

# **POLICY BY THE PEOPLE, FOR THE PEOPLE: DESIGNING RESPONSIVE REGULATION AND BUILDING DEMOCRATIC POWER**

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#### INTRODUCTION

Policymaking in American democracy is often a process that happens to people rather than by them. This is especially the case with respect to policy that affects people with less power in low-income communities and communities of color. Urban policy, in particular, has historically been driven by business elites and white homeowners’ interests, which have shaped exclusionary policies, such as redlining and single-family zoning—etching racial and economic segregation into the fabric of city space.<sup>1</sup> Even when outsider interest groups and social movement organizations gain enough power to shape the policy agenda, give input into the content of policy, and lobby for policy changes that advance their interests, the standard conception of regulatory design is elite-driven: people whose lived reality will be impacted by policy decisions tend to be consulted, if at all, after policy ideas are already articulated and have gained traction in the halls of power.<sup>2</sup>

This Essay seeks to elevate an alternative model of policymaking “by the people” that views the policy process as a means of designing more responsive regulation that emanates from the experiences of marginalized constituencies, while creating an opportunity to build democratic power.<sup>3</sup>

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1. See RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017); see also ANDREA GIBBONS, *CITY OF SEGREGATION: ONE HUNDRED YEARS OF STRUGGLE FOR HOUSING IN LOS ANGELES* 45 (2018).

2. See generally FRANK R. BAUMGARTNER ET AL., *LOBBYING AND POLICY CHANGE: WHO WINS, WHO LOSES, AND WHY* (2009) (arguing that elite interests dominate the lobbying process and thus the shape of public policy).

3. See 1 BRUCE ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* 317–18 (1991); Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 *YALE L.J.* 2740, 2749 (2014).

*Policy by the people* involves: identifying problems from the perspective of those suffering harm, developing solutions based on lived experiences of what works, conducting policy design through an iterative process in which solutions are translated into law, elevating leadership of the people in advocating for policy change, and ensuring that successful policy is not an end goal but rather a starting point in promoting democratic inclusion and community power. This approach therefore seeks to enable policy design by people that responds to their material interests—what we call responsive regulation—as it simultaneously promotes power-building over time. This Essay aims to fill critical gaps in the literature on lawyering for social change and policy design, while offering a set of principles to guide the role of lawyers in bottom-up policymaking.

Our central contributions are threefold. First, we argue that scholars and lawyers have ignored the role of effective policy design as part of legal advocacy and assert the need for new attention to what policymaking looks like, particularly at the local level. Second, we draw attention to the *value added* by lawyers in the policymaking process, which transcends background research and technical drafting. In this sense, we are not just advocating for commitment to a community-first model of policymaking, but rather we are seeking to reveal lawyers' essential contributions to the process at key stages. Third, we want to spotlight policymaking to reframe how lawyers and academics think about the lawyering process—and what counts as “law” in the first instance. Rather than relegating policymaking to the sidelines of an educational experience revolving around litigation and appellate court decision-making, we hope to place policymaking at the center of the legal enterprise.

Our starting point for this project is a commitment to the idea that policymaking should build from authentic mobilization led by the people affected by policy and that lawyers should support mobilization through contributions based on their comparative advantages. To advance this idea, we draw on our experiences as teachers and lawyers who have worked with movements for housing and economic justice in Los Angeles, California. Our method is to derive ideas from this participation to subvert traditional notions of lawyering for social change—spotlighting policy design as part of what effective lawyers do—and also to subvert conventional policy design itself by reconceptualizing the policy process as a power-building exercise. Specifically, we want to show how the people's expertise can be mobilized and amplified by lawyers who “know their role,” while *arguing for a more expansive conception of what that role is*: one that moves beyond deferential conceptions derived from the conventional representation paradigm to illuminate the underappreciated ways lawyers *create conditions of possibility* for policymaking by people who have been historically excluded from the process.<sup>4</sup> In this sense, we argue for a form of policymaking that rises to

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4. Although our focus is on progressive law reform, our emphasis on the contributions of lawyers to policy design also applies to conservative lawyers. See, e.g., Michael S. Schmidt, *Behind the Texas Abortion Law, a Persevering Conservative Lawyer*, N.Y. TIMES

meet the current moment of social movement activism combatting racial injustice, economic inequality, and climate change.

Our contribution to the widening conversation about law and social movements is to identify and map the specific ways that movement-inspired normative claims are translated into viable policy that combats injustice, advances people-defined priorities, and accelerates power-building.

Part I begins by examining the literature on lawyering and policymaking, revealing the absence of meaningful cross-fertilization and laying the groundwork for our focus on the lawyer's role in supporting people-centered social policy campaigns. In Part II, we situate our analysis in the local policy arena, identifying the emergence of local policy as a critical lever for progressive activism and describing four grassroots campaigns in Los Angeles that offer insight into the lawyer's role in policy by the people. In Part III, we use examples from these campaigns to theorize the lawyer's role by placing it within the life cycle of policy development and identifying the specific skill set lawyers bring to bear at each stage of representation. Mobilizing examples from the campaigns, we illuminate how lawyers contribute to policy by the people in four key respects by: (1) mapping systems of power from the people's perspective, (2) generating policy solutions through people-centered process, (3) building power through policy advocacy, and (4) using policy change to promote a more inclusive democracy. In Part IV, we consider implications for lawyering theory and practice by discussing the opportunities and challenges arising from our conception of policy by the people. We then recommend how law schools and public interest legal organizations can adopt new practices to place policy reform at the heart of effective lawyering.

#### I. POLICY BY THE PEOPLE: SUBVERTING THE TRADITIONAL PARADIGM

For more than a half-century, legal scholars have dissected the role of lawyers in movements for social change, on both the left and right.<sup>5</sup> Although this research examines lawyering from multiple perspectives, it is almost entirely focused on the promise and pitfalls of litigation. Lawyers as policy designers appear infrequently, and their role is not theorized. Similarly, while this literature emphasizes the theme of community empowerment in relation to litigation and, less frequently, transactional lawyering strategies,<sup>6</sup> the research fails to present a framework for

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(Nov. 1, 2021), <https://www.nytimes.com/2021/09/12/us/politics/texas-abortion-lawyer-jonathan-mitchell.html> [<https://perma.cc/EUP8-4JDA>].

5. See Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645; see also CAUSE LAWYERS AND SOCIAL MOVEMENTS (Austin Sarat & Stuart A. Scheingold eds., 2006); MICHAEL W. McCANN, *RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION* (1994); ANN SOUTHWORTH, *LAWYERS OF THE RIGHT: PROFESSIONALIZING THE CONSERVATIVE COALITION* (John M. Conley & Lynn Mather eds., 2008).

6. See Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 403 (2001).

understanding and executing bottom-up policy design.<sup>7</sup> New governance research on policy development and implementation provides important insights into policy design based on stakeholder participation and iterative rulemaking,<sup>8</sup> but it fails to adequately address asymmetries of power in the policy process and how social movement mobilization may help correct for structural inequality.

Outside of law, the problem is reversed. Although there is a voluminous body of research on interest group participation in and implementation of public policy,<sup>9</sup> there is little research on the role of affected communities in policy design and enforcement.<sup>10</sup> Political science and management studies often ignore or minimize lawyers' contributions in the policymaking process.<sup>11</sup> Important studies on lobbyists and policymakers omit lawyers entirely,<sup>12</sup> while other research recognizes the role that lawyers play as legal experts in the policymaking process but does not critically examine that role.<sup>13</sup> These gaps pose significant problems for understanding how effective policy comes into being—and what counts as effective—thus disserving research in law and social science.

Our approach is to start from the bottom-up to build a new conception of policy design that centers the people's perspective, while engaging seriously with the lawyer's role. In the conventional approach, policy is typically crafted within the walls of city hall or the capitol and then applied in low-income communities and communities of color, often with harmful results. We are interested in a process that inverts this conventional sequence by developing responsive policy in community spaces and then bringing these policies to the legislature as demands from a mobilized base of affected constituents. It therefore engages with the literature on how norm creation from social movements is translated into law by shining light on the mechanisms driving policy change outside of court in legislative and administrative policymaking venues.<sup>14</sup> Our conception of policy by the

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7. There are important exceptions. *See generally* Jennifer Gordon, *The Campaign for the Unpaid Wages Prohibition Act: Latino Immigrants Change New York Wage Law* (Carnegie Endowment for Int'l Peace, Working Paper No. 4, 1999).

8. William H. Simon, *Solving Problems vs. Claiming Rights: The Pragmatist Challenge to Legal Liberalism*, 46 WM. & MARY L. REV. 127, 181–91 (2004).

9. *See, e.g.*, Peter deLeon & Linda deLeon, *What Ever Happened to Policy Implementation?: An Alternative Approach*, 12 J. PUB. ADMIN. RSCH. & THEORY 467, 476 (2002).

10. *See generally* JOEL F. HANDLER, *THE CONDITIONS OF DISCRETION: AUTONOMY, COMMUNITY, BUREAUCRACY* (1986).

11. *See* SELDEN BIGGS & LELIA B. HELMS, *THE PRACTICE OF AMERICAN PUBLIC POLICYMAKING* 13, 22–25 (2007) (dedicating just one paragraph to lawyers as policymakers “with one particular set of skills,” who are “a key resource in the invention and reinvention of public policy”).

12. *See, e.g.*, BAUMGARTNER ET AL., *supra* note 2, at 6–15; DONALD S. LUTZ, *PRINCIPLES OF CONSTITUTIONAL DESIGN* 1–22 (2006).

13. *See* ELIZABETH CLEMENS, *THE PEOPLE'S LOBBY: ORGANIZATIONAL INNOVATION AND THE RISE OF INTEREST GROUP POLITICS IN THE UNITED STATES, 1890–1925*, at 2, 4, 277 (1997).

14. *See, e.g.*, William N. Eskridge, Jr., *Channeling: Identity-Based Social Movements and Public Law*, 150 U. PA. L. REV. 419, 420 (2001).

people is defined by five key elements: (1) organic identification and analysis of social problems, derived from the experience and expertise of those affected; (2) design of solutions framed by people affected using their practices as a model of what works; (3) translation of language used by people in their day-to-day lives into policy and vice versa; (4) leadership by the people in policy design, advocacy, and implementation; and (5) creation of a proactive plan, built into policy, for community-led monitoring and enforcement, leading toward building greater power and creating new opportunities for organizing against systemic injustice.

To frame our intervention, we build on insights from social movement and institutional political theory referenced above, tying them together in a vision of policymaking that promotes democratic inclusion and thus reorients the lawyer's role as a change agent within the democratic structure. We use the idea of "the people," instead of "the community," to capture what Professors Lani Guinier and Gerald Torres refer to as law-making processes that derive from, and benefit, diverse groups of people—the "demos"—especially those living on the margins with less power.<sup>15</sup> Our Essay focuses on how policy can specifically serve those groups. Accordingly, we do not offer a general theory of *all* policymaking but rather a more targeted approach designed to promote greater equality in our increasingly unequal society. Policy by the people is focused on a particular type of policy initiative—that seeking to redistribute resources and power to marginalized groups in society—and thus requires lawyers to be accountable to those groups. Lawyering for this type of policy change therefore often involves being embedded in a coalition infrastructure in horizontal relationships with nonlawyer partners and community members seeking to influence elected representatives who are responsive to political pressures.

## II. LOCAL POLICYMAKING AS AN ARENA OF PEOPLE POWER

Although the ideas we propose in this Essay apply to policymaking at all levels, our point of departure is local government. This is partly a product of our own experiences, which are shaped by our work with social movement organizations challenging housing insecurity and labor precarity through policy change in Los Angeles. However, our focus on local policymaking as an arena of power also flows from a political economy approach to economic justice that identifies structural opportunities for radical change at the local level.<sup>16</sup> Social movements on the left have thrived and gained power in large cities—in both blue and red states—shifting policy on labor, civil rights, and environmental issues in ways that have reshaped law in urban areas where

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15. Guinier & Torres, *supra* note 3, at 2743 ("Our aim is to better understand and recognize the important roles played by ordinary people who succeed in challenging unfair laws through the sounds and determination of their marching feet.")

16. See SCOTT L. CUMMINGS, AN EQUAL PLACE: LAWYERS IN THE STRUGGLE FOR LOS ANGELES 1–2 (2021).

the majority of Americans live.<sup>17</sup> Research identifies multiple reasons for progressive movements' influence on city power, including proximity to powerholders and the changing demographics of cities—younger and more diverse—which have made them more receptive political sites.<sup>18</sup> To illustrate how policy by the people works at the local level, we draw on the following four examples. In each, while multiple campaign tactics are deployed simultaneously—including direct action, organizing, popular education, and communications and narrative strategy—policy change is a crucial dimension of the broader movement agenda. In these examples, lawyers from the public interest law firm, Public Counsel, and law faculty and students at the University of California, Los Angeles (UCLA) participating in a course on community economic development worked directly with community organizers, residents, and leaders to support the policymaking dimensions of these campaigns.

#### A. *The LA Street Vendor Campaign*

The LA Street Vendor Campaign is a coalition of street vendors and community-based organizations working to advance economic opportunities and expand legal rights for street vendors in Los Angeles.<sup>19</sup> For over a decade, the coalition has pursued a comprehensive and multifaceted organizing and policy campaign to end criminalization and create a legal pathway for low-income entrepreneurship.<sup>20</sup> The campaign secured a major policy victory in 2018, when the coalition successfully advanced California Senate Bill 946 (SB 946),<sup>21</sup> which required local jurisdictions, including the City of Los Angeles, to rescind criminal bans on street vending and create local regulatory programs.<sup>22</sup> Following the enactment of SB 946 and the subsequent adoption of a City of Los Angeles legal sidewalk vending program, the campaign turned its attention to eliminating the remaining

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17. See *Local Nondiscrimination Ordinances*, MOVEMENT ADVANCEMENT PROJECT, [https://www.lgbtmap.org/equality-maps/non\\_discrimination\\_ordinances](https://www.lgbtmap.org/equality-maps/non_discrimination_ordinances) [https://perma.cc/N32V-3GPH] (last visited Mar. 4, 2022); *Inventory of US City and County Minimum Wage Ordinances*, UC BERKELEY LAB. CTR. (Jan. 31, 2022), <https://laborcenter.berkeley.edu/inventory-of-us-city-and-county-minimum-wage-ordinances/#s-1> [https://perma.cc/3G3W-TXA6]; AMY E. TURNER & MICHAEL BURGER, SABIN CTR. FOR CLIMATE CHANGE L., COLUMBIA L. SCH., *CITIES CLIMATE LAW: A LEGAL FRAMEWORK FOR LOCAL ACTION IN THE U.S.* (2021), [https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1000&context=sabin\\_climate\\_change](https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1000&context=sabin_climate_change) [https://perma.cc/MF7T-Y9ZX]. For a discussion of the role of social movements in cities, see generally WALTER J. NICHOLLS & JUSTUS UITERMARK, *CITIES AND SOCIAL MOVEMENTS: IMMIGRANT RIGHTS ACTIVISM IN THE UNITED STATES, FRANCE, AND THE NETHERLANDS, 1970–2015* (2017); Richard C. Schragger, *Is a Progressive City Possible?: Reviving Urban Liberalism for the Twenty-First Century*, 7 HARV. L. & POL'Y REV. 231 (2013).

18. See CUMMINGS, *supra* note 16, at 501–02; see also Walter J. Nicholls, *The Urban Question Revisited: The Importance of Cities for Social Movements*, 32 INT'L J. URB. & REG'L RSCH. 841, 841–42 (2008).

19. See *Our Story*, LA ST. VENDOR CAMPAIGN, <https://lastreetvendors.org/about/> [https://perma.cc/9DCT-XW24] (last visited Mar. 4, 2022).

20. See *id.*

21. S.B. 946, 2017–18 Leg. (Cal. 2018).

22. CAL. GOV'T CODE §§ 51036–51039 (West 2022).

barriers in state and county retail food laws that prevent low-income street food vendors from accessing permits and economic opportunity.<sup>23</sup> The LA Street Vendor Campaign coalition is led by street vendors, with support from community-based organizations.<sup>24</sup> Lawyers work directly with community organizers and vendors to support coalition-led policy design, advocacy, implementation, and enforcement.<sup>25</sup>

*B. United Neighbors in Defense Against Displacement and Central City United*

United Neighbors in Defense Against Displacement (UNIDAD)<sup>26</sup> and Central City United<sup>27</sup> are two neighborhood-based coalitions working to promote equitable development in South Central and Downtown Los Angeles, respectively, through “People’s Plan” campaigns.<sup>28</sup> Each campaign has produced detailed policy language to reorient the city’s land use development process around the needs and priorities of low-income communities of color.<sup>29</sup> The People’s Plans are part vision statement—an aspiration for equitable community growth—and part technical policy—the legal mechanics to make that vision an enforceable reality. In the UNIDAD and Central City United campaigns, lawyers drafted the People’s Plan policy frameworks to mirror the technical format of formal community plans that are adopted by the city, enabling the coalition’s policy demands to be incorporated directly into new municipal law.<sup>30</sup> Through organizing, direct action, and advocacy, these campaigns demand a planning process that follows the direction of community leaders and helps build durable

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23. See CASSIDY BENNETT ET AL., UCLA SCH. OF L. CMTY. ECON. DEV. & PUB. COUNS., UNFINISHED BUSINESS: HOW FOOD REGULATIONS STARVE SIDEWALK VENDORS OF OPPORTUNITY AND WHAT CAN BE DONE TO FINISH THE LEGALIZATION OF STREET FOOD (2021), <https://www.publiccounsel.org/wp-content/uploads/2021/12/Unfinished-Business.pdf> [https://perma.cc/QAF4-5F9P].

24. See generally *Our Story*, *supra* note 19.

25. Samanta Helou Hernandez, *Making it Official: How L.A. Street Vending Became Legal*, KCET (July 3, 2019), <https://www.kcet.org/shows/city-rising/making-it-official-how-l-a-street-vending-became-legal> [https://perma.cc/KZH5-RQDB].

26. See *Who We Are*, UNIDAD, <https://www.unidad-la.org/who-we-are/> [https://perma.cc/5V8F-W2VH] (last visited Mar. 4, 2022).

27. *About*, CENT. CITY UNITED PEOPLE’S PLAN, <https://www.centralcityunited.org/about-1> [https://perma.cc/7V8T-C9RG] (last visited Mar. 4, 2022).

28. See *The People’s Plan*, UNIDAD, <https://www.unidad-la.org/peoplesplan/> [https://perma.cc/FV3Y-3NL3] (last visited Mar. 4, 2022); *People’s Plan*, CENT. CITY UNITED PEOPLE’S PLAN, <https://www.centralcityunited.org/peoples-plan> [https://perma.cc/XG4S-VCNY] (last visited Mar. 4, 2022).

29. See *The People’s Plan*, *supra* note 28; CENT. CITY UNITED PEOPLE’S PLAN, *supra* note 27.

30. See Letter from UNIDAD to Los Angeles City Planning Commission (June 16, 2017), <https://www.unidad-la.org/wp-content/uploads/2017/08/UNIDAD-policy-recommendations-and-redlines-for-South-Southeast-LA-Community-Plans-6-16-2017.pdf> [https://perma.cc/ETE7-TDAG]; CENT. CITY UNITED, PROPOSED AMENDMENTS TO JULY 2019 DRAFT DTLA COMMUNITY PLAN POLICY TEXT (2019), <https://static1.squarespace.com/static/5e2f9c1251bedc373bccf0fa/t/5e335a0b78d5f55da090bca5/1580423692912/CCU+Proposed+Amendments+to+July+2019+Draft+DTLA+Community+Plan+Policy+Text.pdf> [https://perma.cc/7DHN-3ACH].



community power in neighborhoods historically harmed by land use law and policies.

### C. *Keep LA Housed*

Keep LA Housed is a coalition of tenants, tenant organizers, and community-based organizations that came together during the COVID-19 pandemic to demand protections for renters vulnerable to eviction and displacement during the public health emergency.<sup>31</sup> In early 2021, the coalition engaged tenants, organizers, and lawyers to evaluate the barriers in existing rental assistance programs that were preventing tenants from achieving housing security. This evaluation informed the development of a series of responsive policies to strengthen existing rental assistance programs, eliminate (“cancel”) all rent debt during the emergency period, and prevent evictions and collateral consequences stemming from rent debt.<sup>32</sup> The resulting policy platform, dubbed the “Debt Free Recovery Plan to Keep LA Housed,”<sup>33</sup> has become a foundational document for coalition-organizing strategies like town hall “teach-in” events on policy demands, direct action protests, social media tool kits, media spokesperson trainings, talking points for public hearings, and legislative action.<sup>34</sup> The coalition continues to mobilize tenants to build power and generate pressure in support of these policy demands, while sharing knowledge within a national network of movements demanding to cancel rent.<sup>35</sup>

### D. *Unincorporated Tenants United*

Unincorporated Tenants United is a coalition of community-based organizations and tenants formed to strengthen tenant protections for the nearly half-million renters living in unincorporated Los Angeles County.<sup>36</sup> The coalition published policy analysis, created conditions for low-income tenants to lead public policy conversations, organized tenant advocacy, and drafted model policy language. The efforts culminated in L.A. County

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31. See David Mendez, *LA County Researching Plans to Seize COVID Rent*, SPECTRUM NEWS 1 (June 14, 2021, 6:28 PM), <https://spectrumnews1.com/ca/la-west/news/2021/06/14/la-county-researching-plans-to-seize-covid-rent> [<https://perma.cc/E5WC-25RD>].

32. See KEEP LA HOUSED, A DEBT FREE RECOVERY TO KEEP LA HOUSED, <https://drive.google.com/file/d/1Ta5wT6n1VBGwBisKtcLd5YjQjk9dNhc1/view> [<https://perma.cc/JSG3-KU29>]; see also ACT LA: All. for Cmty. Transit L.A., *Debt Free Recovery to Keep LA Housed Teach-In*, FACEBOOK (May 12, 2021, 8:30 PM), [https://www.facebook.com/watch/live/?ref=watch\\_permalink&v=795073407796992](https://www.facebook.com/watch/live/?ref=watch_permalink&v=795073407796992) [<https://perma.cc/Z8ZG-PQM3>] [hereinafter *Teach-In*].

33. See KEEP LA HOUSED, *supra* note 32; *Teach-In*, *supra* note 32.

34. See, e.g., *Teach-In*, *supra* note 32.

35. #HEALTHYLA, LOS ANGELES RENT AND MORTGAGE CANCELLATION POLICY PLATFORM (2020), <http://healthyla.org/wp-content/uploads/2020/12/LA-Rent-and-Mortgage-Cancellation-Platform-1.pdf> [<https://perma.cc/EAV3-LVH7>]; see also *Demands*, BEYOND RECOVERY, <https://cancelrent.us/demands> [<https://perma.cc/BVD2-77C5>] (last visited Mar. 4, 2022).

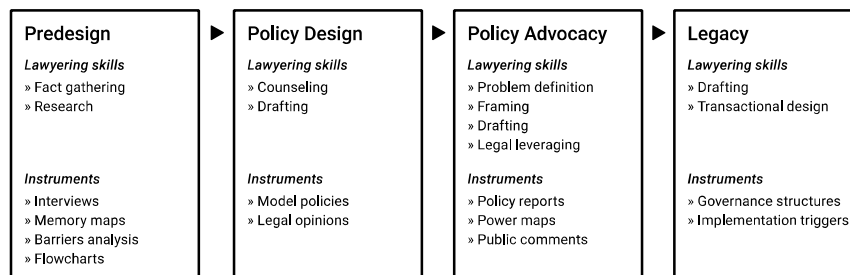
36. See *Tenants, Landlords and Advocates Rally for Housing Rights*, L.A. SENTINEL (Sept. 11, 2018), <https://lasentinel.net/tenants-landlords-and-advocates-rally-for-housing-rights.html> [<https://perma.cc/7LP4-E87W>].

adopting a comprehensive rent stabilization and just cause eviction ordinance in 2019<sup>37</sup>—the largest expansion of rent control in California in a generation.

### III. CREATING CONDITIONS OF POSSIBILITY: HOW LAWYERS SUPPORT POLICY BY THE PEOPLE

This part presents an action framework for lawyer participation in policymaking by the people, drawing on examples from the four campaigns introduced above. Here, we focus on the lawyer's role, not to make the lawyer the protagonist in movement-building,<sup>38</sup> but rather to provide a conceptual framework for understanding and evaluating how lawyers matter in the creation of responsive regulation. Although bottom-up policy campaigns decenter the lawyer and elevate community leadership, organizers do call on lawyers to support these campaigns. While playing a supporting role, lawyers perform essential strategic and structuring work that helps meaningfully push forward effective people-led policy design and advocacy. In this part, we seek to operationalize social change principles articulated in the growing law and in social movement literature by describing precisely *how* lawyers support the translation of normative claims for social change into effective policy. To do this, we trace the *life cycle of policy development* and use examples from practice to highlight how lawyers add value by contributing particular lawyering skills and producing specific legal instruments at the predesign, design, advocacy, and legacy phases of policymaking.<sup>39</sup>

Figure 1: Life Cycle of Policy Development



#### A. Pre-design: Mapping Systems of Power from the People's Perspective

We start by describing how lawyers may help spark policy development through problem identification in what we call the pre-design stage, which involves mapping how systems of power operate at the ground level. This means creating processes for fusing two types of knowledge: (1) knowledge

37. L.A. COUNTY, CAL., CODE OF ORDINANCES ch. 8.52 (2019).

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

39. See generally EUGENE BARDACH, *A PRACTICAL GUIDE FOR POLICY ANALYSIS: THE EIGHTFOLD PATH TO MORE EFFECTIVE PROBLEM SOLVING* (3d ed. 2009).

coming from the people's lived experience of injustice and (2) knowledge coming from lawyers' analysis of legal barriers to equity and inclusion. Cogenerating this knowledge, and synchronizing it, requires rethinking traditional notions of lawyer fact gathering and legal research, which can help structure community activism and nudge inchoate organizing toward a more well-defined goal.

### 1. Uplifting the People's Experience of Injustice Through Bottom-Up Fact Gathering

Creating conditions of possibility for change requires understanding what conditions are causing exclusion and inequality in the first instance. That, in turn, requires a mechanism for uplifting knowledge of the system acquired by those who know it best: the people who live under its rule (or often lack thereof). Here, we are concerned with going beyond simply affirming the validity of people's legal knowledge, which is essential, to specify effective ways for mobilizing that knowledge and connecting it with expertise that lawyers bring to bear. Lawyers are well positioned to assist this type of bottom-up fact gathering through carefully designed research tools.<sup>40</sup>

Lawyers who are actively involved in community spaces with coalition leaders have a deeper understanding of existing conditions and priorities than they would if called in to address a specific narrow problem.<sup>41</sup> Nevertheless, even the most embedded lawyers must still rely on deliberate techniques to solicit information and facilitate dialogue to shape key policy demands. This can be achieved by shifting from informal fact gathering to more systematic data collection using empirical strategies such as interviews, focus groups, and targeted surveys to enhance understanding of how current conditions could be addressed through policy change.

Interviews were an important fact-gathering tool in the LA Street Vendor Campaign drive to eliminate onerous legal barriers to code-compliant vending carts and permits. Although California decriminalized and legalized street vending, securing a cart that could pass inspection from the Los Angeles County Department of Public Health to sell food has remained exceedingly costly and complex.<sup>42</sup> The cost-prohibitive nature of code-compliant carts means that street food vending remains illegal, as a practical matter, for most low-income food vendors.<sup>43</sup> To help increase access to legal permits, the street vendor coalition asked lawyers to develop a granular understanding of how and where vendors confronted barriers in the existing permitting process. This required first *understanding the*

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40. See generally BILL MOYER ET AL., *DOING DEMOCRACY: THE MAP MODEL FOR ORGANIZING SOCIAL MOVEMENTS* (2001); RANDY STOECKER, *RESEARCH METHODS FOR COMMUNITY CHANGE: A PROJECT-BASED APPROACH* (2d ed. 2013).

41. See Cummings, *supra* note 5, at 1695–96.

42. Emily Alpert Reyes, *LA Sidewalk Vendors Have Trouble Legalizing Their Carts*, L.A. TIMES (Aug. 11, 2021, 5:00 AM), <https://www.latimes.com/california/story/2021-08-11/sidewalk-vendor-carts-requirements-legal> [<https://perma.cc/ZMB6-LABD>].

43. BENNETT ET AL., *supra* note 23, at 4.

*problem from the vendors' point of view*—uplifting their knowledge of the system's failings—prior to analyzing relevant regulations.

Toward this end, UCLA law students worked with attorneys and community organizers to conduct extensive interviews of street vendors, who had experiences that organizers knew to be common among the broader vendor community. The students developed a list of questions to illuminate daily experiences and elicit ideas for change.<sup>44</sup> Through this process, they learned the details of how street vending regulations were being selectively and unevenly enforced, what feedback vendors had received in their interactions with county officials responsible for reviewing permit applications, and the innovative approaches to homegrown cart design and construction that vendors pursued in an effort to meet permitting requirements. None of this important qualitative data could be gleaned by simply analyzing the formal policy. By starting with in-depth interviews *before* launching into a legal analysis of the code, the legal team was able to create a barrier analysis (a tool described further below) that was directly responsive to how the existing policy framework was impacting vendors' livelihoods.

Sometimes, such formal data-gathering techniques are not possible or desirable, and lawyers must identify other opportunities to learn from the people's perspective. Much has been written about the utility of community education and participatory research to empower people affected by systems of repression, and we value those lessons.<sup>45</sup> Here, we highlight the reverse flow of knowledge from the people to lawyers through popular education techniques designed to capture *collective community memories* to build political awareness, strategy, and power. In a popular education setting, lawyers, organizers, residents, and community leaders are simultaneously teachers and learners.<sup>46</sup> While lawyers work with organizers to educate residents on existing legal frameworks, this presents an important opportunity for participants to educate lawyers about on-the-ground conditions that form the basis of policy development.

The foundational elements of the People's Plan campaigns originated in the organic dialogue triggered by a popular education initiative called "People's Planning School." Through a collective effort to unpack the complex and inaccessible land use and planning framework, residents shared expertise that formed the basis of new policy demands.<sup>47</sup> For example, discussion of how buildings are redeveloped helped elicit a history of prior uses and long-gone community assets in a particular neighborhood, enabling coalition lawyers to begin recording a collective community memory that

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44. *See id.* at 38 n.29.

45. *See* Lucie White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699; Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433 (1998).

46. *See* White, *supra* note 45.

47. JON TRUONG ET AL., UNIDAD, THE PEOPLE'S PLAN: EQUITABLE DEVELOPMENT IN SOUTH LOS ANGELES 7 (2017), <https://www.unidad-la.org/wp-content/uploads/2017/06/peoples-plan-report-FINAL.pdf> [<https://perma.cc/UJ32-7U5G>].

later became a central feature of policy advocacy. Similarly, a People's Planning School session on the mechanisms that drive informal eviction sparked a conversation about several blocks undergoing rapid turnover from long-time community tenants to University of Southern California (USC) students. This conversation sparked additional participatory research, community walks, and public forums,<sup>48</sup> which led to the creation of a *memory map* showing the transition of community housing to student housing over time. This map served as a powerful visual advocacy tool that elevated storytelling in the campaign's strategy and informed the design of targeted policies within the People's Plan for South Central Los Angeles to address displacement pressures in the areas adjacent to USC.<sup>49</sup>

## 2. Deploying Legal Research to Identify How Law Codifies Exclusion

Once grounded in a deeper understanding of how people are experiencing harms, lawyers are better equipped to identify the precise legal and policy roots of that harm. Identifying the legal bases of harm can inspire movement activism by creating a target for change.<sup>50</sup> Specifically, lawyers can situate social problems within a legal structure that demonstrates how law creates barriers to equity and inclusion. This type of *barrier analysis* is an important form of *legal research* that serves to structure and motivate next steps: enabling a problem statement to crystalize,<sup>51</sup> which can in turn provide the grounding necessary for a comprehensive strategy involving organizing, direct action, communications, and policy advocacy. In this way, researching how a policy or legal system does *not* work has utility beyond the ultimate development of policy recommendations: It can create the scaffolding necessary to open dialogue among movement leaders, reveal points of intervention, and ignite next steps. In addition, by incorporating barrier analyses into effective visual tools, like flowcharts using design technology, this type of research can serve to educate community members on how to circumvent barriers while allowing activists to more effectively lobby for change.

After developing a deeper understanding of how street vendors were struggling to navigate permitting and equipment rules through the interviews described above, the legal team conducted a focused policy analysis that linked each of the harms and challenges identified by vendors to a precise regulation. An understanding of legal preemption—the control of local law

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48. Paulina Gonzalez, *South "Central" Los Angeles: Residents Fight to Save Their Beloved Community in the Face of USC Expansion Plans*, PROGRESSIVE PLAN., Summer 2012, at 14, 14, [http://www.plannersnetwork.org/wp-content/uploads/2012/10/PPMag\\_Gonzalez.pdf](http://www.plannersnetwork.org/wp-content/uploads/2012/10/PPMag_Gonzalez.pdf) [<https://perma.cc/B6BN-VRF4>].

49. *See id.*; *see also* MANUEL PASTOR ET AL., USC DORNSIFE PROGRAM FOR ENV'T & REG'L EQUITY, PLANNING, POWER, AND POSSIBILITIES: HOW UNIDAD IS SHAPING EQUITABLE DEVELOPMENT IN SOUTH CENTRAL L.A. 28 (2015), [http://www.unidad-la.org/wp-content/uploads/2015/09/Research-2015-Planning\\_Power\\_Possibilities\\_UNIDAD\\_PERE\\_final\\_report-2.pdf](http://www.unidad-la.org/wp-content/uploads/2015/09/Research-2015-Planning_Power_Possibilities_UNIDAD_PERE_final_report-2.pdf) [<https://perma.cc/J4N8-FRD9>].

50. *See* McCANN, *supra* note 5, at 48.

51. BARDACH, *supra* note 39, at 1–10.

by higher-order state law—helped the team determine that the manufacturing specifications for street vending carts and attendant equipment were dictated by county permitting regulations, which were in turn crafted to implement state food safety laws. The team scrutinized the local regulations against their state law source and identified a comprehensive list of technical requirements that were impeding vendors’ ability to operate a cart on the sidewalk. The team then organized the policy barriers by category—access, permitting, equipment, support infrastructure, and enforcement—and memorialized this analysis in a detailed—even dizzying—flowchart that outlined each step, and every attendant barrier, that vendors must navigate to secure a permit.<sup>52</sup> This clear structuring and visual depiction of policy barriers was not just an abstract exercise but rather a crucial first step in helping the coalition name injustice and identify the specific ways that law contributed to it. And by merging the legal source of harm with the real-life impact of that harm, this analysis crystallized what had been an amorphous problem. From here, the team developed a concrete problem statement, which pointed toward directions for legal reform, and thus became the foundation for campaign messaging and ultimately for proposed legislation.<sup>53</sup>

A legal barrier analysis was also an important spark to the Keep LA Housed coalition’s efforts to protect the most at-risk renters during the pandemic. Beginning in 2020, as COVID-19 ravaged the job market and compounded an already severe housing crisis,<sup>54</sup> the coalition issued an unambiguous demand for elected officials to “cancel” rent to stabilize housing security for millions of low-income tenants facing the threat of displacement.<sup>55</sup> However, just as online organizing strategies gained momentum, a series of intertwined federal, state, and local “rental assistance” policies upended the legal landscape for tenant protection by attaching brand new requirements and standards to the allocation of federal funding.<sup>56</sup> For the coalition, it was clear that the eviction protections and rental assistance policies being adopted by state and local governments, while crucial, would be insufficient to meet the scale of the impending wave of displacement and

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52. BENNETT ET AL., *supra* note 23, at 43.

53. S.B. 972, 2021–22 Leg. (Cal. 2022).

54. See Mathieu Despard et al., *COVID-19 Job and Income Loss Leading to More Hunger and Financial Hardship*, BROOKINGS (July 13, 2020), <https://www.brookings.edu/blog/up-front/2020/07/13/covid-19-job-and-income-loss-leading-to-more-hunger-and-financial-hardship> [https://perma.cc/9RE4-H23P]; Conor Dougherty, *Pandemic’s Toll on Housing: Falling Behind, Doubling Up*, N.Y. TIMES (Sept. 10, 2021), <https://www.nytimes.com/2021/02/06/business/economy/housing-insecurity.html> [https://perma.cc/WQ7A-2E3R].

55. *Cancel Rent! Cancel Mortgages!*, #HEALTHYLA, <http://healthyla.org/> [https://perma.cc/WDU7-9W3L] (last visited Mar. 4, 2022); #HEALTHYLA, *supra* note 35.

56. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 501(a), 134 Stat. 1182, 2293; S.B. 91, 2021–22 Leg. (Cal. 2021); Glenn Thrush & Conor Dougherty, *Why \$46 Billion Couldn’t Prevent an Eviction Crisis*, N.Y. TIMES (Oct. 18, 2021), <https://www.nytimes.com/2021/09/10/business/evictions-rental-assistance.html> [https://perma.cc/CXC2-9UFW].

homelessness.<sup>57</sup> But in the rapidly evolving legal environment, there was also great uncertainty about what exactly was required, or legally possible, to bring Los Angeles's emergency tenant protection policy framework in line with movement demands.

In this context, the coalition asked lawyers to analyze and explain the new state law allocating federal rent debt relief dollars to local jurisdictions,<sup>58</sup> in order to help movement leaders understand where tenants were encountering barriers to eliminating their rent debt and put forward a viable proposal to cancel rent within the constraints of the new law. This legal barrier analysis included two important elements. First, the legal team provided internal guidance by synthesizing the overlapping federal, state, and local standards for rental assistance, and by distilling complex legal concepts and statutory requirements into accessible terms that helped catalogue barriers. Next, the legal team produced a public-facing visual aid that highlighted the unnecessary and unreasonable complexity of the existing law by presenting these barriers in a flowchart, comprising several pages, that mapped each step of the byzantine process and revealed the head-spinning array of hurdles facing anyone seeking rent debt relief.<sup>59</sup> The visual aid and organizational framework helped shape policy demands to streamline the process as a step toward ending rent debt. Organizers in the coalition then developed a full policy platform and planned direct action protests, using the legal barrier analysis—and the flowchart as a striking visual depiction—to demonstrate the need for streamlining, for more resources, and for structural change to support tenants.<sup>60</sup>

### *B. Policy Design: Defining Solutions Through People-Centered Process*

Once local knowledge gained through innovative fact-gathering strategies is combined with legal research mapping barriers to inclusion and equity, policy by the people shifts to creating the foundations of responsive regulation. This process, which unfolds during the *policy design* phase,

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57. See Manuela Tobias, *How Much Is Rent Relief Helping Californians?*, CAL MATTERS (Apr. 26, 2021), <https://calmatters.org/housing/2021/04/california-rent-relief-tenants/> [<https://perma.cc/HJ9K-LT3T>]; Manuela Tobias et al., *Where Are Tenants Falling Through the Cracks of California Eviction Ban?*, CAL MATTERS (July 9, 2021), <https://calmatters.org/housing/2021/07/california-eviction-moratorium-tenants/> [<https://perma.cc/DMP3-H8RQ>]; Sarah Treuhaft et al., *State of Waiting: California's Rental Assistance Program One Month Before Expiration*, NAT'L EQUITY ATLAS (Mar. 7, 2022), <https://nationalequityatlas.org/CARentalAssistance> [<https://perma.cc/BU9A-3LYZ>]. For an analysis of potential impacts of insufficient tenant protections, see GARY BLASI, UCLA LUSKIN INST. ON INEQUALITY AND DEMOCRACY, UD DAY: IMPENDING EVICTIONS AND HOMELESSNESS IN LOS ANGELES (2020), <https://escholarship.org/uc/item/2gz6c8cv> [<https://perma.cc/5RSA-HZP5>].

58. See S.B. 91, 2021–22 Leg. (Cal. 2021).

59. See UCLA L. CMTY. ECON. DEV. CLINIC, LOS ANGELES COUNTY AND THE CITY OF LOS ANGELES EMERGENCY RENTAL ASSISTANCE PROGRAMS (ERAPs) (2021), [https://drive.google.com/file/d/1RobgR9JPmRbCDiJfMg4Y-pxTA\\_RIt3tu/view](https://drive.google.com/file/d/1RobgR9JPmRbCDiJfMg4Y-pxTA_RIt3tu/view) [<https://perma.cc/TPP6-XUCN>].

60. Community Power Collective, FACEBOOK (May 2, 2021), <https://www.facebook.com/CPColectivo/photos/pcb.292640405794419/292640189127774> [<https://perma.cc/CM7T-JEB4>].

requires lawyers to deploy what we call *iterative client counseling*: structured opportunities for sequential dialogue designed to translate the people's lived experience into a platform, which is revised and refined into policy that represents the people's interests. Iterative counseling, in turn, leads to *drafting* specific types of legal products—model policies and legal opinions—that are crucial tools in advancing policy discussions with official decision-makers and in neutralizing opposition.

### 1. Translating Lived Experience into Just Solutions Through Iterative Client Counseling

Effectively supporting a people-centered movement for transformative policy change requires that lawyers unlearn and challenge traditional notions of “expertise.” Lawyers understand the nuts and bolts of policy and the legal framework for policy adoption. But the people understand the practical and historical implications of policy in ways that most lawyers cannot comprehend. For instance, residents of historically disinvested neighborhoods know how to advance inclusive development because they have done the work of building community against the odds, without the benefit of resources or investment. These forms of expertise are important and must work in tandem. A key principle of people-centered policy design is effectively translating the lived realities of current law into responsive policy change, which is a process that involves multiple iterations of dialogue and counseling to elicit priorities and then transition those priorities and policies into legislation.

The process of policy translation was fundamental to the movement to legalize street vending, which—before the campaign mobilized to address health permit barriers—sought to design local laws setting forth spatial rules for vending across the city. To advance a vendor-centered approach, coalition lawyers were asked to craft a model ordinance that would protect and legitimize the spaces where vendors already worked, which were high-traffic areas essential to their livelihood. The model ordinance needed to rescind a harmful policy of criminalization and proactively establish regulations that would govern street vending locations and operations under a new legal framework.

Although coalition lawyers were trained to create the scaffolding of an ordinance, they were in no position to craft the substantive spatial regulations for street vending. It was the street vendors themselves, forced to develop working arrangements and navigate spatial conflicts in the informal economy for decades, who knew what worked in terms of sharing sidewalk space. Recognizing this expertise, coalition lawyers and law students set out to create an interactive process for street vendors to develop a policy framework for spatial regulations. This started with numerous site visits to key street vending locations, with the lawyers and students trading legal pads and pens for tape measures and chalk. After learning the various informal arrangements and best practices that street vendors had developed, the legal team began memorializing these standards in a broad policy outline, which



was then presented and revised numerous times based on additional feedback and guidance from street vendors. Once there was consensus on the policy framework among vendors, the team consulted outside experts about the potential application of other laws regulating sidewalk activity, such as the Americans with Disabilities Act of 1990.<sup>61</sup> After incorporating feedback from these experts, the lawyers and students brought revisions back to working groups of street vendors to explain and solicit input on proposed changes. Only after consolidating this feedback did coalition lawyers finally set out to convert the policy outline into a model ordinance. Although the lawyers eventually drafted the technical ordinance language, this drafting constituted a *translation* of the policy content created by street vendors according to the systems and arrangements that had developed organically in their work.<sup>62</sup>

The People's Plan movement has similarly centered community expertise in iterative policy design by uplifting experiential knowledge from resilient communities under conditions of public sector neglect. The People's Plan campaigns have demanded that new city planning initiatives not only acknowledge the racism and failures of prior planning but also actually *undo the harm*.<sup>63</sup> A central feature of this new paradigm of land use planning is a recognition that, in the midst of deep irreversible harms created by planning policies, people have found ways to build community nonetheless.<sup>64</sup> Neighborhood support networks, informal economies, and mutual aid efforts developed in disinvested and segregated low-income communities of color, creating spaces and conditions for community and culture to thrive despite structural barriers to wealth and opportunity, and in the face of violent oppression.<sup>65</sup> The People's Plan campaigns have aimed to acknowledge and elevate this community building, and the residents who served as its architects, in new planning initiatives.<sup>66</sup>

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61. See Pub. L. No. 101-336, 104 Stat. 327 (codified as amended in scattered sections of 42 U.S.C.).

62. See Hernandez, *supra* note 25.

63. See ICYMI—Panel Recording: *Racial Equity in Community Planning*, CENT. CITY UNITED (Aug. 2, 2021), <https://www.centralcityunited.org/updates/icymi-panel-recording-racial-equity-in-community-planning> [<https://perma.cc/WT6U-W64N>].

64. See, e.g., GAYE THERESA JOHNSON, SPACES OF CONFLICT, SOUNDS OF SOLIDARITY: MUSIC, RACE, AND SPATIAL ENTITLEMENT IN LOS ANGELES 1 (2013) (“Locked in by residential segregation and territorial policing, locked out of the jobs, schools, and amenities in neighborhoods of opportunity, and sometimes even locked up in the region’s jails and prisons, Blacks and Mexicans in Los Angeles turned oppressive racial segregation into creative and celebratory congregation. They transformed ordinary residential and commercial sites into creative centers of mutuality, solidarity, and collectivity.”); see also MANUEL PASTOR & PIERRETTE HONDAGNEU-SOTELO, SOUTH CENTRAL DREAMS: FINDING HOME AND BUILDING COMMUNITY IN SOUTH L.A. 1–3 (2021) (describing the “homemaking” process of Black and Latino residents in South Central Los Angeles amidst demographic changes).

65. See Christine Fernando, *Mutual Aid Networks Find Roots in Communities of Color*, ABC NEWS (Jan. 21, 2021, 11:16 AM), <https://abcnews.go.com/US/wireStory/mutual-aid-networks-find-roots-communities-color-75403719> [<https://perma.cc/3GYF-M9BH>].

66. TRUONG ET AL., *supra* note 47, at 2.

As in the sidewalk vending example, lawyers for People's Plan campaigns worked closely with organizers and resident leaders to help translate experiences and ideas into policy. Lawyers participated in People's Planning School's popular education events, joined town hall forums to discuss development patterns and priorities, debriefed community benefits agreement campaigns, created surveys and charrettes, and spoke at length with residents. Focusing on what residents wished to see in their neighborhoods and what they loved about their communities allowed the campaigns to develop an affirmative platform for equitable growth. Moreover, freed from the bounds of conventional land use and zoning norms, the campaigns were able to envision alternative community-ownership models for affordable housing, reimagine industrial infrastructure to support low-income entrepreneurs, and define the key features of community-serving legacy small businesses. As a result of this process—starting with the imagination and vision of local experts and only turning to technical policy drafting in the last stage—the campaigns were able to articulate the harms of existing land use models while also offering a fully developed alternative rooted in local experience.

## 2. Drafting Policy Documents as Campaign Assets

As the discussion in this section has underscored, lawyers contribute to policy design by drafting technical policy that conforms to the language and format required by law, while also ensuring that new legal products are consistent with issuing bodies' jurisdictional authority—for local governments, this means ensuring that local action is not preempted by state law. Two critical drafting products that lawyers generate in this context are *model policies* and *legal opinions*, which require different types of drafting approaches rarely taught in law school.

Above, we described the process of translating community practice into policy language through iterative counseling, which involves the gradual evolution from general principles and priorities to precise and technical legislative language. Here, we focus on the output of that process, model policy, defined as legislative drafting that is not yet adopted or codified by the legislature but that serves as a template that a legislature will, if the campaign is successful, eventually incorporate into a local ordinance or state bill. People-led model policy drafting creates an instrument to give legal effect to movement principles and a tool to strengthen advocacy efforts. The drafting process gives people control over framing the issue, while the use of model policy in advocacy can force legislators and political opponents to respond to the movement's model and thereby shape the conversation on the coalition's terms.

Lawyers are well positioned to anticipate opportunities and work with community members and organizers to draft responsive model policy that is embedded in a focused advocacy strategy. Drafting model policy requires ensuring *horizontal* conformity: Does the model policy conform with legal requirements in the relevant jurisdiction? It also requires *vertical*

conformity: Does the policy conform with legal requirements from higher level jurisdictions under preemption? This style of model policy drafting is objective and declarative. Policies are drafted to fit within an existing legislative scheme and must be synchronized as such. The process involves gathering examples from other jurisdictions and using that material to fashion new law. The audience in the short term is comprised of legislators or voters asked to pass the law; in the long term, it also includes beneficiaries of the law and courts asked to interpret it.

Model policy drafting was key to the movement to legalize street vending. After the counseling described above, the final stage—translating a policy outline into ordinance language—required a specific set of drafting skills. Coalition lawyers ensured horizontal conformity by closely analyzing Los Angeles’s Municipal Code to determine drafting conventions, identify relevant terms already defined in the code, and integrate appropriate cross-references to relevant provisions. The lawyers also researched state laws governing the public right of way and relevant case law on First Amendment activities on public sidewalks to ensure the model ordinance achieved vertical conformity. Finally, lawyers closely reviewed dozens of street vending ordinances in other jurisdictions to identify best practices and pitfalls in order to generate ideas for turning vendor policy priorities into enforceable legislation.

The creation of this model ordinance was not strictly necessary to change city policy. The coalition could have just advocated for changes and then reviewed and commented on draft ordinances that the city produced. But creating a structure and devoting significant time to working with vendors on a model ordinance empowered vendors to step into their role as experts and gave the coalition a powerful tool to challenge city council inaction and otherwise contest a policymaking process that was apathetic to the urgent needs of low-income workers.<sup>67</sup> In public hearings and private meetings with city officials, vendors were able to hold up their model ordinance as a responsive policy solution to the challenges being discussed. When politicians sought to delay by asking for more analysis during public hearings, the coalition pushed back by pointing to the model ordinance as proof that vendors had stepped up to do the hard work and were ready with solutions. When the city did eventually propose and assess policy ideas, the coalition evaluated these ideas through the lens of the vendor-driven model ordinance and were prepared with a rapid response.<sup>68</sup>

A policy campaign must be able to defend the legality of its demands. As we have suggested, this requires evaluating the constitutionality of proposed local policy and the risk of state or federal preemption. Lawyers can do this by drafting legal opinions in support of model ordinances and policy platforms. Unlike many other advocacy materials, legal opinions are

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67. See Samanta Helou, *Here’s How Latinas Are Leading the Fight to Legalize Street Vending in Los Angeles*, REMEZCLA (Oct. 24, 2017), <https://remezcla.com/features/culture/street-vendor-campaign-los-angeles/> [https://perma.cc/YNX8-DGTH].

68. See Hernandez, *supra* note 25.

objective in tone—concise, free of jargon, and providing a careful assessment of the legality of the policy recommendations at hand. Often, a movement advancing policy change will make a strategic decision to push ambitious and unprecedented policy demands as a tactic to help shape public dialogue, organize popular support, and increase its influence and power. In this case, an objective legal opinion is important, not to dissuade action or temper policy proposals, but rather to inform strategic decisions that balance the risk of untested policy against the movement-building benefits of more aggressive demands. This analysis should assess the immediate risk of the proposal being struck down, as well as the potential longer-term impact of creating bad legal precedent in an important area of evolving law.

Keep LA Housed's ambitious effort to eliminate unpaid rent debt accrued during the pandemic provides an important illustration of how campaigns can benefit from legal opinions.<sup>69</sup> Because of the unprecedented nature of both the pandemic-induced eviction problem and the proposed policy response, questions about the legality of canceling rent immediately arose. Recognizing that they would encounter these questions in every advocacy meeting, coalition leaders requested legal analysis to help them effectively frame their innovative demands to uncertain politicians. Lawyers thus memorialized the analysis that had backed the policy development process, producing two separate legal opinions: one evaluating the constitutionality of various methods of rent debt elimination and the other providing a preemption analysis of local legal authority to adopt the recommended policies. The coalition sought these opinions for dual purposes: (1) to guide the translation of renters' policy demands into legislation that stood the best chance of withstanding legal challenge and (2) to arm the campaign with facts and analysis when opponents questioned the legality of the proposals. The opinions presented a thorough and objective assessment of various policy options and articulated how policy goals could be drafted to reduce risk. The coalition relied on these opinions to successfully advocate for the introduction of a local initiative that would study the potential for eliminating existing rent debt.<sup>70</sup> This policy is still under consideration, but the motion to initiate the process represented a significant step toward the coalition's policy demands.<sup>71</sup>

### C. Policy Advocacy: Building Power Through Activism

Once model language and supporting legal documentation are drafted, advocacy shifts from policy design to building political support and navigating the procedures for enactment. In this *policy advocacy* phase, lawyers help movements make arguments to persuade decision-makers of their position. These arguments must first present a clear and compelling

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69. #HEALTHYLA, *supra* note 35.

70. See Mendez, *supra* note 31; HILDA L. SOLIS, COUNTY ACQUISITION OF LOW-INCOME RESIDENTIAL TENANT RENTAL DEBT (2021), <http://file.lacounty.gov/SDSInter/bos/supdocs/158957.pdf> [<https://perma.cc/U2C7-XRUD>].

71. SOLIS, *supra* note 70.

*problem definition*. Eugene Bardach provides guidance on this key step, recommending using evaluative statements that specify the problem in terms of existing deficits or excesses and being careful not to define the solution into the problem.<sup>72</sup> With a clearly defined problem, the *causal story* becomes important. Deborah Stone presents a useful framework for connecting causal stories to policy, describing a process in which blame is assigned to actors for conditions that can be regulated through the proposed policy.<sup>73</sup> In this context, framing arguments to multiple audiences, or “targets,” to persuade them of the legitimacy and efficacy of policy is crucial.<sup>74</sup>

These arguments play out in two important arenas: the public domain and the policymaking process. Lawyers provide support in these areas through *narrative drafting* to produce public-facing analysis that shapes the public discourse around movement demands, and by *identifying legal hooks and leverage points in the policymaking process* that can widen access for people to intervene and advance advocacy strategies.

### 1. Shaping Public Discourse Around the People’s Priorities

Although the legislative body is responsible for policy adoption, shaping the public discourse around a policy—by telling compelling stories and by centering the voices of those most impacted—is a fundamental strategy for shifting political dynamics and for pressuring politicians to support movement demands. Bottom-up policy campaigns have influenced public discourse by injecting persuasive policy analysis into the discussion—through reports, white papers, policy briefs, and other written products—as well as by securing media coverage that uplifts the expertise and personal stories of people most impacted by the policy in question.

*Policy reports* were an important tool in both the LA Street Vendor Campaign<sup>75</sup> and the Unincorporated Tenants United campaign to advance rent control.<sup>76</sup> In both, law students worked closely with coalition lawyers and organizers to draft and publish comprehensive reports that presented quantitative and qualitative data analysis in support of coalition policy goals. Reports are common in the policymaking arena, but in most instances these reports are published by grassroots organizations, think tanks, university centers, or other elite institutions and well-funded special interest groups. The policy by the people model mobilizes the policy report as a tool to inject

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72. See BARDACH, *supra* note 39, at 1–2, 7, 26.

73. See Deborah A. Stone, *Causal Stories and the Formation of Policy Agendas*, 104 POL. SCI. Q. 281, 281–83 (1989).

74. WILLARD C. RICHAN, *LOBBYING FOR SOCIAL CHANGE* 59–60 (3d ed. 1991). Richan describes different types of targets: active ally, committed opponent, uninvolved, and ambivalent. See *id.* at 99–105.

75. BENNETT ET AL., *supra* note 23.

76. See GREGORY BONETT ET AL., UCLA SCH. OF L. CMTY. ECON. DEV. & PUB. COUNS., *HOW PERMANENT TENANT PROTECTIONS CAN HELP COMMUNITIES PREVENT HOMELESSNESS AND RESIST DISPLACEMENT IN LOS ANGELES COUNTY* (2019), [https://rtcla.org/wp-content/uploads/2019/12/2019\\_PricedoutPushedoutLockedout.pdf](https://rtcla.org/wp-content/uploads/2019/12/2019_PricedoutPushedoutLockedout.pdf) [<https://perma.cc/3NVH-DV4Z>].

the perspectives of those historically excluded from and harmed by public policy. In both the street vendor and rent control campaigns, reports featured personal stories and on-the-ground knowledge, as well as empirical and legal analyses.<sup>77</sup> The rent control report presented original data that crystalized the magnitude of the affordable housing crisis in L.A. County, alongside stories about how that crisis played out in people's homes and in low-income neighborhoods across the region.<sup>78</sup> The street vending report exposed the ways an outdated retail food law prevented tens of thousands of low-income entrepreneurs from formalizing their businesses, buttressed by stories and testimonies from vendors about how that exclusion was affecting their day-to-day lives and impacting their community.<sup>79</sup>

The legal team drafting these reports was able to effectively integrate people's perspectives and expertise with supporting data and analysis by executing the predesign and policy design phases described above and utilizing persuasive drafting skills to present priorities and demands within a format familiar to policymakers. In both cases, coalition leaders and members gave direction on how they hoped to use the report for direct advocacy and organizing objectives. The legal team then created a work plan and scheduled frequent check-in meetings with leaders to update on progress, workshop challenges, and confirm the accuracy and responsiveness of various drafts.

In the reports, the legal team incorporated the three key elements of policy advocacy described above: problem definition, causal story, and audience targeting. The reports drew on both dimensions of knowledge described in the predesign phase—the people's experience of injustice and the lawyer's analysis of the legal source of that injustice—to present an evaluative problem statement. The rent control report highlighted the problem of too many people living at the precipice of homelessness, while the street vending report focused on the dual problems of too many entrepreneurs being denied economic opportunity and too few food vendors participating in systems of food safety regulation. A causal story featured heavily in each report. The rent control report told the story of a speculative housing market that disproportionately harmed low-income communities and communities of color.<sup>80</sup> The street vending report told the story of inapt policy and structural racism: generations of local ordinances designed to exclude immigrant workers created the effect of a statewide ban, causing other statewide retail food laws to be designed without street vendors in mind.<sup>81</sup> And each report

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77. *Id.* at 29–33; BENNETT ET AL., *supra* note 23.

78. See BONETT ET AL., *supra* note 76, at 16–25.

79. See BENNETT ET AL., *supra* note 23, at 14–29.

80. See BONETT ET AL., *supra* note 76, at 16–43 (describing the impact of rent burden, rent gouging, and formal evictions on housing instability and the history and geography of local rent control policies in California).

81. See BENNETT ET AL., *supra* note 23, at 12–13 (describing the history of criminalization of sidewalk vending in California, and how, despite recent reforms, certain state retail food laws preserve a framework of criminalization and exclusion).

was carefully tailored to speak to decision-makers and supporters by presenting arguments to neutralize anticipated opposition.<sup>82</sup>

This drafting style allowed the reports to serve multiple purposes. They gave ammunition to supporters. For example, in the case of the rent control campaign, the report provided original data to spotlight the scope of the problem, and in the case of the street vending campaign, the report isolated the source of harm and focused on the precise target for policy change. The coalitions also leveraged these reports to organize events around their public release. Unincorporated Tenants United convened a press conference that generated sufficient coverage to force elected officials to respond to the rent control report's findings, building additional political pressure. The street vending coalition organized a "teach-in" event around the report that ended by urging supporters to make calls and send emails to elected officials.<sup>83</sup> Ultimately, organizing around the street vending report pressured decision-makers to support its proposed policy changes,<sup>84</sup> and resulted in the introduction of a bill that would modify the state retail food law in line with the report's recommendations.<sup>85</sup>

Both reports also helped neutralize opposition. The rent control report included a section debunking common arguments against rent control and elevating data showing how rent control can help stabilize housing prices. The street vending report anticipated opposition to changing food cart regulations (for example, its proposal to reduce the number of required sink compartments for vending carts) on the ground that the regulations would imperil public health. The report sought to preemptively control that narrative with research and analysis concerning the public health benefits of the coalition's demands.

## 2. Demystifying the Policymaking Process to Leverage Organizing

In addition to shaping public discourse, policy advocacy involves direct engagement in the formal policymaking process. For policy campaigns, legally mandated touchpoints within this process—such as public comment periods, public hearing requirements, and policy committee referrals—can present important openings for movements to exert leverage over policy outcomes and to wield collective power. By demystifying the procedures and structures that guide the legislative process, lawyers help policy

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82. Each report was drafted to include appendices, with infographics, intended specifically to be distributed as handouts in advocacy meetings.

83. Cmty. Power Collective, *LA Street Vendor Campaign Report Launch*, FACEBOOK (Aug. 11, 2021, 1:09 PM), <https://www.facebook.com/CPCollectivo/videos/258353836105413> [<https://perma.cc/F3M6-MYY5>].

84. See SOLIS, *supra* note 70; *Resolution* (Sept. 28, 2021), [https://clkrep.lacity.org/onlinedocs/2021/21-0002-S170\\_reso\\_09-28-21.pdf](https://clkrep.lacity.org/onlinedocs/2021/21-0002-S170_reso_09-28-21.pdf) [<https://perma.cc/L9JR-8AVQ>].

85. See S.B. 972, 2021–22 Leg. (Cal. 2022); Press Release, Lena A. Gonzalez, Senator, California State Senate, Senator Lena Gonzalez Introduces Bill to Support California Street Food Vendors (Feb. 10, 2022), <https://sd33.senate.ca.gov/news/2022-02-10-senator-lena-gonzalez-introduces-bill-support-california-street-food-vendors> [<https://perma.cc/PZ24-AR6X>].

campaigns identify such leverage points and exploit openings for organizing while also directing action in support of policy demands. A lawyer's understanding and explanation of technical procedural requirements can uncover opportunities for expert testimony, targets for direct action, and other tactics to build momentum in favor of a set of policy demands.

In support of the Unincorporated Tenants United rent control campaign, coalition lawyers partnered with community organizers to facilitate dialogue that clarified the intricacies of the legislative process at the County of Los Angeles Board of Supervisors. Coalition lawyers then assessed the results of *power mapping* analyses to inform campaign decisions on which elected officials should be recruited for leadership, which needed to be targeted for additional advocacy efforts, and which coalition partners were best positioned to lead those efforts.<sup>86</sup> Based on this assessment, lawyers helped organizers and community leaders prepare for meetings with elected officials by collaborating on a prepared meeting agenda to emphasize renters' voices, develop a response to anticipated opposition, and create space for renters to tell personal stories and speak truth to power.

Later, lawyers worked closely with organizers to develop a *public comment* strategy—helping to identify main arguments, assess which coalition organization was best equipped to carry the message, and craft succinct talking points that could be modified to fit the short three-minute public comment allowance for public hearings. Organizers then worked with residents to practice selected topics and talking points. The result was an organized strategy that wove together personal stories and persuasive testimony into a full narrative arc that covered the multifaceted policy platform. This show of force in public hearings was crucial to outweighing opposition, energizing an organized base of tenant leaders, and signaling formidable people power in support of new tenant protection policies.<sup>87</sup>

#### *D. Legacy: Mobilizing Policy Change Toward Inclusive Democracy*

This section spotlights what we call the *legacy phase* of policymaking—focusing on how lawyers may promote inclusive democracy by thinking proactively about mechanisms for people-centered implementation and policy design that can amplify structural change beyond a single campaign. It is important to distinguish participation from power building in the legacy

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86. There are several methods of power mapping, all aimed at creating a visual guide for the various actors that will influence a policy campaign, ranging from decision-makers to potential influencers, whether allied, oppositional, or neutral. See STOECKER, *supra* note 40, at 70–71; *Training & Capacity Building*, SCOPE, <https://scopela.org/our-work/training/> [<https://perma.cc/4HG6-46HE>] (last visited Mar. 4, 2022); Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large Scale Social Change*, 23 CLINICAL L. REV. 147, 155–160 (2016).

87. See Lexis-Olivier Ray, *How a Tenant Born and Raised in East Los Angeles Challenged Her Landlord and Helped Secure Housing Rights for 100,000 People*, L.A. TACO (Sept. 12, 2019), <https://www.lataco.com/rent-control-la-county/> [<https://perma.cc/WSP8-PV24>].



phase.<sup>88</sup> While ensuring that people play a meaningful role in implementing policy can yield more responsive outcomes, policy by the people is ultimately concerned with achieving “policymaking as power-building”—deploying processes and tactics that generate meaningful power to dismantle structures and procedures that perpetuate injustice.<sup>89</sup> This requires a comprehensive approach to policy design and enforcement, which involves considering the composition of formal advisory committees, the level of authority granted to people affected by policy in monitoring and implementation, and where in the process that authority is exercised.<sup>90</sup> Lawyers can work with organizers and movement leaders to conceptualize and draft policy mechanisms that increase the power of the people to meaningfully shape the implementation of policy *and* to leverage these same mechanisms to establish new openings for continued contestation and organizing for greater change.

### 1. Centering the People in Policy Implementation

So far, we have discussed drafting in connection with translating community demands into model policies supported by legal opinions. Here, we are concerned with how lawyers, after policy adoption, use drafting to strategically embed opportunities for additional leadership development and power building that arise after policy adoption in the *implementation* phase. Through strategic drafting, lawyers can help campaigns plan and create conditions for effective implementation before that phase begins. In this regard, lawyers may be called on to draft policy language that modifies the composition of traditional oversight and advisory structures to be more inclusive and to exert more control. Likewise, lawyers may draft language that leverages these bodies to function as a training ground for leadership development.

The Unincorporated Tenants United coalition identified a significant opportunity to involve tenant organizers and movement leaders in the oversight and administration of the countywide rent control law it helped to pass. Most rent control policies in California include a rent control board, which is empowered to administer the program through actions such as adjudicating requests for rent adjustments and appeals, and creating a budget for oversight and enforcement.<sup>91</sup> In the case of L.A. County, coalition lawyers researched the composition of boards in other jurisdictions with rent

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88. See K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 719–722 (2020).

89. K. Sabeel Rahman, *Policymaking as Power-Building*, 27 S. CAL. INTERDISC. L.J. 315, 356 (2018) (“Institutions and processes for policymaking are not just neutral responders to the external pressures of interest groups. Rather, they themselves shape the political terrain on which individuals and constituencies attempt to exercise political power. Thus, institutions and processes can be designed in ways that pro-actively catalyze and facilitate the ability of groups—particularly diffuse, under-resourced, marginalized, or traditionally overlooked groups—to be better able to exercise power and influence.”).

90. Rahman & Simonson, *supra* note 88, at 719–32.

91. See TENANTS TOGETHER, COMMUNITIES THRIVE WITH RENT CONTROL: A GUIDE FOR CALIFORNIA CITIES 15–16 (2017), [http://www.boundarysolutions.com/BRIEFING/TT\\_Toolkit\\_2017\\_FINAL.pdf](http://www.boundarysolutions.com/BRIEFING/TT_Toolkit_2017_FINAL.pdf) [<https://perma.cc/627E-WBEF>].

control ordinances, as well as the relevant laws governing the appointment or election of rent board members. Backed by this research, the coalition developed policy recommendations, and lawyers drafted model language for an appointed oversight board with membership reserved for low-income renters and housing justice advocates.<sup>92</sup> While full implementation has been impeded by the COVID-19 pandemic, the creation of appointed leadership positions for renters and advocates embeds a space in the formal implementation process to wield “inside” influence in coordination with continued “outside” pressure.<sup>93</sup>

In the People’s Plan campaign led by Central City United, coalition members sought to identify opportunities in the implementation phase to enhance the influence of low-income downtown residents over planning and development decisions going forward, while simultaneously establishing a pipeline for community leaders to step into formal oversight and administrative roles in land use governance. A key feature of the People’s Plan policy recommendations was a program to generate new revenue—through the sale of development rights—that would be earmarked exclusively for housing justice initiatives that were crafted by coalition leaders, such as supporting tenant acquisition and ownership of buildings, funding community land trusts, creating permanent supportive housing, and funding enforcement of tenant protections. Lawyers drafted program mechanics based on coalition priorities. Chief among them was the creation of an oversight commission—consisting of downtown residents affected by the affordable housing and eviction crisis and comprised of at least 50 percent of current or former houseless residents—to exert control over funding allocations. The City Planning Commission approved a draft of the plan that integrated the coalition’s exact recommendations. While the coalition awaits a final hearing at the Los Angeles City Council, organizers are developing strategies to identify, recruit, and train community members to step into leadership roles in monitoring and enforcing equitable development standards.

## 2. Designing Policy that Embeds Organizing Opportunities

Beyond carving out a role for community members to exert influence in policy implementation, lawyers also support strategies to embed opportunities for future organizing within legislation. In this sense, policy by the people embraces policymaking as a process not just to design and implement policy but also to create new conditions for power building. This approach conceptualizes policy as an active framework that encodes opportunities for future organizing and creates space for continued

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92. BONETT ET AL., *supra* note 76, at 49.

93. *C.f.* Rahman, *supra* note 89, at 348–50 (questioning the ability of tenant groups to leverage power and influence through appointments to the Rent Guidelines Board, a rent stabilization administrative board in New York City, relative to a commission created by a community benefits agreement in Oakland where community members hold the balance of power).

contestation within institutional structures.<sup>94</sup> This type of encoding is seen in policy provisions that require ongoing reports or public hearings or that establish performance metrics and periodic data reporting requirements that give additional leverage to organizing campaigns.

The Central City United People's Plan campaign adopted this approach. In developing a final plan, lawyers researched best practices from other jurisdictions to develop recommendations for a Racial Justice and Equity Analysis.<sup>95</sup> This new program would require the city to evaluate, on an ongoing basis, the racial equity impacts of land use policy and to recommend "transformative or restorative strategies, such as targeted plan and code amendments, if harm is identified."<sup>96</sup> Historically, community plans in Los Angeles are static: once adopted, they sit unchanged for years, even decades.<sup>97</sup> The Racial Justice and Equity Analysis, on the other hand, would give the coalition a tool to advocate for additional policy changes throughout the life of the plan, creating new legal hooks to continue engaging coalition members and residents around responsive development standards. By tethering this built-in process of ongoing policy reform to racial justice, the analysis incorporates the community plan into the larger movement to dismantle discriminatory planning and development policies in the city.

The Keep LA Housed coalition also worked to strategically embed policy triggers that could be utilized for future organizing and advocacy efforts. Part of the coalition's policy platform was a requirement for the city to: collect and share data about access to the existing rental assistance program (organized by income, race, gender, age, disability, and neighborhood), monitor and report data on disparities in access on a regular timeline, and evaluate additional policies needed to respond to disparities and stabilize housing for low-income renters.<sup>98</sup> Coalition lawyers drafted—and organizers successfully advocated for—a data collection provision to be included in a Los Angeles City Council directive codifying this element of the policy platform.<sup>99</sup> In turn, the city department responsible for administering the rental assistance program created an online public dashboard showing the demographic data of renters able to access rent debt

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94. See Rahman, *supra* note 89, at 368.

95. Letter from Sissy Trinh, Se. Asian Cmty. All., Steve Diaz, Los Angeles Cmty. Action Network, Erich Nakano, Little Tokyo Serv. Ctr. & Greg Bonett, Pub. Couns., to Brittany Arceneaux, Project Manager, Downtown Cmty. Plan (Jan. 13, 2021) (on file with author).

96. L.A. CITY PLAN., DOWNTOWN COMMUNITY PLAN 76 (2021), [https://planning.lacity.org/odocument/2425dc72-10bd-49c8-afd6-e862225f4b1c/CPU\\_Downtown\\_v18.pdf](https://planning.lacity.org/odocument/2425dc72-10bd-49c8-afd6-e862225f4b1c/CPU_Downtown_v18.pdf) [<https://perma.cc/CXX7-AFPF>].

97. See Bianca Barragan, *Council Committee Wants LA's Outdated Community Plans Refreshed Every 6 Years*, CURBED L.A. (Feb. 1, 2017, 8:35 AM), <https://la.curbed.com/2017/2/1/14461810/community-plans-los-angeles-updated-plum-huizar> [<https://perma.cc/2SJM-8ZJE>] ("Right now, 29 of 35 community plans are at least 15 years old.").

98. KEEP LA HOUSED, *supra* note 32.

99. See L.A. City Council, *Motion to Report on Emergency Rental Assistance Subsidy Program* (March 2, 2021), [https://clkrep.lacity.org/online/docs/2021/21-0042\\_misc\\_3-2-2021.pdf](https://clkrep.lacity.org/online/docs/2021/21-0042_misc_3-2-2021.pdf) [<https://perma.cc/3ZQA-2GV9>].

relief from the program, updated in real time.<sup>100</sup> By requiring ongoing disparate impact analysis of rental assistance, the coalition ensured an information flow to sustain public awareness about the racial justice implications of the rent debt crisis, plant the seeds for future advocacy and agitation focused on discriminatory impacts, and galvanize further efforts to mobilize support for adopting the remaining provisions of the policy platform.

#### IV. TOWARD A NEW THEORY AND PRACTICE OF POLICYMAKING

The concept of policy by the people aims to broaden our conception of the lawyer's role in social change by identifying the important skills lawyers contribute to crafting law through the legislative process that advances goals set by the people affected—what we have called responsive regulation. Beyond highlighting technical skills lawyers bring to bear, the concept challenges conventional understandings of what it means to do policy and thus draws attention to a new dimension of lawyering for social change. In this part, we step back from the mechanics of policy by the people to consider its implications for lawyering and legal process.

##### *A. What It Means to Design Law and What Law Means*

Policy by the people imagines distinctive social change roles for lawyers, while also reframing the meaning of law reform—away from litigation toward advocacy for policy change—in ways that spotlight new advocacy opportunities and challenges.

##### 1. Rethinking the Lawyer's Role

In Part III, we argued that lawyers can play an essential role in people-centered policy campaigns by using specific lawyering skills to create conditions of possibility throughout the life cycle of policymaking. Here, we zoom out to consider two challenges raised by this role. First, we consider challenges stemming from efforts to fashion responsive regulation from underlying laws historically used to perpetuate inequality and exclusion, while helping movements shift from a reactive to a proactive posture. Second, we consider challenges for lawyering practice raised by reconceptualizing notions of client and case in relation to policymaking.

Advancing policy by the people involves a culture shift in terms of the way lawyers think about legal reform that moves from considering law as a force of exclusion to be challenged to understanding law as a force for inclusion that can be built from the ground up. At times, this involves repurposing the same tools that produced harm in prior policy design, which raises fundamental concerns about whether policy reform, at worst, simply reinforces underlying structural inequality or, at best, tinkers around the

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100. See *Report Dashboard for ERAP*, L.A. HOUS. DEP'T, <https://housing.lacity.org/erap> [<https://perma.cc/W6TY-Q24T>] (last visited Mar. 4, 2022).

margins of an unjust system. In response to this dilemma, the policy by the people model seeks to break down harmful policy into building blocks that can then be reassembled into new frameworks that excise or reformulate negative elements to advance priorities aligned with social movement demands.

This was the approach taken in the People's Plan campaigns, which began from an explicit recognition that the land use tools being molded to resident priorities had been used for past discrimination.<sup>101</sup> The lawyers' efforts to identify the legal rules used to codify structural injustice helped the campaigns imagine how to dismantle the system as well as how that system might be rebuilt around equity and inclusion. This process contributed to the design of more responsive regulation while also shifting the coalition's orientation from a defensive posture to a proactive stance. For instance, instead of fighting a resource-intensive battle for community benefits in relation to a single development site, the community plan offered a vehicle to scale up community benefits standards to apply to *all* future development. This framework created space for residents and coalition leaders to present an affirmative case *for* a particular vision of inclusive growth, rather than framing the campaign as a fight *against* a harmful development project.

In another example, when the LA Street Vendor Campaign met extensive and prolonged resistance from the Los Angeles City Council for its proposal to legalize sidewalk vending, lawyers researched state preemption to consider how the state legislature might impart standards necessary to catalyze action at the local level. When the coalition succeeded in introducing state legislation to compel the city to decriminalize and legalize sidewalk vending, lawyers were able to ensure that specific language was included in state law to prevent harmful provisions being proposed at the local level.<sup>102</sup> In this way, preemption, which has typically been weaponized by conservative actors to blunt local progressive policy change,<sup>103</sup> became a legal tool to overcome recalcitrant local jurisdictions and advance stronger local policy.

These examples demonstrate how lawyers can help social movements disassemble exclusionary policy structures and then reassemble those tools in a different configuration to advance community priorities. Refashioning law in this way raises the deep political question of co-optation: whether

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101. See TRUONG ET AL., *supra* note 47, at 3; see also CENT. CITY UNITED COAL., CENTRAL CITY UNITED PEOPLE'S PLAN 3 (2022), <https://static1.squarespace.com/static/5e2f9c1251bedc373bccf0fa/t/5e334c9e74383164f98c2bd9/1580420261516/CCUPP2020-DOWNLOAD-FINAL.pdf> [<https://perma.cc/G22M-ZL4A>].

102. CAL. GOV'T CODE § 51038(b)(3) (West 2022) (effective Jan. 1, 2019) ("A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise."). Prior to the adoption of S.B. 946, the City Council was debating several severe restrictions to appease opponents of legalized street vending, including a proposal to grant property owners the ability to veto a vendor's proposed location. See *Editorial, Legalize and Decriminalize Street Vending in L.A.*, L.A. TIMES (Dec. 10, 2016, 6:00 AM), <https://www.latimes.com/opinion/editorials/la-ed-street-vending-20161211-story.html> [<https://perma.cc/354A-2QHG>].

103. See CUMMINGS, *supra* note 16, at 503–04.

buying into existing legal concepts—using the “master’s tools”—limits the transformative ambitions of reimagining new systems that work better for the people or whether it is possible to reclaim legal tools to push the existing system in more inclusive directions. Our view is that refashioning is not inconsistent with reimagining—indeed, both are essential strategies that can work together. Reimagining sets the north star for system change, while refashioning helps move toward that direction. Indeed, policy by the people is intended to help facilitate reimagining projects through sustained engagement with people-led social movements seeking to translate transformative visions into structural changes to democratic governance. In this sense, the question is not how to avoid using the “master’s tools” but rather how to do so effectively and toward broader goals championed by movements of marginalized people.

In addition to deepening understanding of how lawyers approach policy change, policy by the people also requires a shift in understanding client relations and what constitutes a “case.” Client relations in policy by the people depend on the nature of local groups challenging injustice and organizing for system change. In the examples we provide, organizations leading policy campaigns were politically sophisticated, with experience engaging elected officials and building cross-sector coalitions. In a different scenario, where organizations are venturing into policy work for the first time, lawyers must engage in capacity building prior to launching into the policy design process. In all cases, given that lawyers are crafting policy that builds on but transcends the interests of a specific client group, there may be potential for client-cause conflict. Lawyers engaged in policy by the people seek to manage this problem by working with groups that are as broadly representative as possible; and yet lawyers must also consider the larger universe of people impacted by policy. While lawyers have been criticized for overreaching in these reform spaces,<sup>104</sup> there are ways in which their professional training, which teaches how to manage conflicts and respect client decision-making, makes them keenly sensitive to inevitable tensions over tactics and goals and makes them well-suited to help shape policy outcomes that serve their client’s immediate interests while also addressing the broader impact—intended and unintended—on similarly situated groups. Making this tension a central aspect of the lawyer-client conversation throughout the policy process will help effectively manage it.

From a lawyering perspective, policy by the people also requires attending to a related tension between discrete policy change and broader social change goals—raising questions about what counts as “success” and when the “case” ends. Our theory of policy by the people situates policy change within a larger agenda that also includes long-term power building by groups historically excluded from the political process. In our framing of the lawyer’s role, policy change is an important outcome, but one pursued in service of other favored outcomes relating to correcting power asymmetry.

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104. See STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING 23–24 (2004).

Based on direction from campaign leaders, the lawyer may be tasked with facilitating a policy development process and drafting a policy platform for purposes of contesting existing structural injustices, shaping public dialogue, organizing popular support, and increasing the influence and power of the movement. Lawyers in this setting are not primarily concerned with finding the legal levers to pass a policy but with collaborating to develop policy ideas that break with conventional norms in ways that promote wider culture-shifting and power-building goals.<sup>105</sup> In this regard, the policy campaign is part of a larger strategy that transcends the four corners of the policy in question and that calls on lawyers to help develop bold proposals in the short term that feed into a longer-term process to reshape the political environment to make more radical reform possible. In some cases, a movement's policy demands might be intentionally framed to be more radical than the current political opportunity structure would likely support because the movement seeks to change the popular discourse to create space for reimagination beyond the specific policy at issue. This could mean supporting a policy campaign bound to fail—in order to generate more attention and resources for a new round of policy contention<sup>106</sup>—or simply drafting a model policy used as a public relations and organizing tool as a movement seeks to build early momentum.

## 2. Reimagining Law Reform

Policy by the people is designed to reorient how we think of law reform, moving it from the realm of impact *litigation* to impact *advocacy*. The role of policymaking as a *legal* strategy to correct injustice is historically overshadowed by the role of litigation and direct services. As we have argued, policy deserves more attention as a fundamental tool of lawyering for progressive social change. Toward this end, policy by the people highlights new law reform opportunities: subverting traditional policymaking centered on elite institutions and inaccessible procedures, by bringing the practice of policy development from the people to the halls of power instead of the other way around. But this model also raises practical political constraints on law reform that underscore the importance of creating and exercising *power* as a precondition of effective policy design.

Policy by the people necessarily runs through the existing legislative system and thus depends on persuading political officials. Aligning policymaking with organizing is intended to pressure and move those decision-makers toward the people's demands, but the ultimate decision-making power remains in the hands of elected legislators. As a result, *electoral politics* plays a crucial role. Social movements seeking to advance policy by the people require a comprehensive political strategy, of which legal advocacy is but one piece. This involves targeting advocacy to the existing configuration of the legislature while also seeking to shift the

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105. See Gordon, *supra* note 38, at 2138.

106. Cf. Douglas NeJaime, *Winning Through Losing*, 96 IOWA L. REV. 941 (2011).

political opportunity structure to be more favorable to movement demands over time. It is therefore crucial for policy campaigns to incorporate an electoral strategy. A wide range of constraints, from tax-exempt law to funding parameters, have historically limited the effective integration of electoral strategy into a people-led policy campaign. We do not address these constraints here, but we note that the link between bottom-up policymaking and electoral politics deserves deeper interrogation and should feature in future analysis of lawyering for policy change.

By emphasizing the granular realpolitik of policymaking and the need for comprehensive political strategy, policy by the people departs from new governance theory's emphasis on "stakeholder participation" as a central feature of responsive regulation.<sup>107</sup> While we support the idea of participation, we seek to move the discussion toward the *exercise of power*, which profoundly shapes outcomes in our political system. Participation detached from power is unlikely to shift the terms of debate or to put pressure on elected officials to direct resources toward outsider groups, particularly in a context of significant economic and political inequality. For this reason, policy by the people is understood as an ongoing process designed to produce social change cascades that create opportunities for policy wins and more resources. These cascades can be harnessed by movements to gain greater influence over local politics: ultimately shaping *who* gets elected and thereby expanding the opportunity structure for more responsive policy over time.<sup>108</sup>

### *B. Proposals for Teaching and Practicing Policy by the People*

The approach we have outlined, by spotlighting the lawyer's role in working with mobilized groups to design policy from the bottom up, also has important implications for how we think about training lawyers and building policy capacity in practice. To move that thinking forward, we offer proposals for how to strengthen the teaching and practice of policy by the people.

#### 1. Law School Curricular Change

Law schools currently do an inadequate job teaching policy design as a core element of what lawyers do. Instead, policy development tends to be reserved for upper-division specialty courses, often taught through clinics. While we support these efforts, we believe they are too little, too late. To augment them, it is essential to reframe law school pedagogy to deepen the recognition of "policy" as an integral part of "law." Doing this requires change at multiple levels: a conceptual shift in how policy is understood as part of the legal system alongside a more practical shift in the types of skills students are taught.

From a conceptual standpoint, it is essential to approach teaching policy from a critical theoretical perspective that highlights how policy is a product

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107. See generally Simon, *supra* note 8.

108. See CUMMINGS, *supra* note 16, at 472–77.



of processes distorted by unequal power that have encoded structural racism and other forms of inequality.<sup>109</sup> This perspective creates necessary space for analyzing the structural roots of policy design, which reveals how it has been shaped by underlying forces of oppression while also showing how it has been leveraged to promote equal justice. Traditional approaches to this structural analysis center on how litigation and court-based reform can serve to challenge oppressive policy in a liberal democracy based on majority rule through the assertion of minority rights. Given the well-documented constraints on this method, particularly in a context of judicial conservatism,<sup>110</sup> we have argued in favor of bottom-up policy reform, targeted at cities as sites of favorable political opportunity, as a complement to social change litigation. Methodologically, law teachers could explore policy reform through analysis that empirically examines the ways in which policy has advanced social and economic disenfranchisement,<sup>111</sup> while also analyzing how movements of the past have utilized disruption and organizing to win important policy gains at the national and local levels.<sup>112</sup> As we have emphasized throughout this Essay, teaching policy therefore requires centering an analysis of power in law: specifically, by assessing how power asymmetries have shaped policy and how power can be cogenerated by lawyers and community groups to change policy.

At a more practical level, students should be equipped with specific skills that permit them to interrogate policy's role in social inequality and to redesign policy in ways that challenge that inequality. This should occur across the curriculum through a "pervasive approach" that begins in the first year ("1L") and builds through deliberate sequencing in the upper division.<sup>113</sup> This should start by elevating policy as a core lawyering skill in the first year and teaching it as a formal component of 1L doctrinal and law skills courses. Many 1L doctrinal courses—criminal law, property, civil procedure—are built around analyses of the design and distributional consequences of policy regimes and thus are well suited for policy incorporation. These courses could be reframed to emphasize the *process* by which underlying rules that form the basis of legal challenges analyzed through case law are created—and how those rules might be changed through policymaking. Doing so would lay the foundation for deeper interrogation of policy design in the upper division, while introducing students to a broader way of conceptualizing the attorney-client relationship—one focused on collaboration with nonlawyer activists and community members—which is a theme that can be pulled through upper-division professional responsibility

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109. Rahman & Simonson, *supra* note 88, at 714–15.

110. See Catherine Albiston, *The Dark Side of Litigation as a Social Movement Strategy*, 96 IOWA L. REV. 61 (2011).

111. See Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 WIS. L. REV. 557.

112. See generally SUSAN D. CARLE, *DEFINING THE STRUGGLE: NATIONAL ORGANIZING FOR RACIAL JUSTICE, 1880–1915* (2013).

113. On the "pervasive approach," see Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31 (1992).

courses. To augment these efforts in the classroom, schools could also create formalized opportunities for extracurricular or simulated/live-client legal work in 1L that would expose law students to community-driven policy development efforts to bring these issues to life while promoting public service.

The 1L curriculum should also incorporate new ways to think about legal skills: focusing on policy design and drafting, while reconceptualizing the very idea of what constitutes “research and writing.” Drawing on the work we have described, research methods should include modules on analyzing expertise and power and how to build inclusive policy design processes. Writing should move beyond briefs and memos to include instruction on how to draft policy reports, model ordinances, and legal opinions. More radically, writing should be reconceptualized to incorporate new ways of analyzing and conveying information: teaching facility with “visual tools,” like flowcharts, and with social media designed to communicate with powerholders and shape their decision-making.

Building thoughtfully on the 1L policy curriculum, the upper division should contain pathways to continue investigating policy reform. Specifically, we propose developing class formats that build on, but extend beyond, clinical education to teach essential elements of policy design and implementation. This effort should include increasing nonlitigation experiential opportunities to better prepare students for the reality of contemporary practice in which litigation constitutes a limited aspect of what lawyers do. Beyond this, we recommend that law schools explore how emerging curricular innovations could be adapted to teach policy by the people. One such innovation is the “policy lab” concept increasingly featured in law schools, in which faculty and students draw upon multiple disciplines and analytical tools to develop legal solutions to difficult social problems. While policy labs can risk being top-down exercises in design disconnected from grassroots policy development, they can be thoughtfully constructed to foster people-led processes that formalize partnerships with local community-based organizations engaged in policy work. These courses can be stand-alone or operate as modules in seminars.<sup>114</sup>

Upper-division experiential courses should also be redesigned to expand the scope of what counts as “lawyering skills.” Building on our examples, this involves reframing the concept of fact gathering to include knowledge of quantitative and qualitative empirical research methods, such as interviews and surveys. In the projects we describe, the UCLA School of Law’s Empirical Research Group, staffed by PhD researchers expert in empirical design and analysis, provided essential support by laying out methods for

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114. For example, the Center for Public Interest Advocacy and Collaboration at Northeastern University School of Law offers a fully integrated classroom and practical program through which students apply legal, research, and lawyering skills to achieve “social, economic, and environmental justice in all dimensions.” *Center for Public Interest Advocacy and Collaboration*, NE. U. SCH. OF L., <https://law.northeastern.edu/academics/centers/cpiac/> [<https://perma.cc/Y499-8M2N>] (last visited Mar. 4, 2022).

interviewing and providing key statistical analysis. Although such a group is a luxury for many law schools, professors can potentially augment skills courses by building partnerships with academics outside the law school to train students on empirical design and on how to better understand and engage with empirical research as a fundamental predicate of designing good policy. Deepening the skills introduced in 1L, upper-division courses should include policy-oriented drafting in specialized coursework that also teaches lawyering skills at other key stages of the full policy life cycle that we have outlined—skills such as how to secure meetings, how to produce talking point and comment letters, and other communications strategies. Law schools should further consider how to promote opportunities for and publicize policy work that students do *outside* the classroom to demonstrate to future employers how engagement in community-driven policy advocacy equips students with marketable legal skills while widening access to justice.

Finally, we propose using policy-by-the-people pedagogy to spotlight (and rethink) the broader role that the legal profession plays in entrenching social inequality. In doing so, policy by the people can hold a mirror up to routine practices of lawyers that tilt power away from people toward well-resourced corporate actors that buy legal knowledge to shape policy to their advantage. Reimagining legal training from a people-centered policy perspective ultimately requires critical analysis of the existing maldistribution of legal resources that produces elite-driven policy in the first instance, highlighting the need to rebalance legal resources and redress broader power differentials as part of the legal profession's obligation to promote and protect democracy and the rule of law. This type of reanalysis has implications beyond just devoting more class time to discussing lawyers' professional obligations. It argues for a deeper culture shift in law school that addresses explicit and implicit ways in which schools valorize corporate legal work through programming and the structure of hiring processes,<sup>115</sup> while also questioning charitable approaches to professional service, like pro bono work, that do not challenge existing configurations of professional prestige and power.

## 2. Law Practice Institutional Change

Public interest law organizations can also do more to embrace bottom-up policy design as an important law reform strategy. This requires creating internal organizational infrastructure focused on nurturing a policy practice. As a first step, many organizations may need to think creatively about how to surmount obstacles to rigorous policy work from various funding sources, such as federal legal services and foundation grant restrictions. Organizations should also dedicate resources to hiring and supporting staff attorneys who will focus on community-led policy campaigns as a primary practice, not just as an occasional supplement to direct services or litigation. Organizations should further invest in training and education for staff

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115. See generally John Bliss, *From Idealists to Hired Guns?: An Empirical Analysis of "Public Interest Drift" in Law School*, 51 U.C. DAVIS L. REV. 1973, 1988 (2018).

attorneys. This should include formal training on the legislative process, lobbying limits, and reporting requirements for 501(c)(3) organizations, alongside informal mentorship programs that pair junior attorneys with lawyers who are experienced in policy design.

Public interest law organizations should also seek to build external relationships to bolster an effective policy practice. Regional peer-to-peer networks could promote learning on policy strategies by sharing model policies, databases of legislators, and other useful resources. Public interest law organizations should also consider new ways to effectively leverage the resources of local law schools, using the examples in this Essay as a guide to identify mechanisms for sustained partnerships with law students. These partnerships may be achieved through ongoing courses, externships, and less formal extracurricular arrangements that give students rigorous opportunities to engage in community-led policy development and advocacy. As public interest law organizations increase capacity to support policy design as a fundamental legal strategy, they should engage in careful planning to ensure that such design flows from organizing and movement-building led by the people most affected by it. Public interest law organizations seeking to strengthen their capacity for policy work should therefore begin with a landscape assessment of existing community resources, needs, and opportunities in order to develop projects that emanate from social movement struggle and that are accountable to the principles of policy by the people we have set forth in this Essay.

#### CONCLUSION

In the midst of an ongoing pandemic, as inequality and uncertainty continue to spiral, it is essential to rethink how change happens—by building on the wave of social protest and calls for fundamental restructuring to create a path for sustainable transformation that begins to dismantle the legal regimes, and underlying structures of power, that have produced the current moment. There is no straightforward path. But any path must consider how to seize back policy design from powerful interest groups that have tilted the system away from the interests of people with less money and power. We have proposed policy by the people as one strategy for contributing to this essential broader effort, which offers a new way of thinking about what lawyers can do to help support the development of social movement capacity at the local level to design—and win—more equitable and just regulation.