

# MOVEMENT LAWYERING: A SOCIAL INNOVATION TO ACHIEVE CLIMATE JUSTICE

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“One has a moral responsibility to disobey unjust laws...an unjust law is no law at all.”

Martin Luther King, Jr.,  
A Letter from a Birmingham Jail

## I. INTRODUCTION

Law and justice do not always align, but they are intertwined, and it is clear that in moments throughout American history, what was once legal was not ethical. “History shows ‘The Law’ has always trailed behind what was just.”<sup>1</sup> To name a few examples, slavery was legal, women were not allowed to vote, and interracial and same sex marriages were illegal. These led to movements fighting injustices, such as abolition, the suffrage

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<sup>1</sup> Jennifer Ching, et al., *A Few Interventions and Offerings from Five Movement Lawyers to the Access to Justice Movement*, 87 FORDHAM L. REV. 186, 187 (2019).

movement, and the civil rights movement. When a fundamental injustice is felt deeply, social movements can emerge to challenge oppressive systems and shift societal norms, values, and laws.<sup>2</sup> In many of these social movements, movement lawyers, who choose not to follow the law,<sup>3</sup> supported these causes while also playing an important part in social change.<sup>4</sup> Movement lawyers start with the belief that systemic social change comes from social movements, rather than courts or heroic lawyers or impact litigation.<sup>5</sup>

In the midst of destructive social challenges such as climate change, in efforts to advance social change, social innovation emerged as a possible

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<sup>2</sup> See Alexi Freeman, *Teaching for Change: How the Legal Academy Can Prepare the Next Generation of Social Justice Movement Lawyers*, 59 HOW. L.J. 99, 106–09 (2015).

<sup>3</sup> See William Quigley, *Lawyers and Civil Disobedience*, 35 GPSOLO 12, 12–17 (2018) [hereinafter *Lawyers and Civil Disobedience*].

<sup>4</sup> See Austin Sarat & Stuart Scheingold, *Introduction*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 1 (Austin Sarat & Stuart Scheingold eds., 2006).

<sup>5</sup> See William P. Quigley & Janet Mary Riley, *Ten Questions for Social Change Lawyers*, 17 LOY. PUB. INT'L L. REP. 204, 204–05 (2012).

sustainable solution.<sup>6</sup> The study of sustainability transitions has developed into an interdisciplinary field of research, which focuses on the long-term processes of transformative change towards more sustainable societies.<sup>7</sup> Social Innovations for sustainability have been the subject of increased attention due to their transformative potential.<sup>8</sup> Notably, social innovation has been linked to climate change as a critical societal challenge that requires coordinated efforts to succeed.<sup>9</sup> The threat and complexity of climate change has inspired, “a new kind of activism” for the climate movement, one that showcases more assertive strategies, including non-violent civil disobedience.<sup>10</sup> Those within the

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<sup>6</sup> See Jurgen Howaldt, et al., *Social Innovations as Drivers of Social Change—Exploring Tarde’s Contribution to Social Innovation Theory Building*, in *NEW FRONTIERS IN SOCIAL INNOVATION RESEARCH* 29–51 (Alex Nicholls, et al. eds., 2015).

<sup>7</sup> See Flor Avelino, *Power in Sustainability Transition: Analyzing Power and (dis)Empowerment in Transformative Change Towards Sustainability*, 37 *ENV’T POL’Y GOVERNANCE* 505 (2017).

<sup>8</sup> See Marc Wolfram, *Cities Shaping Grassroots Niches for Sustainability Transitions: Conceptual Reflections and an Exploratory Case Study*, 173 *J. CLEANER PROD.* 1, 6 (2018).

<sup>9</sup> See Jay Sterling Gregg, et al., *Collective Action and Social Innovation in the Energy Sector: A Mobilization Model Perspective*, 13 *ENERGIES* 651, 653 (2020).

<sup>10</sup> Maxin Burkett, *Climate Disobedience*, 27 *DUKE ENV’T L. & POL’Y F.* 1, 6 (2016).

climate movement are fully embracing the Bornstein, “change the world” attitude.<sup>11</sup>

This Article develops the theory that movement lawyering utilizes processes similar to social innovation and that the Climate Defense Project is a nonprofit organization of movement lawyers seeking to advance climate justice through various innovative legal and community-based strategies. From this basis, the Article develops as follows: Part II discusses the theories of social movements, and briefly discusses how the climate change movement challenges the system through civil disobedience. Part III defines movement lawyers as those who are not traditional or “regnant”<sup>12</sup> and introduces the Climate Defense Project as a nonprofit social enterprise. Part IV identifies the main themes found in the literature that establish a movement lawyer, such as integrated advocacy, building power, and advocating for systemic social change and

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<sup>11</sup> See DAVID BORNSTEIN, *HOW TO CHANGE THE WORLD: SOCIAL ENTREPRENEURS AND THE POWER OF NEW IDEAS* (2004).

<sup>12</sup> See Milner S. Ball, *Power from the People*, 92 MICH. L. REV. 1725, 1726 (1994) (citing GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* 29 (1992)).

establishes a comparative analysis of the definitions and processes of social innovation, ultimately concluding that there is a strong connection between social innovation pathways and movement lawyering processes, thereby cementing movement lawyering as a socially innovative process that could lead to societal change. Part V showcases the Climate Defense Project as a social innovation model of climate movement lawyering by exemplifying their collaborative integrated advocacy techniques, innovative use of the climate necessity defense, and their methods of aiming to build power within the climate justice movement. Part VI concludes by demonstrating how the Climate Defense Project is seeking to advance systemic social change through movement lawyering and social innovation processes.

## II. SOCIAL MOVEMENTS AND CLIMATE JUSTICE

Most definitions of social movements highlight the collectivity of movements. Social movements

have been conceptualized as a form of collective action for the purpose of challenging or defending institutional or cultural authority.<sup>13</sup> Social movement actors are engaged in the movement with a goal to promote or oppose social change.<sup>14</sup> The students of the collective behavior schools impacted the sociology of social movements, which defines collective movements “as meaningful acts, driving often necessary and beneficial social change.”<sup>15</sup> Alan Scott identifies two key characteristics of social movements: 1) the use or threat of mass mobilization as the main source of power; and 2) the defending or changing of society being the primary concern.<sup>16</sup> Protest as a method is often included in social movement definitions.<sup>17</sup>

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<sup>13</sup> See ALAN SCOTT, *IDEOLOGY AND THE NEW SOCIAL MOVEMENTS* 6 (1990); Noam Bergman, *Impacts of the Fossil Fuel Divestment Movement: Effects on Finance, Policy, and Public Disclosure*, 10 SUSTAINABILITY 2529, 2532 (2018).

<sup>14</sup> See DONATELLA DELLA PORTA & MARIO DIANI, *SOCIAL MOVEMENTS: AN INTRODUCTION* 21 (2006).

<sup>15</sup> *Id.* at 13.

<sup>16</sup> See Scott, *supra* note 14, at 6.

<sup>17</sup> See NICK CROSSLEY, *MAKING SENSE OF SOCIAL MOVEMENTS* 6 (2002).

## A. Social Movement Impacts

Although the ultimate goal of social movements is to bring about change, the study of the effects has been largely neglected.<sup>18</sup> The outcomes of a movement are heavily influenced by the utilization of third parties, political resources and institutions, allies, a conducive environment, and even the support of government or organizations.<sup>19</sup> Some authors have explored how social movements can have greater impact when goals are pursued in administrative agencies and courts.<sup>20</sup>

However, analyzing social movements based on their success or failures can be problematic because in efforts to bring about change, unintended consequences occur that are unrelated to its claims.<sup>21</sup> Movement outcomes are analyzed in two avenues of research: 1) public opinions and 2) political

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<sup>18</sup> See Marco Giugni, *Was it Worth the Effort? The Outcomes and Consequences of Social Movements*, 98 ANN. REV. SOCIO. 371, 373 (1998).

<sup>19</sup> See *id.*

<sup>20</sup> See *id.* at 384.

<sup>21</sup> See *id.* at 386–87.

context.<sup>22</sup> Mobilizing public opinion can maintain the pressure capacity.<sup>23</sup> Protest activity within social movements raises awareness of issues amongst the general public and can cause changes in public opinion which helps movements achieve their goals by making decisionmakers more receptive to their demands.<sup>24</sup> Several authors stress the role of public opinion in making legislative change.<sup>25</sup>

#### B. Environmental Movements and the Climate Justice Movement

New social movements challenge ideas of politics and society.<sup>26</sup> Porta and Diani, describe environmental protection as a new social movement.<sup>27</sup> An environmental movement is known to be engaged in collective action motivated by shared identity or concern about environmental

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<sup>22</sup> *See id.* at 377.

<sup>23</sup> *See della Porta, supra* note 15, at 28.

<sup>24</sup> *See* Giugni, *supra* note 19, at 379; Christopher Rootes & Eugene Nulman, *The Impacts of Environmental Movements*, in OXFORD HANDBOOK OF SOCIAL MOVEMENTS 729–742 (Donatella della Porta & Mario Diani, eds., 2014).

<sup>25</sup> *See* Giugni, *supra* note 19, at 379–80.

<sup>26</sup> *See della Porta, supra* note 15, at 9.

<sup>27</sup> *See id.* at 6.

issues.<sup>28</sup> Environmental movements influence policy by utilizing scientific knowledge.<sup>29</sup> The environmental justice movement emerged in the 1970s, which grew the climate justice movement.<sup>30</sup> Beginning in the 1990s, the focus was on sharing the burdens and benefits of climate change; mitigation and adaptation; and assisting those affected by climate change.<sup>31</sup> Now climate justice predominantly concerns itself with issues of justice for both present and future generations.<sup>32</sup>

The failure of the Kyoto Protocol triggered climate protests calling for climate justice.<sup>33</sup> However, the signing and adoption of the Paris Agreement at Conference of the Parties (COP) 21 signified a global consensus that climate change is an urgent threat that needs ambitious mitigation and

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<sup>28</sup> See Rootes, *supra* note 25.

<sup>29</sup> *See id.*

<sup>30</sup> Kirsten Jenkins, *Setting Energy Justice Apart from the Crowd: Lessons from Environmental and Climate Justice*, 29 ENERGY RSCH. & SOC. SCI. 117, 117–21 (2018).

<sup>31</sup> *See id.*

<sup>32</sup> *See id.*

<sup>33</sup> *See id.*

adaptation efforts to solve the problem.<sup>34</sup> Yet, negating this consensus, on June 1, 2017 withdraw from the Paris Climate Accord was advanced within the United States.<sup>35</sup> Hostile Republican majorities in Congress have blocked federal government action on climate change, which overall has a tendency to create a political environment that is not conducive to legislative change.<sup>36</sup> Recognizing this political resistance, the U.S. Climate movement most often has taken the form of protest.<sup>37</sup> Despite any success of environmental movements, the degradation of the global environment continues at an unprecedented pace.<sup>38</sup>

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<sup>34</sup> See Josephine M. Balzac, *Corporate Responsibility: Promoting Climate Justice Through the Divestment of Fossil Fuels and Socially Responsible Investment*, in CLIMATE JUSTICE: CASE STUDIES IN GLOBAL GOVERNANCE CHALLENGES 126 (Randall S. Abate, ed., 2016).

<sup>35</sup> See Cara Korte, *What the U.S. is Committing to As It Rejoins the Paris Climate Accords—and Why It Matters*, CBS News (Feb. 19, 2021), <https://www.cbsnews.com/news/paris-agreement-united-states-commitment/>.

<sup>36</sup> See Rootes, *supra* note 25.

<sup>37</sup> See *id.*

<sup>38</sup> See *id.*

### C. Climate Movement Challenges the System

Climate change has been identified as a wicked problem, which is complex with multiple causes, many interdependencies, and different stakeholders with conflicting goals.<sup>39</sup> Within climate change there are political, social, and environmental issues involved at all levels of governance.<sup>40</sup> Climate change impacts are perpetuated by the lack of political will to mitigate the harms. Resembling all large systems of oppression, the burning of fossil fuels, serves the interests of the wealthiest and most politically powerful.<sup>41</sup> The irony is that the massive burning of fossil fuels is absolutely legal and yet it causes an immense social and environmental injustice to the most vulnerable communities and future generations. In his book, *Civil Disobedience*, Henry David Thoreau emphasized the existence of

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<sup>39</sup> See Sharon Zivkovic, *Systemic Innovation Labs: A Lab for Wicked Problems*, 14 SOC. ENTER. J. 348 (2018).

<sup>40</sup> See RANDALL S. ABATE, CLIMATE JUSTICE: CASE STUDIES IN GLOBAL GOVERNANCE CHALLENGES XXXIII (2006).

<sup>41</sup> See Alexi Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large Scale Social Change*, 23 CLINICAL L. REV. 147, 162 (2016).

unjust laws.<sup>42</sup> He argued that citizens do not have a duty to follow or support a government that facilitates injustice.<sup>43</sup> Law-breaking can actually preserve the legal system.<sup>44</sup> Civil disobedience and resistance are not at odds with democracy, they are a plea for reform not revolution.<sup>45</sup> The action must be open and visible so as to “awaken the conscience of society that a law is unjust.”<sup>46</sup>

This type of non-violent communication rooted in Gandhian tradition has long been a part of both environmental politics and social entrepreneurship.<sup>47</sup> William Drayton, one of the most influential persons for social entrepreneurship, was inspired by both the American civil rights movement and Indian independence.<sup>48</sup> Drayton was motivated by the role

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<sup>42</sup> HENRY DAVID THOREAU, CIVIL DISOBEDIENCE (1849).

<sup>43</sup> *See id.*

<sup>44</sup> *See* Matthew Lippman, *Liberating the Law: The Jurisprudence of Civil Disobedience and Resistance*, 2 SAN DIEGO JUST. J. 299, 388 (1994).

<sup>45</sup> *See id.* at 381.

<sup>46</sup> *See* Michael Patrick Wilt, *Civil Disobedience and the Rule of Law: Punishing “Good Lawbreaking in a New Era of Protest,”* 28 GEO. MASON CIV. RTS. L.J. 43, 56 (2017).

<sup>47</sup> Rafael Ziegler, et al., *Following Gandhi: Social Entrepreneurship as a Non-Violent Way of Communicating Sustainability Challenges*, 6 SUSTAINABILITY 1018, 1023 (2014).

<sup>48</sup> *See* Bornstein, *supra* note 12, at 48-51.

of individuals who acted courageously and engaged themselves based on their empathetic understanding of the difficult situation as opposed to some laws or rules that they could simply apply.<sup>49</sup> Drayton's vision focuses on innovation and impact, especially those types of social innovations that can change systems.<sup>50</sup>

The unjust laws perpetuating the injustices of climate change are exactly the type of social problems that propel social innovation and the movement lawyering process with a goal to solve the systemic issue and achieve meaningful social change. It is clear that the climate movement has embraced both civil disobedience and law through social innovation to challenge the oppressive system that governments are supporting.

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<sup>49</sup> See Ziegler, et al., *supra* note 48, 1023 (citing Bornstein, *supra* note 12, at 48).

<sup>50</sup> See *id.*

### III. MOVEMENT LAWYERS

Movement lawyering turns from the vision of lawyering linked to the idea of legal liberalism, which is a model of social change through law using impact litigation.<sup>51</sup> Many lawyers are trained to think narrowly in terms of policy and to believe that legal skills alone can create a more just society.<sup>52</sup> However, some lawyers see the legal system as a corrupt, unjust, and oppressive force.<sup>53</sup> They become frustrated with the system because even when their positions are grounded on justice and morality, they still find themselves on the losing end of important cases and policy formation.<sup>54</sup> However, this knowledge is essential to understanding how law fits into the social and political institutions in order to recognize that law alone cannot solve our most crucial problems.

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<sup>51</sup> See Scott Cummings, *Movement Lawyering*, U. ILL. L. REV. 1645, 1654 (2017) [Cummings, *Movement Lawyering*].

<sup>52</sup> See Freeman, *supra* note 3, at 150.

<sup>53</sup> See Thomas M. Hilbink, *You Know the Type...Categories of Cause Lawyering*, in CAUSE LAWYERING POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 681 (Austin Sarat & Stuart Scheingold, eds., 2004).

<sup>54</sup> See Freeman & Freeman, *supra* note 42, at 149.

## A. Movement Lawyers and Social Movements Throughout History

Law and lawyers are considered an integral part of social movements and of social change, but it is a role that is debated.<sup>55</sup> It is true that litigation plays a role within social movements, however, the majority of successes of the movement connect more with the popular struggles than with the court victories.<sup>56</sup> Lawyers working within social movements are not usually the central figure, but instead enhance the power of community groups or defend them, because the real key figures are the ones struggling on the street.<sup>57</sup> Movement lawyers remained largely behind the scenes while playing important roles defending

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<sup>55</sup> See Scott Cummings, *Law and Social Movements: Reimagining the Progressive Canon*, WIS. L. REV. 441, ### (2018) [hereinafter Cummings, *Law and Social Movements*] (citing Michael R. Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67–131 (2000)).

<sup>56</sup> See Charles Elsesser, *Community Lawyering – The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT’L L. 375, 382 (2013).

<sup>57</sup> See Freeman, *supra* note 3, at 101.

activists and empowering them to pursue nonviolent direct action.<sup>58</sup>

During the civil rights movement, there are examples of traditional lawyer domination and counterproductive legal campaigns, however, there were also underappreciated efforts by lawyers to combine law and politics to build social movements.<sup>59</sup> Lawyers served a central role throughout Dr. Martin Luther King's activist life.<sup>60</sup> Nevertheless, there is little mention of these lawyers working hard toward systemic social change with marginalized groups, because this concept was not given an "official name" until Gerald Lopez's influential piece about "rebellious lawyering."<sup>61</sup> Yet, these types of legal advocates have been engaged in mass struggles, such as the labor movement and civil rights.<sup>62</sup>

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<sup>58</sup> See Leonard S. Rubinowitz, et al., *A "Notorious Litigant" and "Frequenter of Jails": Martin Luther King, Jr., His Lawyers, and the Legal System*, 10 NW. J. L. & SOC. POL'Y 494, 497 (2016).

<sup>59</sup> See Cummings, *Movement Lawyering*, *supra* note 52, at 1661.

<sup>60</sup> See Rubinowitz, *supra* note 59, at 496.

<sup>61</sup> Freeman, *supra* note 3, at 108.

<sup>62</sup> See Elssesser, *supra* note 57, at 375–76.

Today movement lawyers, their organizations, and strategies are seen in the struggle for lesbian, gay, bisexual, transgender, and queer (LGBTQ) rights, immigrant rights, and the Black Lives Matter movement.<sup>63</sup> A recent article written for *Law at the Margins*, called on all movement lawyers committed to supporting social movements to come together to provide legal support to communities most impacted by illegal policies.<sup>64</sup> Over the past couple of decades legal scholars have written that movement lawyering can be a positive and necessary framework to advance social change and have provided strategies to overcome the limitations of the legal system.

### B. Movement Lawyers Recognize the Limitations of the Legal System

Many scholars see traditional lawyering, including most forms of public interest law and

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<sup>63</sup> See Cummings, *Law and Social Movements*, *supra* note 56, at 129–52.

<sup>64</sup> See Chaumtoli Huq, *Calling All Movement Lawyers: We Need to Organize Our Legal Support*, *Law @ the Margins* (Jan. 16, 2019), <https://lawatthemargins.com/calling-movement-lawyers-need-organize-legal-support/>.

impact litigation, as undermining the potential for systemic change and social justice within social movements.<sup>65</sup> Unfortunately, typical legal services that exclusively address immediate and urgent client needs do not characteristically create meaningful systemic change, redistribute societal power, or alter the fundamental hierarchal and capitalist structures.<sup>66</sup> Traditional lawyering tools can exacerbate the power differences and create dependency not interdependency.<sup>67</sup> Movement lawyers believe that the limitations of the legal system and the corresponding traditional legal tools do not always achieve true social change, and must approach their strategic efforts more creatively.<sup>68</sup> They see the law as one social problem-solving tool, but not the only one. Therefore, recognizing this potential for unintended consequences and/or disempowering communities, movement lawyers

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<sup>65</sup> See Gabriel Arkles, et al., *The Role of Lawyers in Trans Liberation: Building a Transformative Movement for Social Change*, 8 SEATTLE J. SOC. JUST. 579, 595–60 (2010).

<sup>66</sup> See *id.* at 595; Freeman, *supra* note 3, at 111.

<sup>67</sup> See Arkles, *supra* note 66, at 594; Elsesser, *supra* note 57, at 383.

<sup>68</sup> See Cummings, *Movement Lawyering*, *supra* note 52, at 1654.

embrace implementing the processes of integrated advocacy with the aim to build community power and achieve social change.

### C. Recognizing Lawyers as Changemakers within the Social Enterprise Field

Lawyers have an enormous opportunity to innovate and advance positive social change.<sup>69</sup> The Executive Director of the American Civil Liberties Union (ACLU) suggested that entrepreneurialism and innovation channeled toward positive social change are fundamental for the legal profession today.<sup>70</sup> Driving this point even further, in 2016, the American Bar Association (ABA), provided recommendations to the legal profession and stated that “lawyers who learn entrepreneurial skills can help solve the justice gap.”<sup>71</sup>

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<sup>69</sup> See David Nahmias, *The Changemaker Lawyer: Innovating the Legal Profession for Social Change*, 106 CAL. L. REV. 1336, 1336–37 (2019).

<sup>70</sup> See *id.* at 1337.

<sup>71</sup> *Report on the Future of Legal Services in the United States*, AM. BAR ASS’N 1, 49 (2016), [https://www.americanbar.org/content/dam/aba/images/abanews/2016/FLSReport\\_FNL\\_WEB.pdf](https://www.americanbar.org/content/dam/aba/images/abanews/2016/FLSReport_FNL_WEB.pdf) [hereinafter *Report on the Future of Legal Services*].

Lawyers are often seen as playing a role within the social enterprise sector, helping startups address their legal needs, but not as the changemakers themselves. For example, social enterprise law refers to the legal services that legitimize, enable, and grow social entrepreneur organizations.<sup>72</sup> These legal services include business formation, intellectual property, tax compliance, and financial and investment regulations.<sup>73</sup> However, social enterprise law situates the lawyer, not as the social entrepreneur, but as a conventional lawyer in service of the social entrepreneur.<sup>74</sup> There is a lack of emphasis on lawyers as social entrepreneurs or on lawyers starting social enterprises with a social mission. Yet, these changemaker lawyers do exist and minimal research exists on legal entities with a social mission.<sup>75</sup> Movement lawyers seek to stop the larger social problem, challenge the injustices, and transform the unjust system.<sup>76</sup>

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<sup>72</sup> See Nahmias, *supra* note 70, at 1348.

<sup>73</sup> *See id.*

<sup>74</sup> *See id.*

<sup>75</sup> *See id.*

<sup>76</sup> *See* Freeman, *supra* note 3, at 111.

Within the climate justice movement there is a need for this changemaker lawyer and model of climate movement lawyering. In this era of climate change, lawyers must acknowledge that the very system of laws allows the government and the fossil fuel industry to destroy the planet and, therefore, humanity. In order for citizens to prosper, environmental laws need to be accountable to the laws of nature, but currently the U.S. system has dysfunction permeating the entire structure.<sup>77</sup> Recognizing some of the failures of traditional environmental legal systems, there have been several innovative initiatives within the legal community to transform the legal paradigm: Nature's Trust, to categorize government's ecological obligation to protect natural resources;<sup>78</sup> The Rights of Nature, to change the treatment of nature as "property" to recognizing nature rights as human beings have

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<sup>77</sup> See MARY WOOD, NATURE TRUST: ENVIRONMENTAL LAW FOR A NEW ECOLOGICAL AGE, 6 (2014).

<sup>78</sup> See *id.* 14-17.

rights;<sup>79</sup> and Ecocide Law, to include ecocide (i.e., crime against earth) as the fifth international crime against peace.<sup>80</sup> Consequently, a lawyer who is passionate about environmental and climate justice is confronted with the dilemma of adhering to the traditional rule of law or having the “courage and ingenuity to act differently from the status quo” of the current legal system.<sup>81</sup>

Climate Defense Project (CDP) co-founder, Kelsey Skaggs, was confronted with this dilemma while in a law school class, when she realized environmental law was siloed, administrative, had very little to say about climate change, and actually failed to address it in a meaningful way.<sup>82</sup> The CDP co-founders incorporated as a nonprofit, 501(c)(3) organization, because they wanted to do the work of

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<sup>79</sup> See *What is Rights of Nature?*, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE, <https://therightsofnature.org/what-is-rights-of-nature/> (last visited Aug. 10, 2020).

<sup>80</sup> See ECOCIDELAW, <https://ecocidelaw.com/> (last visited Aug. 11, 2020) [hereinafter *Ecocide*].

<sup>81</sup> See Nahmias, *supra* note 70, at 1342.

<sup>82</sup> See Telephone Interview with Kelsey Skaggs, Executive Editor, & Ted Hamilton, Co-Founder, the Climate Defense Project (June 6, 2019) [hereinafter Telephone Interview with Kelsey Skaggs & Ted Hamilton].

climate justice and they knew traditional lawyer jobs were not going to meaningfully address the issue of climate change.<sup>83</sup> As Gregory Dees stated, when governments and institutions fall short, this is the ideal time for “entrepreneurial approaches to social problems.”<sup>84</sup>

The creative solution of CDP to advance climate action was recognized by Echoing Green in 2018 when both Kelsey Skaggs and Alice Cherry were named Echoing Green Climate Fellows.<sup>85</sup> In 2019, Alice Cherry was named one of 2019 Straubel Leadership Award Winners, in the same class as Greta Thunberg.<sup>86</sup> Echoing Green describes CDP’s bold climate idea as “removing barriers to nonviolent

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<sup>83</sup> *See id.*

<sup>84</sup> *See* Gregory Dees, *The Meaning of “Social Entrepreneurship,”* Duke FUQUA 1 (1998), [https://centers.fuqua.duke.edu/case/wp-content/uploads/sites/7/2015/03/Article\\_Deas\\_MeaningofSocialEntrepreneurship\\_2001.pdf](https://centers.fuqua.duke.edu/case/wp-content/uploads/sites/7/2015/03/Article_Deas_MeaningofSocialEntrepreneurship_2001.pdf).

<sup>85</sup> *See* Alice Cherry, ECHOING GREEN, <https://fellows.echoinggreen.org/fellow/alice-cherry/> (last viewed Mar. 22, 2019) [hereinafter *Alice Cherry*]; Kelsey Skaggs, ECHOING GREEN, <https://fellows.echoinggreen.org/fellow/kelsey-skaggs/> (last viewed Mar. 22, 2019) [hereinafter *Kelsey Skaggs*].

<sup>86</sup> *2019 Straubel Leadership Award Winners*, STRAUBEL FOUNDATION, <https://www.straubelfoundation.org/newspage/2019/2019-straubel-leadership-award-winners> (last visited Aug. 8, 2020).

civil disobedience combating climate change by reducing legal risks and strengthening the global climate movement.”<sup>87</sup> Echoing Green’s Fellowships selects some of the world’s best emerging social entrepreneurs.<sup>88</sup> They describe their fellows as the “innovators, instigators, pioneers, and rebels that reject the status quo and drive positive social change all over the world.”<sup>89</sup>

Social innovation is at the core of social enterprises making positive impacts.<sup>90</sup> In an interview with Kriss Dieglmeier, Executive Director of Stanford Center for Social Innovation, she said “social innovation is what needs to grow, the social enterprise is just one individual piece.”<sup>91</sup> CDP’s mission is to “fill the gap in the legal landscape by supporting front-line activists, pursuing climate

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<sup>87</sup> See Alice Cherry, *supra* note 86; Kelsey Skaggs, *supra* note 86.

<sup>88</sup> See *Fellowship*, ECHOING GREEN, <https://echoinggreen.org/fellowship/> (last visited Aug. 8, 2020) [hereinafter *Fellowship*].

<sup>89</sup> See *id.*

<sup>90</sup> See Jeffrey Goldstein, et al., *Complexity and Social Entrepreneurship: A Fortuitous Meeting*, 10 EMERGENCE: COMPLEXITY & ORGANIZATION 9, 22 (2008).

<sup>91</sup> See RUTH SHAPIRO, THE REAL PROBLEM SOLVERS: SOCIAL ENTREPRENEURS IN AMERICA 133–34 (2013).

impact litigation, and connecting attorneys with communities and campaigns.”<sup>92</sup> This approach requires innovative legal arguments and comprehensive legal support for climate activists.<sup>93</sup> CDP believes that in order to respond to climate change, a movement-based model of climate lawyering as a social innovation initiative needs to grow.<sup>94</sup> They are recognizing that the processes utilized by movement lawyers are valuable to address the complex problem of climate change because ultimately the goal is to achieve systemic social change and stop the extraction of fossil fuels.

#### IV. MOVEMENT LAWYERING IS A FORM OF SOCIAL INNOVATION

The concept of social innovation and its definitions have evolved over the past six decades,

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<sup>92</sup> CLIMATE DEFENSE PROJECT, <https://climatedefenseproject.org/> (last viewed July 16, 2019).

<sup>93</sup> *See id.*

<sup>94</sup> *See About*, CLIMATE DEFENSE PROJECT, <https://climatedefenseproject.org/about/> (last viewed July 16, 2019).

from 1955 to the present.<sup>95</sup> A comprehensive review of the literature linked social innovation to key themes: social inventions, social change, and address unmet social needs.<sup>96</sup> More recently, the social innovation scholarship describes social innovation as a contested concept and as a collaborative concept that seeks to explain a diversity of uses.<sup>97</sup> In their bibliometric review, Noorseha Ayob, Simon Teasdale, and Kylie Fagan describe the first stream of literature as focusing on the outcomes and social value production of social innovation; and the second focusing on new social processes focused on structural changes in power relations.<sup>98</sup> However, their analysis indicates some decontestation with the

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<sup>95</sup> See Monica Edwards-Schachter & Matthew L. Wallace, *'Shaken, But Not Stirred': Six Decades Defining Social Innovation*, Ingenio Working Paper Series N° 1, 7 (2015).

<sup>96</sup> See *id* at 19.

<sup>97</sup> See Nooresha Ayob, et al., *How Social Innovation 'Came to Be': Tracing the Evolution of a Contested Concept*, 45 J. SOC. POL'Y 635, 636 (2016); Rafael Ziegler, *Social Innovation as a Collaborative Concept*, 30 INNOVATION: THE EUROPEAN J. SOC. SCI. RSCH. 1, 5–6 (2017).

<sup>98</sup> See Ayob, *supra* note 99, at 638–41; Eduardo Pol & Simon Philip Ville, *Social Innovation: Buzz Word or Enduring Term?*, 38 J. SOCIO-ECONOMICS 879, 879–885 (2009); Frank Moulaert, et al., *Social Innovation: Intuition, Precept, Concept, Theory and Practice*, INT'L HANDBOOK ON SOC. INNOVATION 13, 15–17 (2013).

emerging view that both the outcome and process dimensions are common elements of the social innovation definition.<sup>99</sup> Social innovation has become central to policy and has manifested as an effective way for dealing with societal challenges.<sup>100</sup> In the European Union, the Bureau of European Policy Advisors (BEPA) defines social innovation (SI) as “innovations that are social both in their ends and in their means and as new ideas (products, services, and models) that simultaneously meet social needs (more effectively than alternatives) and create new social relationships or collaborations.”<sup>101</sup> Most usages recognize the importance of new social relationships in generating new ideas and in delivering new solutions.<sup>102</sup>

However, within social innovation, the “innovation is not only a new idea...innovation is an

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<sup>99</sup> See Ayob, *supra* note 99, at 636–37; Ziegler, *supra* note 98, at 17.

<sup>100</sup> See Flor Avelino, et al., *Transformative Social Innovation and (dis)Empowerment*, 145 TRANSFORMATIVE FORECASTING & SOC. CHANGE 195 (2019).

<sup>101</sup> See Agnès Hubert, *Empowering People, Driving Change: Social Innovation in the European Union*, Bureau of European Policy Advisors (BEPA) European Commission, 7, 9 (May 2010) [hereinafter *Empowering People, Driving Change*].

<sup>102</sup> See Ayob, *supra* note 99, at 646–47.

inherently social process, requiring interaction with others: social processes of discussion, group formation, and networking. Thus, innovation is not only important for its outputs and outcomes, but also as a social process.”<sup>103</sup> Alex Nicholls and colleagues discuss three levels of social innovation.<sup>104</sup> The third level, disruptive social innovation aims at systems change.<sup>105</sup> This is typically the area of social movements and networks aiming to change power relations.<sup>106</sup> The objective of the disruptive level is to change cognitive frames of reference to alter social systems and structures.<sup>107</sup> Transformative social innovation (TSI) is the process through which social innovation contributes to transformative change by challenging, altering, or replacing dominant institutions.<sup>108</sup>

After reviewing the literature, Ayob, Teasdale, and Fagan illustrated the social innovation process,

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<sup>103</sup> Ziegler, *supra* note 98, at 4.

<sup>104</sup> ALEX NICHOLLS, ET AL., NEW FRONTIER IN SOCIAL INNOVATION RESEARCH 3 (2015).

<sup>105</sup> *See id.*

<sup>106</sup> *See id.*

<sup>107</sup> *See id.* at 4.

<sup>108</sup> *See* Avelino, et al., *supra* note 101, at 196.

showcasing five plausible pathways linked to co-production that can be conceived as social innovation.<sup>109</sup> First, new forms of social relations lead to innovation. Innovation leads to restructuring of social and power relations. Innovation leads to utilitarian social value. New forms of social relations lead to innovation which results in the restructuring of power relations, and thus, societal impact. New forms of social relations lead to innovation, which creates utilitarian social value, and thus societal impact.<sup>110</sup>

This section analyzes the interrelationship and connection between movement lawyering processes and the fourth social innovation pathway where “new forms of social relations lead to innovation (new ideas) which results in the restructuring of power relations (and thus societal impact).”<sup>111</sup> This connection between social innovation and movement lawyering is not unusual. Throughout the social entrepreneurship research, social entrepreneurship

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<sup>109</sup> See Ayob, *supra* note 99, at 648, Figure 3.

<sup>110</sup> See *id.* at 648.

<sup>111</sup> See *id.* at 648, Figure 3.

and advocacy and social activism are linked and contrasted.<sup>112</sup>

In the literature, clear themes defining movement lawyering include integrated advocacy, building community power, and seeking to achieve systemic social change. A comprehensive definition of movement lawyering is:

the mobilization of law through deliberately planned and interconnected advocacy strategies, inside and outside of formal law-making spaces, by lawyers who are accountable to politically marginalized constituencies to build the power of those constituencies to produce and sustain democratic social change goals that they define.<sup>113</sup>

Table 1. Movement Lawyering Themes

MOVEMENT LAWYERING	THEMES	CITED IN THE LITERATURE
Integrated Advocacy	A process-based approach to lawyering for social movements designed to support	Arkles, et al 2010; Ball, 1994; Ching, et al, 2019; Cummings, 2017;

<sup>112</sup> See Roger L. Martin & Sally Osberg, *Social Entrepreneurship: The Case for Definition*, STAN. SOC. INNOVATION REV. 28, 30–39 (2007); Tina Dacin, et al., *Social Entrepreneurship: A Critique and Future Directions*, 22 ORG. SCI. 1203, 1203–11 (2011).

<sup>113</sup> See Cummings, *Movement Lawyering*, *supra* note 52, at 1690.

	strategic collaboration with nonlawyer activists and encourage analysis about the potential consequences. <sup>114</sup>	Elsesser, 2013; Freeman, 2015; Freeman and Freeman, 2016; Gordon, 2007; Hilbink, 2004; Nahmias, 2019; Quigley, 2018; Shah; 2018
Building Community Power	Build up the community by collaborating with clients and organizers within grassroots movements to shift the power back to communities and give them their voice back to decide their futures and fight the system in order to enforce the promises of a just world. <sup>115</sup>	Arkles, et al 2010; Ching, et al, 2019; Cummings, 2017; Elsesser, 2013; Freeman, 2015; Freeman and Freeman, 2016; Gordon, 2007; Hilbink, 2004; Nahmias, 2019; Quigley, 2018; Riley, 2012; Shah; 2018

<sup>114</sup> See Cummings, *Movement Lawyering*, supra note 52, at 1695–11; Freeman & Freeman, supra note 42, at 148–51; Jennifer Gordon, *The Lawyer is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133, 2138 (2007); Ball, supra note 13, at 1727-28; *Lawyers and Civil Disobedience*, supra note 4, at 12–17; Hilbink, supra note 54, at 682-684; Ching, supra note 2, at 190; Arkles, supra note 66, at 624–25; Purvi Shah, *Movement Lawyering Roundtable Symposium: Movement Lawyering Reading Guide*, 47 HOFSTRA L. REV. 1, 99–115 (2018); Elsesser, supra note 57, at 396–97; Nahmias, supra note 70, at 159–64; Freeman, supra note 3, at 103–09.

<sup>115</sup> See Freeman & Freeman, supra note 42, at 155–61; Gordon, supra note 115, at 2137–40; Cummings, *Movement Lawyering*, supra note 52, at 1724–27; Quigley & Riley, supra note 6, at 205–07; Hilbink, supra note 54, at 684; Ching, supra note 2, at 187; Arkles, supra note 66, at 614–17; Shah, supra note 115, at 111-112; Elsesser, supra note 57, at 384–88; Nahmias, supra note 70, at 1369; Freeman, supra note 3, at 110–12.

<p>Seeking Systemic Social Change</p>	<p>Movement lawyers seek to stop the larger social problem, challenge the injustices, and transform the whole system because they understand that rule change does not equal social change.<sup>116</sup></p>	<p>Arkles, et al 2010; Ching, et al, 2019; Cummings, 2017; Elsesser, 2013; Freeman, 2015; Freeman and Freeman, 2016; Gordon, 2007; Hilbink, 2004; Nahmias, 2019; Quigley, 2018; Quigley &amp; Riley, 2012; Shah, 2018</p>
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Table 2. Social Innovation Themes

SOCIAL INNOVATION	THEMES	CITED IN THE LITERATURE
<p>Co-production and Co-creation</p>	<p>Common themes of co-production include: collaboration, new relations, generation of new ideas, empowerment, and societal change.<sup>117</sup></p>	<p>Ayob, et al 2016; Bovaird &amp; Loeffler, 2012; Brandsen &amp; Pestoff, 2006</p>

<sup>116</sup> See Freeman & Freeman, supra note 42, at 148–51; Gordon, supra note 115, at 2140–41; Cummings, Movement Lawyering, supra note 52, at 1717–18; Quigley & Riley, supra note 6, at 205; Lawyers and Civil Disobedience, supra note 4, at 12–17; Ching, supra note 2, at 186–88; Arkles, supra note 66, at 595–98; Shah, supra note 115, at 111-112; Elsesser, supra note 57, at 375–78; Nahmias, supra note 70, at 1352–53; Freeman, supra note 3, at 107–08.

<sup>117</sup> See Tony Bovaird & Elke Loeffler, From Engagement to Co-Production: How Service Users and Communities Contribute to Public Services, in NEW PUBLIC GOVERNANCE, THE THIRD SECTOR AND CO-PRODUCTION 35–60 (V. Pestoff, et al., eds., 2012); Taco Brandsen & Victor Pestoff, Co-Production, the Third Sector and the

Reshape Power Relations	<p>Social Innovation focuses on reshaping of power relations and shifting the balance of power which leads to social justice.</p> <p>The “strong and radical tradition focuses on the potential of collaborative processes to restructure extant power relations.”<sup>118</sup></p>	Ayob, et al, 2016; Finlayson & Roy, 2019; Nicholls 2015; Nicholls & Zeigler 2019; Zeigler 2017
Systemic Social Change	<p>Social innovation has been defined as leading to social change through, “those processes, products, and initiatives which profoundly challenge the system that created the problem that they seek to address.”<sup>119</sup></p>	Ayob, et al, 2016; Antadze & Westley 2010; Moore & Westley, 2011

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Delivery of Public Services, 8 PUB. MGMT. REV. 493, 497–50 (2006); Ayob, supra note 99, at 649.

<sup>118</sup> See Ayob, supra note 99, at 645–47; Eilidh Finlayson & Michael James Roy, Empowering Communities? Exploring Roles in Facilitated Social Enterprise, 15 SOC. ENTER. J. 76, 77–80 (2019); Alex Nicholls & Rafael Ziegler, The Extended Social Grid Model, in CREATING ECONOMIC SPACE FOR SOCIAL INNOVATION 7 (Alex Nicholls & Rafael Ziegler, eds., 2019); Nicholls, et al., supra note 105, at 3.

<sup>119</sup> See Michele-Lee Moore & Frances Westley, Surmountable Chasms: Networks and Social Innovation for Resilient, 16 ECOLOGY & SOC’Y 5 (2011); Nino Antadze & Frances Westley, Funding Social Innovation: How Do We Know What to Grow?, 23 THE PHILANTHROPIST 343, 343–56 (2010); Ayob, supra note 99, at 647.

### A. Social Innovation and Integrated Advocacy

The new forms of social relations and developing new ideas within movement lawyering is generated into the concept of integrated advocacy, which is a process-based approach that incorporates co-creating with the community, collaborating as equal partners, and breaking down hierarchical lawyer-client relationships to achieve social change.<sup>120</sup> Integrated advocacy requires a utilization of various formats represented as organizational, tactical, and institutional in order to break down divisions and produce sustainable social change.<sup>121</sup>

Organizational advocacy emphasizes horizontal relations, such as building partnerships with social movement organizations, movement constituents, lawyers, and other problem-solvers across the public and private sectors.<sup>122</sup> Tactical advocacy focuses on the contribution of legal advocacy to a

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<sup>120</sup> See Cummings, *Movement Lawyering*, *supra* note 52, at 1653; Quigley & Riley, *supra* note 6, at 205–07; Elsesser, *supra* note 57, at 390–91; Gordon, *supra* note 115, at 2141.

<sup>121</sup> See Cummings, *Movement Lawyering*, *supra* note 52, at 1695.

<sup>122</sup> See *id.*

comprehensive political strategy in order to maximize political pressure and transform public opinion, similar to social movements.<sup>123</sup> Institutional advocacy understands that law operates within different political and social institutions and that law needs to be deliberately leveraged from the bottom-up, sideways, and top-down.<sup>124</sup>

Social innovation is linked to co-production themes, such as collaboration, generation of new ideas, empowerment, and societal change.<sup>125</sup> Social innovation processes create new social relations and involves new ways of doing, organizing, framing and knowing.<sup>126</sup> Social innovation embraces the collaboration and new forms of social relations.<sup>127</sup> Appropriate approaches for addressing wicked

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<sup>123</sup> See *id.* at 1696.

<sup>124</sup> See *id.* at 1657.

<sup>125</sup> See Bovaird, *supra* note 118, at 35–60; Brandsen, *supra* note 118, at 497; Ayob, *supra* note 99, at 649.

<sup>126</sup> See Avelino, et al., *supra* note 101, at 197 (citing Alex Haxeltine, et al., *A Framework for Transformative Social Innovation: TRANSIT Working Paper # 5*, TRANSFORMATIVE SOCIAL INNOVATION THEORY (Nov. 2016), [http://www.transitsocialinnovation.eu/content/original/Book%20covers/Local%20PDFs/240%20TRANSIT\\_WorkingPaper\\_no5\\_TSI%20framework\\_Haxeltine%20et%20al\\_November2016\\_AH041116.pdf](http://www.transitsocialinnovation.eu/content/original/Book%20covers/Local%20PDFs/240%20TRANSIT_WorkingPaper_no5_TSI%20framework_Haxeltine%20et%20al_November2016_AH041116.pdf).)

<sup>127</sup> See Ziegler, *supra* note 98, at 1–3.

problems involves users as co-creators, multiple diverse actors, and compelling collective action.<sup>128</sup>

Collaborative concepts bring together multiple disciplines and actors from government, civil society, and business.<sup>129</sup>

Integrated advocacy embraces the co-production themes of social innovation by requiring horizontal relationships, co-creating equally and the crossing of silos by collaborating with non-lawyers to create new techniques, other than traditional litigation, in order to shift public opinion and generate political pressure. Movement lawyers explore a range of options such as litigation, lobbying, community education, media campaigns, political mobilization, and organizing.<sup>130</sup> Non-traditional and non-legal tactics need to be part of the social change strategy.<sup>131</sup> This means that lawyers many times will be “making it up as they go along,” and new legal

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<sup>128</sup> See Zivkovic, *supra* note 40, at 353.

<sup>129</sup> See Ziegler, *supra* note 98, at 2.

<sup>130</sup> See Freeman, *supra* note 3, at 115; Cummings, *Movement Lawyering*, *supra* note 52, at 1704; Gordon, *supra* note 115, at 2137–38.

<sup>131</sup> See Nahmias, *supra* note 70, at 1369.

services will need to be produced depending on the context and the needs of the movement.<sup>132</sup> The innovation relates to the newness of the ideas or the collaborative forms of social relations involved in the generation and implementation of these ideas.<sup>133</sup> Movement lawyering embraces ambiguity by acknowledging that they are operating in unknown territories which will require new approaches driven by new relationships to meet the needs of the movement and advance it forward. Both movement lawyering and social innovation focus on the “power of networks to create social change and/or provide solutions to social problems.”<sup>134</sup>

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<sup>132</sup> See Ball, *supra* note 13, at 1727; Gordon, *supra* note 115, at 2145.

<sup>133</sup> See Ayob, *supra* note 99, at 648.

<sup>134</sup> See *id.* at 646.

Table 3. Social Innovation and Integrated Advocacy

<u>THEMES</u>	<u>MOVEMENT LAWYERING</u>	<u>SOCIAL INNOVATION</u>
Integrated Advocacy	They co-create with the community and collaborate as equal partners by crossing silos, breaking down hierarchical lawyer-client relationships and developing horizontal relationships while creating new ideas to achieve social change.	Social innovation is linked to co-creation and co-production, which are new forms of collaborations, and new and less hierarchical relationships between government, civil society, and citizens, which subsequently leads to innovations.

### B. Social Innovation and Building Community Power

The collaboration and co-creation methods through integrated advocacy seeks to build power. A movement lawyer uses different tools, many mentioned above in sub-part A, with the aim of building power, defending, and protecting social movements and the activists and communities within them.<sup>135</sup> Movement lawyers adopt the same

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<sup>135</sup> See Ching, *supra* note 2, at 187.

mentality as organizers and grassroots leaders by thinking in terms of transforming the power structures that produce unjust laws and policies.<sup>136</sup> This is especially important because typically the focus has been on traditional methods of access to courts and legal reforms, instead of shifting the attention to questions of power.<sup>137</sup> Movement lawyers believe they will not be satisfied until they shift the power back to communities to decide their futures and create mechanisms to enforce the promises of a just world.<sup>138</sup>

Social innovation focuses on the restructuring of power relations and shifting the balance of power which leads to greater social inclusion and social justice.<sup>139</sup> BEPA also describes social innovation as empowering people and driving social change.<sup>140</sup> There is a shared expectation regarding the

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<sup>136</sup> See Freeman & Freeman, *supra* note 42, at 150–51; Cummings, *Movement Lawyering*, *supra* note 52, at 1657; Freeman, *supra* note 3, at 135.

<sup>137</sup> See Ching, *supra* note 2, at 187–88.

<sup>138</sup> See Freeman, *supra* note 3, at 111.

<sup>139</sup> See Ayob, *supra* note 99, at 645; Moulart, *supra* note 99, at 15–17.

<sup>140</sup> See *Empowering People, Driving Change*, *supra* note 102, at 10.

empowering potential for social innovation.<sup>141</sup> There is also support for the idea that social enterprise can be empowering, especially when it is “collective” or “community led.”<sup>142</sup> It has been deemed necessary that members of the community take ownership of the problem and initiate action.<sup>143</sup> However, critical perspectives on empowerment recognize that attempts to empower others may, in effect, disempower them.<sup>144</sup> For example, if unequal power relationships go unchecked, this can disempower communities.<sup>145</sup> It is argued that research on transformative social innovation (TSI) empowerment needs to give attention to the processes of disempowerment because high expectations on the empowering potential merits critical reflection.<sup>146</sup> Through integrated advocacy processes and adopting the organizer mentality, movement lawyers are looking to empower

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<sup>141</sup> See Avelino, et al., *supra* note 101, at 196.

<sup>142</sup> See Finlayson, *supra* note 119, at 76–77.

<sup>143</sup> See *id.*

<sup>144</sup> See Avelino, et al., *supra* note 101, at 200.

<sup>145</sup> See Finlayson, *supra* note 119, at 89.

<sup>146</sup> See Avelino, et al., *supra* note 101, at 198.

communities and constituents within social movements. Despite these good intentions, movement lawyers need to recognize the potential for unintended consequences and disempowerment, because building power is necessary in the pursuit of achieving systemic social change.

Table 4. Social Innovation and Building Community Power

THEMES	MOVEMENT LAWYERING	SOCIAL INNOVATION
Building Power	Lawyers seek to build power and shift the power to communities to fight unjust systems by recognizing that empowerment is valuable for radical social change.	It focuses on the restructuring of power relations through collaborative processes and shifting the balance of power, which leads to social justice.

### C. Social Innovation and Achieving Systemic Social Change

As acknowledged by the sections above, the ultimate goal of movement lawyers is achieving systemic social change. They consider how rule change does not always equal social change, and therefore focus on the collective action not solely

individual rights.<sup>147</sup> They think that addressing the root cause of the systemic inequities is the way to change the legal system.<sup>148</sup> Social change can be either incremental or radical.<sup>149</sup> Incremental builds on what already exists and radical produces a total change compared to the past.<sup>150</sup> The social innovation literature, as well as the movement lawyer literature highlight “how grassroots collaborations could transform social relations and improve governance systems.”<sup>151</sup> Social innovation has been described as a multi-level set of processes that has the ability to address social problems in a systemic way.<sup>152</sup> Systemic innovation, considered the most appropriate to address wicked problems, requires co-

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<sup>147</sup> See Cummings, *Movement Lawyering*, *supra* note 52, at 1650.

<sup>148</sup> See Ching, *supra* note 2, at 194.

<sup>149</sup> *Fostering Innovation to Address Social Challenges: Workshop Proceedings*, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT 1, 22 (2011), <https://www.oecd.org/sti/inno/47861327.pdf> [hereinafter *Fostering Innovation*].

<sup>150</sup> See *id.*; Ezio Manzini, *Making Things Happened: Social Innovation and Design*, 30 MASS. INST. TECH 57, 57 (2013).

<sup>151</sup> See Ayob, *supra* note 99, at 647 (citing FRANK MOULAERT, ET AL., THE INTERNATIONAL HANDBOOK ON SOCIAL INNOVATION: COLLECTIVE ACTION, SOCIAL LEARNING AND TRANSDISCIPLINARY RESEARCH (2013)); Hilbink, *supra* note 54, at 681-689.

<sup>152</sup> See Nicholls & Ziegler, *supra* note 119, at 27.

creation throughout the process to bring about systems change.<sup>153</sup> Additionally, the use of community transition processes based on an understanding of complex adaptive systems, can offer great success in impacting larger scale variables such as climate change.<sup>154</sup> Ultimately, there is a place for radical change in social innovation through social movements that “aim to change entrenched power-relations, alter social hierarchies, or reframe issues to the benefit of otherwise disenfranchised groups.”<sup>155</sup> Movement lawyering embraces the goal of disruptive social innovation, which aims at systems change.<sup>156</sup>

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<sup>153</sup> See Zivkovic, *supra* note 40, at 354.

<sup>154</sup> See Goldstein, *supra* note 91, at 15.

<sup>155</sup> See Nicholls & Ziegler, *supra* note 119, at 7.

<sup>156</sup> See Nicholls, et al., *supra* note 105, at 3.

Table 5. Social Innovation and Systemic Social Change

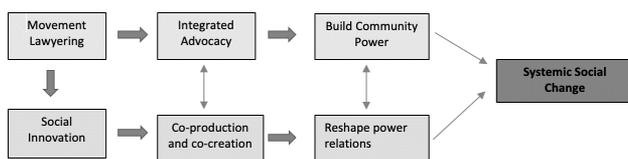
THEMES	MOVEMENT LAWYERING	SOCIAL INNOVATION
Systemic Social Change	It seeks to stop the larger social problem by addressing the root cause, challenge the injustices, and transform the whole system.	It is focused on innovations that lead to systemic social change through processes, products, and initiatives that profoundly challenge the system that created the problem that they seek to address.

#### D. Movement Lawyering is a Form of Social Innovation

As discussed throughout this section, the movement lawyer process themes of integrated advocacy, building community power, and aiming to achieve systemic social change are connected to the social innovation process themes of co-production and co-creation, reshaping power relations, and systemic social change. This interrelationship between movement lawyering and social innovation is summarized in Figure 1. This figure intends to compare both movement lawyering and social

innovation themes and further point out these connections and how they both aim to achieve systemic social change.

Figure 1. Movement Lawyering is a Form of Social Innovation



## V. THE MOVEMENT LAWYERS OF THE CLIMATE MOVEMENT

The injustice is that those most vulnerable have the least to do with causing climate change. As has been shown, throughout history many social movements have incorporated civil disobedience as part of the strategy to expose unjust laws and propel society towards changing those laws and the systems that created them in the first place. This section will exemplify a social innovation through a “movement-based model” for climate justice by showcasing how

the Climate Defense Project is incorporating these themes and aiming to undertake the disruptive level of social innovation in their work to fight climate change and advance climate justice.

#### A. Climate Defense Project: Integrated Advocacy

The co-founders of CDP met during their first year of Harvard Law School while working on Fossil Fuel Divestment Campaigns on campus.<sup>157</sup> They tried all sorts of advocacy techniques such as petitions, rallies, and referendums, but the administration did not want to hear it.<sup>158</sup> This is when Kelsey Skaggs, Ted Hamilton, and Alice Cherry, as students, decided to take advocacy to another level and sue Harvard, in the first ever, Fossil Fuel Divestment Litigation.<sup>159</sup> Although the lawsuit was not successful, CDP co-founders found the importance of integrating the litigation into greater

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<sup>157</sup> See Telephone Interview with Kelsey Skaggs & Ted Hamilton, *supra* note 83.

<sup>158</sup> See *id.*

<sup>159</sup> See *id.*; Balzac, *supra* note 35, at 134–37.

fossil fuel divestment campaign strategies.<sup>160</sup> They realized that law and litigation serve as a tool, but not the only tool, in advancing the aims of the climate justice movement.<sup>161</sup> CDP embraced the movement lawyering processes of integrated advocacy when they designed the structure and mission of their organization. Their services are broken down into three main categories: public education and convening equaling (35%), production of legal reference materials equaling (30%), and litigation equaling (30%).<sup>162</sup> Their four main service areas are identified as the following:

- 1) Providing trainings to empower individuals and communities to take action on climate change by ensuring they know their rights;
- 2) Connecting attorneys with communities and

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<sup>160</sup> See Telephone Interview with Kelsey Skaggs & Ted Hamilton, *supra* note 83.

<sup>161</sup> See Gordon, *supra* note 115, at 2141; Cummings, *Movement Lawyering*, *supra* note 52, at 1658; *Lawyers and Civil Disobedience*, *supra* note 4, at 12–17; Nahmias, *supra* note 70, at 1337; Scott Cummings & Deborah Rhodes, *Public Interest Litigation: Insights from Theory and Practice*, 36 *FORDHAM URBAN L. J.* 604, 609–12 (2009).

<sup>162</sup> Changes to Form 1023, Department of the Treasury Internal Revenue Service, <https://climatedefenseproject.org/wp-content/uploads/2015/04/CDP-IRS-1023-Filing-Redacted.pdf> (last viewed Apr. 12, 2019) [hereinafter *Changes to Form 1023*].

campaigns to strengthen and sustain the climate movement; 3) Putting climate change on trial by supporting individuals in climate-related legal actions throughout the trial process and ensuring they have the most up-to-date evidence on their side; [and] 4) Developing legal resources for the climate movement campaigns, communities, and attorneys.<sup>163</sup>

CDP is approaching lawyering by designing pathways that create new relationships in collaboration with nonlawyer activists, the community, movement organizations, and other lawyers, which is necessary for integrated advocacy.<sup>164</sup>

CDP co-founders started out as activists, and some of their first memories are blockading the main administration building on campus, so even though they are now lawyers, they are not too far removed from activism.<sup>165</sup> This is important because they have an appreciation for the significant contributions

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<sup>163</sup> CLIMATE DEFENSE PROJECT, *supra* note 93.

<sup>164</sup> See Cummings, *Movement Lawyering*, *supra* note 52, at 1653.

<sup>165</sup> See Telephone Interview with Kelsey Skaggs & Ted Hamilton, *supra* note 83.

and goals that activists have to advance the movement forward.<sup>166</sup> Their social innovation model is built upon the processes of establishing these horizontal relationships with the activists and the communities. Specifically, they are focused on collaborating with the Shut it Down defendants, the Climate Disobedience Center, and collaborating with groups in the broader climate justice movement by keeping each other up-to-date, soliciting advice, and making connections.<sup>167</sup> They appreciate the power of networks and work with organizations seeking both incremental and radical change. CDP sees the importance of incremental social innovation, which works with already existing systems to address social needs more effectively.<sup>168</sup> The evidence shows that the majority of social innovations are incremental, and therefore are necessary to advance social change.<sup>169</sup>

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<sup>166</sup> *See id.*

<sup>167</sup> *See* E-mail from Josephine M. Balzac, Assistant Professor, to Kelsey Skaggs, Executive Editor, & Ted Hamilton, Co-Founder, the Climate Defense Project (July 17, 2019) (on file with author) [hereinafter E-mail from Josephine M. Balzac].

<sup>168</sup> *See* Nicholls, et al., *supra* note 105, at 3-4, 147.

<sup>169</sup> *See Fostering Innovation, supra* note 150, at 22.

It is clear by their own description, that they understand the need for tactical advocacy by exploring a range of options to maximize the political pressure and transformation of public opinion and that the social change strategy requires both legal and non-legal tactics.<sup>170</sup> The legal tactics they adopt include providing advice to other attorneys, summarizing existing laws, highlighting avenues for legal reform, and creating legal references to share with attorneys, activists, and the public.<sup>171</sup> CDP provides open sourced resources, educates the communities and activists about their rights, and frequently promotes awareness by being avid speakers across the country.<sup>172</sup> CDP also focuses their collaborations with scientific experts and social movement experts to further build the strength of their integrated advocacy techniques.<sup>173</sup> One of the most innovative approaches to integrated advocacy utilized by CDP is defending frontline climate

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<sup>170</sup> See Cummings, *Movement Lawyering*, *supra* note 52, at 1695–96; Nahmias, *supra* note 70, at 1369.

<sup>171</sup> See *Changes to Form 1023*, *supra* note 163.

<sup>172</sup> See *id.*

<sup>173</sup> See CLIMATE DEFENSE PROJECT, *supra* note 93.

activists, who have been arrested while participating in climate civil disobedience against fossil fuel infrastructure, by exercising the necessity defense.<sup>174</sup>

### 1. The Necessity Defense

The necessity defense is an old English common law defense, believed to be used as early as 1550.<sup>175</sup> The necessity defense states that “breaking the law can be legally, as well as morally, permissible, and our legal system recognizes that breaking the law is sometimes justified.”<sup>176</sup> The defense justifies non-violent illegal acts committed to achieve a greater good.<sup>177</sup> The purpose of the illegal act is to call

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<sup>174</sup> *Climate Necessity Defense Case Guide: A Guide for Activists and Attorneys*, CLIMATE DEFENSE PROJECT 1, 1 (Apr. 3, 2019), <https://climatedefenseproject.org/wp-content/uploads/2019/04/CDP-Climate-Necessity-Defense-Case-Guide-April-3-2019.pdf> [hereinafter *Climate Necessity Defense Case Guide*].

<sup>175</sup> See Lance N. Long & Ted Hamilton, *The Climate Necessity Defense: Proof and Judicial Error in Climate Protest Cases*, 38 STAN. ENV'T L.J. 57, 69 (2019).

<sup>176</sup> Kelsey Staggs, *Why the 'Necessity Defense' is Crucial to the Climate Struggle*, PACIFIC STANDARD MAG. (May 1, 2019), <https://psmag.com/ideas/the-necessity-defense-is-crucial-to-the-climate-struggle>.

<sup>177</sup> See Steven Bauer & Peter J. Eckerstrom, *The State Made Me Do It: The Applicability of the Necessity Defense to Civil Disobedience*, 39 STAN. L. REV. 1173, 1174 (1987).

attention to the significant injustice in order to provoke change.<sup>178</sup>

Steven Bauer and Peter J. Eckerstrom called it a social policy that sanctions certain justifiable, but illegal acts, further stating that it relies on a utilitarian rationale by giving individuals political empowerment and to empower the jury members, who ultimately determines whether an illegal act was committed for the greater good.<sup>179</sup> It articulates a “profoundly revolutionary principle, both as a jurisprudential doctrine and as a vehicle for social change.”<sup>180</sup> The necessity defense, known as “choice of evils,” is a political-legal tool being used by climate activists to justify and promote awareness on climate resistance actions.<sup>181</sup> It is a “radical legal principle.”<sup>182</sup> The necessity defense, which varies by state laws, usually requires that the defendant show

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<sup>178</sup> See John Alan Cohan, *Civil Disobedience and the Necessity Defense*, 6 PIERCE L. REV. 111, 113 (2007).

<sup>179</sup> See Bauer, *supra* note 178, at 1174.

<sup>180</sup> Shaun Martin, *The Radical Necessity Defense*, 73 U. CINCINNATI L. REV. 1527, 1529 (2005).

<sup>181</sup> See MODEL PENAL CODE § 3.02 (AM. L. INST. 1962); *Climate Necessity Defense Case Guide*, *supra* note 175, at 1.

<sup>182</sup> J.C. Oleson, “Drown the World”: *Imperfect Necessity and Total Cultural Revolution*, 3 HARV. UNBOUND J. LEGAL LEFT 19, 20 (2007).

four elements: “ a) Faced an imminent danger; b) took action to prevent that danger through less harmful means (lesser of two evils); c) reasonably anticipated that the action would prevent the danger; and d) had no reasonable alternative to the action.”<sup>183</sup>

As part of their integrated advocacy techniques, CDP produced the “Climate Necessity Defense Case Guide” as a guide for activists and attorneys to explain the importance of the necessity defense in climate cases.<sup>184</sup> In the guide, they express how the “defense educates the public about the risks of climate change, the inaction of governments, and the need for citizen action to change our energy politics.”<sup>185</sup> When the necessity defense is applied to civil disobedience it can persuade others to see the honor in the civil disobedience, the integrity of the role of the judiciary, the power of individuals in society, and the right to protest in this democracy.<sup>186</sup>

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<sup>183</sup> See *Climate Necessity Defense Case Guide*, *supra* note 175, at 1.

<sup>184</sup> See *id.*

<sup>185</sup> See *id.*

<sup>186</sup> See Bauer, *supra* note 178, at 1173–74.

CDP has represented activists and presented the necessity defense in the following cases: *North Dakota v. Foster*, *Massachusetts v. Gore*, *Minnesota v. Cussen-Anglada*, *Montana v. Higgins*, *Minnesota v. Klapstein*, and *Washington v. Ward*.<sup>187</sup> These cases include the “Shut It Down defendants,” who coordinated actions at the Kinder Morgan pipelines across the states of Minnesota, Montana, North Dakota, and Washington to turn the valves to shut off tar sands oil flowing from Canada.<sup>188</sup> The “Four Necessity Valve Turners” are Catholic Workers activists who turned valves on a pipeline to stop the flow of tar sands through Enbridge Lines.<sup>189</sup>

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<sup>187</sup> See *Climate Necessity Defense Case Guide*, *supra* note 175, at 1–8 (citing *North Dakota v. Foster*, No. 34-2016-CR-00187 (N.E. Jud. Dist. Ct. Pembina Cty., N.D., Oct. 6, 2017); *Massachusetts v. Gore*, No. 1606CR000923 (Mass. Dist. Ct., Bos. Mun. Ct., Mar. 27, 2018); *Minnesota v. Cussen-Anglada*, No. 31-Cr-19-395 (Minn. Ninth Jud. Dist. Ct., Itasca Cty., Mar. 25, 2019); *Montana v. Higgins*, No. DC-16-18 (Mont. Twelfth Jud. Dist. Ct., Choteau Cty., Feb. 12, 2019); *Minnesota v. Klapstein*, No. 15-CR-16-413 (Minn. Ninth Jud. Dist. Ct., Clearwater Cty., Oct. 9, 2018); *Washington v. Ward*, No. 16-1-010001-5 (Wash. Sup. Ct., Skagit Co., 2017)).

<sup>188</sup> See E-mail from Josephine M. Balzac, *supra* note 168; *Climate Necessity Defense Case Guide*, *supra* note 175, at 1–8.

<sup>189</sup> *Climate Necessity Defense Case Guide*, *supra* note 175, at 1.

## 2. The Elements of the Climate Necessity Defense

Without getting too detailed with the procedural legalities of the necessity defense, it is important to understand the impacts of each element and how it empowers, shifts the public conscience, and seeks to create a positive social change. First, the requirement of the lesser of two evils, is usually easy to prove that the harm to be prevented was greater than the minor criminal charge.<sup>190</sup> In the case of climate disobedience, it is clear that it would be difficult for anyone to dispute that a trespass was a lesser evil than the threat of climate change. The causal nexus, which requires showing that the defendant reasonably believed their actions would avoid or minimize the harm, sheds light on the ripple effect each individual action can have in reforming society.<sup>191</sup> The following subparts will highlight both the imminent harm and no legal alternatives requirements.

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<sup>190</sup> See Cohan, *supra* note 179, at 126.

<sup>191</sup> See Bauer, *supra* note 178, at 1173–75.

a. Imminent Harm

In using the necessity defense, the defendants must prove they faced an imminent danger when conducting the civil disobedience. This is a powerful tool because it allows the defendant to demonstrate the urgency of the social problem by presenting scientific evidence, through expert witnesses, that climate change is a real and immediate threat.<sup>192</sup> By putting climate change on trial, CDP brings scientific experts such as, James Hansen, the leading NASA scientist, who first rung the alarm in 1987 about the irreversible damage and is called the father of climate alarmism to prove this imminent harm.<sup>193</sup> Unfortunately, some judges have barred experts from

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<sup>192</sup> See *id.* at 1176.

<sup>193</sup> See *Recognizing Strength of Activists' Case*, Minnesota Judge Issues First-of-Its-Kind Written Decision Allowing Presentation of Climate Necessity Defense in a Jury Trial, CLIMATE DEFENSE PROJECT (Oct. 14, 2017), <https://climatedefenseproject.org/recognizing-strength-activists-case-minnesota-judge-issues-first-kind-written-decision-allowing-presentation-climate-necessity-defense-jury-trial/> [hereinafter *Recognizing Strength of Activists' Case*]; Robert Bradley, *Climate Alarmism: Statism's New Clothes*, FORBES (Nov. 17, 2015), <https://www.forbes.com/sites/robertbradley/2015/11/17/climate-alarmism-statisms-new-clothes/#4c1f475f7ae5>.

testifying for the defense.<sup>194</sup> The necessity defense has been difficult to use in criminal civil disobedience, as courts usually prevent the presentation of the necessity defense prior to trial. However, CDP has been successful in securing two appellate opinions that recognize the climate necessity defense.<sup>195</sup>

#### b. No Legal Alternatives

Another difficult element<sup>196</sup> is proving that there were no other legal alternatives that would divert the harm. This is also an empowering ability to prove the unresponsiveness of those in power in dealing with the problem and a way to publicize and debate political issues in a judicial forum.<sup>197</sup> This is the opportunity that CDP seizes; to put climate change on trial. When the other branches of government, the

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<sup>194</sup> See *Recognizing Strength of Activists' Case*, *supra* note 194.

<sup>195</sup> See E-mail from Josephine M. Balzac, Assistant Professor, to Ted Hamilton, Co-Founder, the Climate Defense Project (2019) (on file with author).

<sup>196</sup> See MODEL PENAL CODE, *supra* note 182.

<sup>197</sup> See Cohan, *supra* note 179, at 143; Bauer, *supra* note 178, at 1176.

executive branch and the legislative branch, are not responding to an urgent problem, evidence can be presented to the third branch of government, the judiciary, which should be impartial. As Bauer and Eckerstrom stated, the necessity defense is appealing to activists who practice civil disobedience because the courtroom forum mandates equal time and respect to express their political views.<sup>198</sup>

In analyzing the climate necessity defense through the no legal alternatives angle, climate activists offer proof of how they have attempted numerous times to address climate change through legal means such as, lobbying, petitioning, testifying at public hearings, organizing, and rallying.<sup>199</sup> In *North Dakota v. Foster* the defendants offered expert evidence of the systemic failure through the decades of all branches of government (executive, legislative, and judicial) to secure any adequate protections for the climate.<sup>200</sup>

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<sup>198</sup> Bauer, *supra* note 178, at 1176.

<sup>199</sup> See Long, *supra* note 176, at 99–100 (citing *Higgins*, No. DC-16-18).

<sup>200</sup> See *id.* at 100 (citing *Foster*, No. 34-2016-CR-00187).

## B. The Climate Defense Project Builds Community Power

Through the use of integrated advocacy techniques including necessity, CDP is aiming to empower and strengthen the climate justice movement. They are trying to build power for the climate movement by providing legal services, communications power, political, and grassroots support, which are the core components of the “social change power meter.”<sup>201</sup> This grassroots organizing tool is based on the assumption that systemic injustice is the result of power imbalances.<sup>202</sup> When oppressed communities can acquire more power in each of these areas, especially grassroots power, large scale social change can be achieved.<sup>203</sup> The necessity defense is one of the few tools that political activists can use to shine light on the abuse of power that motivated their protest.<sup>204</sup> It

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<sup>201</sup> See Freeman & Freeman, *supra* note 42, at 156.

<sup>202</sup> See *id.*

<sup>203</sup> See *id.*

<sup>204</sup> See Bauer, *supra* note 178, at 1176.

provides the activist defendant political empowerment.<sup>205</sup>

CDP's services are seeking to empower communities, activists, and lawyers in the climate movement through a number of legal and educational resources that are open sourced and available. These include the Principles of Climate Resistance, which comprises constitutional rights and international human rights), Amicus briefs, U.S. legal framework of climate change, the "Climate Necessity Defense Guide", "Climate Necessity Defense Info Pamphlet", "Political Necessity Defense Jurisdiction Guide", and a comic explaining the climate necessity defense.<sup>206</sup> Some of these resources were produced in collaboration with the Climate Disobedience Center and the Graphic Advocacy Project.<sup>207</sup> These novel resources educate the community, giving them the tools to be effective in their civil disobedience and make an impact within the climate justice

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<sup>205</sup> *See id.* at 1184.

<sup>206</sup> *See Resources*, CLIMATE DEFENSE PROJECT, <https://climatedefenseproject.org/resources/> (last viewed July 6, 2019) [hereinafter *Resources*].

<sup>207</sup> *See id.*

movement. A quick glance at CDP's press page demonstrates how their movement lawyering is impacting the climate justice movement.<sup>208</sup>

### C. The Climate Defense Project is Advancing Systemic Social Change

Movement lawyers sense that at times history has proven that systemic social change comes from social movements.<sup>209</sup> Through implementing the movement lawyering processes, CDP is seeking systemic social change to move from fossil fuels aligning within the climate justice movement. There is an understanding of the systemic problems, many of which the law itself perpetuates. CDP embraces the four key points that underlie a movement lawyer's work: long-term vision and power building, relationships with "clients," the limited role of the law, and the use of advocacy strategies and skills.<sup>210</sup> CDP embodies these main characteristics and are

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<sup>208</sup> See *Press*, CLIMATE DEFENSE PROJECT, <https://climatedefenseproject.org/press/> (last viewed July 6, 2019) [hereinafter *Press*].

<sup>209</sup> See Quigley & Riley, *supra* note 6, at 204.

<sup>210</sup> See Freeman, *supra* note 3, at 109.

advocating the courts to consider the larger landscape of climate policy and protest.

They are attempting to change the system, by putting climate change on trial. They are allowing the scientific evidence to be heard by the only branch of government that may unbiasedly find scientific evidence as facts. They are working to dismantle the fossil fuel systems, which they perceive are oppressive, they are not working only one case at a time, but collaborating with others for the greater climate movement, which seeks to have a just transition to a clean energy future. There is a “new wave of movement lawyering, representing a distinct professional response to changing political circumstances.”<sup>211</sup> Through CDP’s climate movement lawyering strategies, they are working within the legal system, creating incremental social innovations while seeking to reach the disruptive level of social innovation aiming at systemic social change, with the ultimate goal of achieving climate justice.

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<sup>211</sup> See Cummings, *Movement Lawyering*, *supra* note 52, at 1652.

## VI. CONCLUSION

The climate justice movement is fighting against the laws “that trail behind what is just.”<sup>212</sup> The injustice is felt so deeply and widely that many people are mobilizing to challenge the power holders, governments, and the fossil fuel industry. In various social movements, the positive impacts of civil disobedience have been felt. Many times, what was once deemed crazy, is later admired, celebrated, and valued. Movement lawyers have risen to the challenge in some of these movements because they believe, similarly to the field of social innovation, that many problems are systemic and require a disruption of the status quo. Movement lawyers join movements not to lead, but to stand as equal partners in the same fight. The literature revealed that in practice the methodology of co-creating and collaborating with communities is essential in both social innovation and movement lawyering because

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<sup>212</sup> Jennifer Ching, et al., *A Few Interventions and Offerings from Five Movement Lawyers to the Access to Justice Movement*, 87 *FORDHAM L. REV.* 186, 187 (2019).

it is seen as a problem-solving tool that leads to the social change. Additionally, the research indicates that by building power and empowering communities, unjust systems can be dismantled and ultimately lead to systemic social change. The Climate Defense Project is working towards eliminating our dependence on the fossil fuel system and create a “just transition”<sup>213</sup> to a clean energy future, by seeking to empower communities, who are challenging the status quo, and creating innovative strategies to ultimately put climate change on trial.

This Article has the potential to further future investigations into the interrelationship between movement lawyering and social innovation. This is important because as mentioned, the social enterprise field usually identifies lawyers in a conventional position of providing lawyer services to the social enterprise, but fails to consider those lawyers, who are creating social enterprises and seeking to be

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<sup>213</sup> *The Just Transition Alliance Definition of a Just Transition and Just Transition Principles*, Just Transition Alliance, <https://climatejusticealliance.org/wp-content/uploads/2018/06/Just-Transition-Alliance-Just-Transition-Principles.pdf> (last viewed April 29, 2021).

changemakers by implementing social innovation processes/initiatives with the aim of achieving systemic social change. There needs to be continued research on how the movement lawyer processes interrelated to social innovation do in fact achieve the goal of systemic social change. Also, legal academic research generally describes how movement lawyers are different than traditional lawyers and how they are necessary within social movements; however, there is relatively little research of actual movement lawyers and the specific types of impacts they have had within social movements. Additionally, given the political climate, many lawyers have started to create social enterprises that encompass the themes of movement lawyers and these could prove to be model case studies in analyzing movement lawyers in practice and the impact of these social enterprises. Furthermore, broader research would be necessary to discover additional examples of movement lawyers within the climate movement. Movement lawyering is an area that is expanding within legal academia; however, it has not yet formally entered the field of

social innovation, social entrepreneurship, and social enterprise, which is long overdue.