

Essay

The Lawyer's Baggage: Engaging the Oppressor Within

Carolyn O'Connor[†]

For at least fifty years, lawyers have examined what professional role to play in movements to end oppression. First, lawyers criticized the impact litigator: ducking in and out of movements, the litigator represented a client to advance a cause. These lawyers could deliver a gut punch to an oppressive regime, yet winning a court case could defuse organizing power and lead to push-back. The lawyer, not the client or movement, was in charge. Then, criticism swung against the community lawyer seeking to empower marginalized people. That lawyer served individuals who were confronting systemic discrimination, going person by person to make a change. While the community or individual had more control over reform efforts, the lawyer was often seen as only serving the immediate issue, just holding the oppressive forces at bay.

Movement lawyers have since learned better ways to engage the oppressors. Movement lawyers are now, as Professor of Law Scott J. Cummings argues, collaborating more often with activist organizations.¹ In these collaborations, movement lawyers apply their skills to any number of activities: organizing, educating, and advocating for change to name a few. Collaboration and a broad skill-set are critical next steps in movement lawyering. In this new phase of movements, activists are looking for answers about what baggage keeps movements from confronting oppressive forces. Lawyers must own their own baggage: the tensions that remain inherent in movement lawyering.

A Choice Of Voices In A Movement

[†] Carolyn O'Connor is a student at Yale Law School.

1. For a significant study in movement lawyering, see Scott L. Cummings, *Movement Lawyering*, 5 U. ILL. L. REV. 1645 (2017).

Like every lawyer, movement lawyers choose their clients. However, movement lawyers do not choose their clients based on market forces, like transactional lawyers, or due to need, as in direct service. Movement lawyers do not have a unifying theory of change for which clients in a movement need representation. To select clients, the movement lawyer makes a value-laden decision about which individual or organization is making the changes that the lawyer believes will benefit the overall movement.

In a perfect world, every voice that wished would be empowered by legal counsel and every activist would engage the oppressor in a constructive way. The real world is far messier. Many movements in the United States, at their core, are now often coordinated by well-organized, large-scale activist organizations. These organizations have the capacity and knowledge to direct a lawyer, engaging that lawyer in any variety of education, litigation, and advocacy initiatives.

A perfect criterion for why a lawyer should choose the perfect client is impossible. Nevertheless, lawyers should not get a free pass to ignore the impact that their choice may have on the movement itself. In a movement of many voices with varying centrality and power, a lawyer may tip scales to favor those voices that the lawyer sees as having the right values or approach towards change. A lawyer may empower certain critical voices, but in building power for some, the lawyer strengthens some narratives as opposed to other important voices. That client selection process can replicate oppressive dynamics that the movement is already struggling with.

A Zealous Advocate For Many Movements

A lawyer may have multiple clients as long as a lawyer can be a zealous advocate, free from conflicts of interest. Nothing except time, resources, and possible conflicts keeps a lawyer from working on many movements. Movements do not always have neat borders: take the civil rights movement, for example, in which the fight for racial justice also overlapped with the fight for economic rights, as well as with many other struggles. With too few movement lawyers, this flexibility can allow a good movement lawyer to match their skills and ideology across movements.

In a movement, a critical question is what values a person must hold to participate. Yet, nothing says that a lawyer must wholeheartedly endorse, or even strongly agree with, the activist or organization. A lawyer is never required to agree with the views of a client; a lawyer's views are not those of the client. The neat line in this principle may work well in a contract dispute or even litigation. But lawyers should question what level of commitment is necessary for a movement lawyer to have in order to work for the cause the lawyer now represents. As lawyers bring in non-movement lawyers, such as through asking for pro bono assistance from law firms, professionals with oppressive – perhaps even destructive – views can become part of the activist's counsel.

And, of course, movements are fractured. Lawyers may choose to represent people whom other clients in the movement may object to on

principle. Other areas of law have tried to resolve these tensions by declaring a lawyer a neutral agent. Can a movement lawyer fight oppression when only professionally committed to engaging the oppressor for change?

Lawyers' Limiting Dream Of Laws

Lawyers are often brought into movements to help explain, challenge, and change the oppressor's laws. A lawyer's capacity to build power for movements is, in part, the power given to them by the oppressor: lawyers are trained to speak in specific ways in often exclusive fora with a license that confers special rights and responsibilities to a government. Lawyers can turn a client's lived experience and emotion into a legal brief or new law. Yet, lawyers may risk encouraging a client to conform to these special rules. Even when working in non-traditional ways, a lawyer's view will often be shaped by their legal socialization.

Employed by a client to contribute to the client's work, a lawyer risks limiting the vision to legal reform. Legal reform is a pillar in building a dream of freedom yet may consume significant resources and distract from other critical work. Many movements may already engage in these fora. But a lawyer may make legal fora seem like the place for justice.

Conclusion

Movements around the world are turning their gazes inward, asking what oppressive forces are recreated within their movements as activists strategize about ways to engage the oppressor. Rather than being divided, confronting one's own oppressive baggage – that socialization that pervades even the simplest interaction – is part of every successful movement. Movement lawyers should follow suit and study their own baggage. A lawyer must no longer ask whether empowerment or impact litigation is effective, but whether the dynamics that a lawyer contributes in a movement increases or undermines the danger for harm in the movement.

There are no fast or rote answers to dealing with the internal baggage that lawyers bring as professional carpetbaggers. Instead, I suggest three questions that every movement lawyer should ask about the way in which they build power to engage the oppressor. First, how is legal representation contributing to what voices are absent or given little space in the movement? Second, what type and level of commitment to a movement is necessary for a lawyer to be a zealous movement advocate, particularly for multiple clients whose views are not adverse yet also not necessarily aligned? Third, in what ways does a lawyer's focus on laws, bolstered by a capacity for legal work, shape the ways that resources are spent on engaging the oppressor?

These questions are only a starting point. Many lawyers already wrestle with these tensions. Exploring the answers will contribute to understanding not just how power issues are re-enacted in movements, but also the way lawyers undercut efforts to engage the oppressors.

