections, neighborhoods will be impacted to varying degrees by rising river-line and coastal flooding, frequent stormwater flooding, and extreme heat.⁶⁴ Roxbury in particular is a neighborhood that will be vulnerable to all three hazards, on top of the social vulnerabilities the neighborhood already faces.⁶⁵ Mayor-elect Wu’s “Boston Green New Deal” is a sweeping plan to confront these dangers: it calls for decarbonization, clean energy, food justice, programming to develop green jobs, and other policy measures, as well as a “justice audit and framework” to address “structural injustices

61 Nadege Green, *As Seas Rise, Miami’s Black Communities Fear Displacement From The High Ground*, WLRN (Nov. 4, 2019), <https://www.wlrn.org/post/seas-rise-miami-s-black-communities-fear-displacement-high-ground#stream/0>.

62 See generally OFFICE OF THE MAYOR OF THE CITY OF BOSTON, CLIMATE VULNERABILITY ASSESSMENT (2017) [hereinafter VULNERABILITY ASSESSMENT], https://www.boston.gov/sites/default/files/imce-uploads/2017-01/crb_-_focus_area_va.pdf. For a visual illustration of projected impacts of climate change on Boston, see Climate Ready Boston Map Explorer, <http://boston.maps.arcgis.com/apps/View/index.html?appid=7a599ab2ebad43d68adabc9a9e9ea0e6&extent=-71.1583,42.2897,-70.9309,42.4060> (last visited Nov. 7, 2021).

63 See *Boston Climate Action*, CITY OF BOSTON, <https://www.boston.gov/departments/environment/boston-climate-action> (last accessed Nov. 7, 2021); see also *Preparing for Climate Change*, CITY OF BOSTON, <https://www.boston.gov/departments/environment/preparing-climate-change> (last visited Nov. 7, 2021).

64 See VULNERABILITY ASSESSMENT, *supra* note 61; see also OFFICE OF THE MAYOR OF BOSTON, CLIMATE READY BOSTON: EXECUTIVE SUMMARY, https://www.boston.gov/sites/default/files/file/2019/12/02_20161206_executivesummary_digital.pdf; Climate Ready Boston Map Explorer, *supra* note 61.

65 See VULNERABILITY ASSESSMENT, *supra* note 61, at 13.

by starting with the structure of [the] city government.”⁶⁶ Wu’s plan calls for “bold, progressive change”⁶⁷ and echoes the demands of the climate justice movement:

Ultimately, a Green New Deal for Boston would seek to mitigate the threat of climate change, attack poverty and economic inequality, close the wealth gap, and dismantle structural racism at the scale necessary for a Just Recovery from the devastation of this pandemic. But we can only do so through community leadership, accountability, and long-term engagement.⁶⁸

When plans to incorporate climate justice in government decision-making finally take shape, activists avoid complacency even while they celebrate victories. Noiles and Owen noted that the community needs to stay engaged in and critical of policymakers’ plans, since “inviting the community to participate doesn’t actually mean that there will be meaningful participation and it doesn’t mean that people’s needs and wants will be taken seriously” and community involvement could end up being merely a “check the box” for officials.⁶⁹ Cole described this problem in his explanation of different models of movement lawyer: in some public process, “communities [have learned] the hard way that the public participation process is not designed to hear and address their concerns, but instead to manage, diffuse, and ultimately co-opt community opposition to projects.”⁷⁰

This is not to say that Wu’s “Boston Green New Deal” or the city’s existing climate preparedness programs are not intended to center climate justice, but rather to emphasize that climate justice requires constant and consistent consideration of community needs — not just occasional moments of listening without commitment to real action. Any steps forward for a community, cause, or movement have to be protected. As the report from Edwards’ office states, unless public benefits are “permanently protected,” “they are vulnerable to amendment, changing in staffing of city agencies or changes in

66 Office of Boston City Councilor Michelle Wu, *Planning For A Boston Green New Deal & Just Recovery*, 2-3 (Aug. 2020), <https://assets.ctfassets.net/1hf11j69ure4/B6NLxlOVxTVMNbHEvFaQE/700f4762bae92990f91327a7e01e2f09/Boston-Green-New-Deal-August-2020-FINAL.pdf> (last accessed Nov. 7, 2021).

67 *Id.* at 6.

68 *Id.*

69 Owens & Noiles, *supra* note 17.

70 Cole, *supra* note 40, at 701.

ownership.”⁷¹ “To achieve the equitable city we all want, we need to be cognizant of our past and actively pursue strategies that center racial equity.”⁷² Even after winning policy victories, movement lawyers must continue to actively monitor new policy developments, inform affected community members about those developments, and maintain communication lines between decision-makers and the movement.

V. CHALLENGES IN MOVEMENT LAWYERING FOR CLIMATE JUSTICE

When I asked Caramello about how and whether she weighs climate justice in her housing justice work, she sighed. We sat in the Harvard Legal Aid Bureau (“HLAB”) office, a floor of a converted house near Harvard Law School, which was humming with law students and their supervisors. These lawyers and soon-to-be lawyers represent hundreds of indigent clients a year in a spectrum of civil cases. Caramello said that climate gentrification is a clear problem for the communities with whom she works, who are at risk of becoming unhoused by current rates of gentrification in the Boston area. Caramello explained the difficulty for public interest attorneys in working on a long-term issue like climate change when every day holds a new set of emergencies — and when the attorneys with the skillsets to address either problem are overworked and under resourced. “Maybe we should be doing long-range planning, but there’s like 2-300 people in the housing court every week,” she said. “We’re not going to abandon the emergency room to do 40-year planning.”⁷³

Caramello named a problem inherent but not unique to climate justice: the difficulty of gaining momentum on a problem that looms in the future but may not appear to be immediately affecting environmental justice community members’ quality of life. Caramello noted that she was impressed at the amount of civil protest around climate change that has sprung up in recent years, through events like Fridays for Future and the Global Climate Strike and groups like Extinction Rebellion and the Sunrise Movement. However, social justice requires that communities most affected by an issue are given precedence and voice in the movement around that issue. Caramello pointed out that members of environmental justice communities, who may be working several jobs, raising children, and experiencing other serious life stressors, may find a protest against an immediate threat, like eviction, more worth their limited spare time than a climate march.

71 Khan, *supra* note 55, at 30.

72 *Id.* at 56.

73 Caramello, *supra* note 47.

Climate change is a new kind of threat, but movements for climate justice share many of the same challenges as other social justice movements. Those challenges include the difficulties of building lasting coalitions between experts, like lawyers and scientists, and affected community members; the potential for hard-fought improvements to lead to gentrification; the necessity of counteracting revisionist histories and powerful narratives; the fatigue that can come from constantly fighting what can seem to be an uphill battle; and the conundrum of how to subscribe to the ethics of movement lawyering when a social justice movement is in its fledgling stages. Climate justice differs from other movements in the scale of the problem: climate change is a threat to the entire human population. Most of the country, including the powerful and the wealthy, see climate change as an issue affecting them that requires action. The challenge in climate justice is to make sure that the ways in which society adapts to those changes do not amplify the racial, economic, and social inequalities that exist.

HLAB is a civil legal services organization, but Caramello also works with City Life/Vida Urbana, a group that works to “help people stay in their homes” through community organizing and collective action.⁷⁴ Her advocacy in that housing justice movement is mainly through helping individual clients fight their cases in housing court, a strategy that aligns with Cole’s participatory model of lawyering. Although she said she sees the difficulties of organizing around climate change, she said that strong movements like City Life/Vida Urbana have the grassroots power to get people to take action on issues that might not immediately affect them. City Life/Vida Urbana has the reputation, trust, and momentum to draw connections between a single tenant’s eviction and the fate of a neighborhood, incentivizing entire crowds to protest a family’s eviction. In the same way, “the movement plays a role in drawing the connections between present and future.”⁷⁵

However, Caramello noted the difficulty for social justice movements in making sure that their actions aimed at addressing current conditions also include forward-thinking components. As an example, Caramello pointed to activism around the creation of the Fairmount train line, a relatively new extension of the MBTA’s commuter line that connects the lower income and diverse neighborhoods of southwest Boston to downtown.⁷⁶ For years, com-

74 See City Life/Vida Urbana, <http://www.clvu.org/> (last accessed November 7, 2021).

75 Caramello, *supra* note 47.

76 See Clara Hudson, ‘Indigo Line’ Advocates Keep Pushing for a Switch from Commuter Line to Rapid Transit, DORCHESTER REPORTER (Dec. 15, 2016), <https://www.dot-news.com/2016/indigo-line-advocates-keep-pushing-switch-transit>; see also Nik DeCosta-Klipa, *Marty Walsh Says Improving This MBTA Line Could be a ‘Game-Changer’ for Parts*

munity advocates pushing for more access to economic opportunities for their neighborhoods joined with environmental advocates pushing for more public transportation to pressure the MBTA to add commuter rail stops in underserved neighborhoods. The addition of those stops for the community was a victory for the whole coalition, but it is a victory that carries the risk of a different problem: a new rail stop could lead to gentrification.

Caramello said that sometimes an initiative may have gaps in foresight because of a gap in shared understanding among coalition members. She cited the Fairmount line campaign as an example of environmentalists and housing advocates working together, but such a coalition can be hard to keep together after the stated goal is met. She asked, “How do we build lasting coalitions so that when these big things come up, we have ways of working together rather than seeing ourselves as separate interest groups?” If individuals continue to cultivate relationships built during one campaign, the coalition may continue for future campaigns. Caramello said that the trust that develops through those maintained relationships, like what she has experienced between HLAB and CVLU, is what makes movements long-lasting and efficient. Cross-disciplinary coalition building is particularly important to a cause like climate justice, where highfalutin legal language combines with the technocratic jargon of climate and environmental science. Movements need experts to interpret for and advocate for their mission, and they need to be able to trust those experts.

Through the long-term activity of groups like CVLU, ACE, and REEP, Roxbury is a neighborhood with an entrenched tradition of social justice movements. Caramello noted that the strong presence of these groups is something other cities can learn from, and she also noted the difficulties for aspiring movement lawyers in locations without strong movements already present. In other jurisdictions without a similar tradition, particularly in areas where the legal system is more oppressive towards environmental justice communities and less amenable to public activism, movement lawyering can be more complicated because the affected communities may not be as visibly organized.

Particularly for climate change, communities may not be concerned about the danger of inequities it causes, or residents may be too overwhelmed with more immediate crises to put their energy into fighting such a seemingly theoretical issue. Movement lawyering is bound to be different in every locality, because each community has its own unique history, culture, motivations and personalities. It is up to movement lawyers to listen openly to those af-

of Boston, BOSTON.COM (Oct. 7, 2019),

<https://www.boston.com/news/local-news/2019/10/07/mbta-fairmount-line>.

fectured by an issue and to use their legal expertise with humility and honesty to help movement protagonists on the path to power.

VI. CONCLUSION

Movement lawyering for climate justice looks a lot like movement lawyering for environmental, economic, and housing justice. That's because all of those movements are part of the same wider struggle for dignity and self-determination — a struggle that involves legal successes and failures but is not limited to them. Climate justice is distinct because it requires movement attorneys, organizers, and affected community members to organize around climate change — a “threat multiplier” that may not appear to have a tangible immediate effect on communities not yet regularly confronted with unusual weather events, rising coastlines, and extreme heatwaves. However, existing movements can provide a solid ground for a local climate justice movement by supporting advocates with the coalitions and grassroots power needed to pressure local government to respond to climate change in an equitable and just way. Attorneys can support these efforts with education, lobbying, litigation, and other legal skills and privileges. In order to truly be engaged in climate justice, however, lawyers must approach their work with respect, humility, and a confrontation of their own biases and assumptions about hierarchy.

The research I conducted for this article was limited to movement lawyering strategies, but much more research can and should be done on specific tactics that movement lawyers can use to implement those strategies. I also limited the bulk of my research and interviews to organizations and actors in Boston, but research with a wider geographic would provide a more diverse, and therefore more universally applicable, set of movement successes, setbacks, and lessons. In particular, I think a valuable addition would include study of the climate justice movement growing out of regions with less progressive politics, such as the Southeast. A much more expansive research project could explore policies in countries with other legal regimes and compare climate justice movement strategies in civil law regimes against those in common law regimes. Other research that could be useful includes more interviews with movement lawyers and organizers; more application of international frameworks to local policy; and more research on indigenous-led movements.

My purpose in researching this topic was to explore both an area of the law and a theory of lawyering that I did not find in the Harvard Law School curriculum when I was a student. While climate law is burgeoning within the environmental law sphere, I did not find much guidance on climate

justice from casebooks. Despite calls for the law school to establish a movement lawyering clinic, Harvard does not have many options available for students interested in practicing public interest law that do not fall within the assumed categories of impact litigation, direct services, or government work.⁷⁷ I chose to write this article to learn how I can become a legal advocate who treats clients with respect and humility, and who advocates with an understanding of power dynamics. Since completing this essay, I have started work as a Climate Justice Legal Fellow for the environmental justice nonprofit GASP in Birmingham, Alabama. As a new attorney, I try to incorporate the lessons I learned from this research in my everyday practice.

As existential threats from climate change to the COVID-19 pandemic change our society and our future, powerful and wealthy individuals will tend to use tragedy as opportunity to further undermine the rights of others.⁷⁸ My belief is that lawyers dedicated to the public interest must understand their own power to press against that current and use their skills and privileges to support others in their struggle. Because, as movement lawyers Alexi and Jim Freeman said, “despite what seem like long odds, oppressed communities can win. As history has shown us time and time again, David can beat Goliath. However, doing so requires that the affected community marshals more power than those who are invested in preserving the status quo.”⁷⁹

77 See Aidan F. Ryan, *Activists Urge Harvard Law School to ‘Better Prepare’ Students to Support Incarcerated People*, HARV. CRIMSON (Sept. 27, 2018), <https://www.thecrimson.com/article/2018/9/27/blsa-letter-prison-strike-demands-social-justice-programs/>.

78 See Naomi Klein, *Coronavirus Capitalism — and How to Beat It*, THE INTERCEPT (Mar. 16, 2020), <https://theintercept.com/2020/03/16/coronavirus-capitalism/>; see also Naomi Klein, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM*, Picador (2007).

79 Freeman & Freeman, *supra* note 19, at 151.