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I. INTRODUCTION: LOCAL CLIMATE COALITIONS

Spring 2007 was a heady time for climate advocates. The fourth report of the Intergovernmental Panel on Climate Change expressed an overwhelming scientific consensus that anthropogenic climate change is a serious problem.[1] The US Supreme Court not only addressed climate change for the first time, but also found that the US Environmental Protection Agency ("EPA") had abused its discretion in denying a petition asking it to regulate motor vehicle emissions.[2] The UN Security Council also took an initial look at climate change, with a ranging debate over its security implications.[3]

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1 See Intergovernmental Panel on Climate Change, *2007: Summary for Policymakers*, in S. Solomon, et al, eds, *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge 2007), available online at <http://www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-spm.pdf> (visited Nov 17, 2007).

2 See *Massachusetts v EPA*, 127 S Ct 1438 (2007).

3 See UN Security Council, *Security Council Holds First Ever Debate on Impact of Climate Change*, (Apr 17, 2007), available online at <http://www.un.org/News/Press/docs/2007/sc9000.doc.htm> (visited Nov 17, 2007).

Amid that furor, it is perhaps unsurprising that another important moment in climate regulation slipped by without nearly so much public attention. On May 15, 2007, Tulsa, Oklahoma became the 500th city to join the US Mayors Climate Protection Agreement.[4] This coalition of mayors around the country began in 2005 under the leadership of Seattle Mayor Greg Nickels on the day that the Kyoto Protocol came into force without the United States as a party.[5] The effort has grown so substantially over the last two years that the US Conference of Mayors launched a climate protection center in February 2007.[6] Tulsa's decision to join was notable not only because of the coalition hitting the 500 mark, but also because of its location at the center of the US energy industry.

Urban leadership on climate change in the United States, however, began well before the federal government withdrew from the Kyoto Protocol. Many US cities and counties have played a crucial role in international coalitions of localities attempting to make progress on emissions. Portland, Oregon, for example, has long been at the forefront of these issues, including being the first US city to develop a carbon reduction plan back in 1993.[7] Portland's 2001 Local Action Plan on Global Warming aimed to reduce its carbon emissions to 10 percent below its 1990 levels by 2010.[8]

Moreover, localities serve in many ways as the front line for difficult decisionmaking on emissions and their impacts. Local land use and transportation choices shape residents' emissions decisions. A US EPA inventory of 2005 emissions found that 33 percent of emissions came from transportation activities and that over 60 percent of those emissions stemmed

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4 Kevin McCarty, *Bloomberg, Palmer Lead USA and World Mayors on Climate Protection: US Mayors Climate Agreement Hits 500 Milestone*, US Mayor Newspaper, (May 21, 2007), available online at <http://www.usmayors.org/USCM/us_mayor_newspaper/documents/05_21_07/pg1_NYC_climate.asp> (visited Nov 17, 2007).

5 US Conference of Mayors, *U.S. Conference of Mayors Climate Protection Agreement*, available online at <http://www.usmayors.org/climateprotection/agreement.htm> (visited Nov 17, 2007).

6 US Conference of Mayors, *About the Mayors Climate Protection Center*, available online at <http://www.usmayors.org/climateprotection/about.htm> (visited Nov 17, 2007).

7 See Joan Laatz, *City Council Hears Plan to Cut Air Pollution*, Oregonian C6 (Mar 4, 1993); ICLEI—Local Governments for Sustainability, *CCP Participants*, available online at <http://www.iclei.org/index.php?id=809> (visited Nov 17, 2007); Timothy Grewe, Susan Anderson, and Laurel Butman, *Portland, Oregon: A Case Study in Sustainability*, 18 Govt Fin Rev 8 (Feb 2002).

8 See City of Portland and Multnomah County, *Local Action Plan on Global Warming*, 1 (April 2001), available online at <http://www.portlandonline.com/shared/cfm/image.cfm?id=25050> (visited Nov 17, 2007); Local Action Plan on Global Warming: Binding City Policy BCP-ENN-5.01, Portland City Council Res 35995 (Apr 25, 2001), available online at <http://www.portlandonline.com/Auditor/index.cfm?a=cfaej&c=cjbfb> (visited Nov 17, 2007).

from personal vehicle use.[9] Even the most progressive cities struggle with reconciling emissions reduction and urban growth. For example, after over a decade of concentrated effort on reducing greenhouse gas emissions that has resulted in a 12.5 percent decline in per capita emissions, Portland's emissions were still above 1990 levels.[10]

A growing scholarly and public policy dialogue examines these tensions and the role of localities in climate change regulation. To date, however, analyses of cities' participation in climate policy have largely focused on some combination of law and policy initiatives, urban theory, and the intersection of international law with political science.[11] At the same time, interdisciplinary

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9 See US Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2005, Executive Summary*, ES-7 (Apr 2007), available online at <http://www.epa.gov/climatechange/emissions/downloads06/07ES.pdf> (visited Nov 17, 2007).

10 See Maria Rojo de Steffi, et al, *A Progress Report on the City of Portland and Multnomah County Local Action Plan on Global Warming*, 1 (June 2005), available online at <www.portlandonline.com/shared/cfm/image.cfm?id=112118> (visited Nov 17, 2007).

11 See, for example, Randall S. Abate, *Kyoto or Not, Here We Come: The Promise and Perils of the Piecemeal Approach to Climate Change Regulation in the United States*, 15 Cornell J L & Pub Poly 369 (2006); Donald A. Brown, *Thinking Globally and Acting Locally: The Emergence of Global Environmental Problems and the Critical Need to Develop Sustainable Development Programs at State and Local Levels in the United States*, 5 Dickinson J Envir L & Poly 175 (1996); Kirsten Engel, *State and Local Climate Change Initiatives: What is Motivating State and Local Governments to Address a Global Problem and What Does This Say About Federalism and Environmental Law?*, 38 Urban Law 1015 (2006); Robert B. McKinstry, Jr, *Laboratories for Local Solutions for Global Problems: State, Local and Private Leadership in Developing Strategies to Mitigate the Causes and Effects of Climate Change*, 12 Penn St Envir L Rev 15 (2004); Judith Resnik, *Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry*, 115 Yale L J 1564, 1627–33 (2006); Katherine Trisolini and Jonathan Zasloff, *Cities, Land Use, and the Global Commons: Genesis and the Urban Politics of Climate Change*, in William C.G. Burns and Hari M. Osofsky, eds, *Adjudicating Climate Change: Sub-National, National, and Supra-National Approaches* ___ (Cambridge forthcoming 2008); Carolyn Kousky and Stephen H. Schneider, *Global Climate Policy: Will Cities Lead the Way?*, 3 Climate Poly 359 (2003); Laura Kosloff and Mark Trexler, *State Climate Change Initiatives: Think Locally, Act Globally*, 18 Nat Resources & Envir 46 (2004).

But see Janet Koven Levit, *Bottom-Up International Lawmaking: Reflections on the New Haven School of International Law*, 32 Yale J Intl L 393, 402–04 (2007); Hari M. Osofsky, *Climate Change Litigation as Pluralist Legal Dialogue?*, 26 Stanford Envir L J 181 & 43 Stanford J Intl L 181 (2007) (joint issue); Hari M. Osofsky, *Local Approaches to Transnational Corporate Responsibility: Mapping the Role of SubNational Climate Change Litigation*, 20 Pac McGeorge Global Bus & Dev L J 143 (2007).

For a general discussion, see Neil Brenner, *New State Spaces: Urban Governance and the Rescaling of Statehood* (Oxford 2004); Mark R. Montgomery, et al, eds, *Cities Transformed: Demographic Change and Its Implications in the Developing World* (National Academies 2003); Peter Marcuse and Ronald van Kempen, eds, *Globalizing Cities: A New Spatial Order?* (Blackwell 2000); Saskia Sassen, ed, *Global Networks: Linked Cities* (Routledge 2002); Heidi H. Hobbs, *City Hall Goes Abroad: The Foreign Policy of Local Politics* (Sage 1994); Saskia Sassen, *The Global City: New York, London, Tokyo* (Princeton 2d ed 2001); H.V. Savitch and Paul Kantor, *Cities in the International Marketplace: The Political Economy of Urban Development in North America and Western Europe* (Princeton 2002); Kevin R. Cox, ed, *Spaces of*

scholarly literature has explored the significance of networks for international law. For example, Anne-Marie Slaughter's transgovernmentalism brings a law and political science lens to networks among international actors.[12] And Annelise Riles has considered transnational networks from a law and anthropology perspective.[13] This work has not, however, drawn substantially from the growing discourse in geography over the significance of networks.[14]

This Article aims to build upon both of these streams by considering the ways in which bottom-up lawmaking and geography might enhance the narrative of urban choices regarding climate change. In particular, it integrates Janet Levit's exploration of bottom-up lawmaking with Hari Osofsky's work on law and geography[15] to examine the role of localities in transnational environmental

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Globalization: Reasserting the Power of the Local (Guilford 1997); Richard Sennet, *The Conscience of the Eye: The Design and Social Life of Cities* (Knopf 1990); Paul L. Knox and Peter J. Taylor, eds, *World Cities in a World-System* (Cambridge 1995). More recently, Frug and Barron have built upon the existing models in an article considering cities' dual roles "as simultaneously subordinate domestic governments and independent international actors." Gerald E. Frug and David J. Barron, *International Local Government Law*, 38 Urban Law 1, 2 (2006). See also Keith Aoki, Kristy Young, and Thomas Hwei, *(In)visible Cities: Three Local Government Models, Immigration, Non-Citizen Voting, and Language Regulation* (draft manuscript on file with Hari M. Osofsky) (building upon Frug's and Barron's work in the context of cities and noncitizens). For some of the scholarship on state-level climate initiatives, see Barry G. Rabe, *Statehouse and Greenhouse: The Emerging Politics of American Climate Change Policy* (Brookings Institution 2004); Ann E. Carlson, *Federalism, Preemption, and Greenhouse Gas Emissions*, 37 UC Davis L Rev 281 (2003); David R. Hodas, *State Law Responses to Global Warming: Is It Constitutional to Think Globally and Act Locally?*, 21 Pace Envir L Rev 53 (2003); Barry G. Rabe, *North American Federalism and Climate Change Policy: American State and Canadian Provincial Policy Development*, 14 Widener L J 121 (2004); Stephanie Stern, *State Action as Political Voice in Climate Change Policy: The Minnesota Environmental Cost Valuation Regulation*, in Burns and Osofsky, eds, *Adjudicating Climate Change* __ (cited in note 11).

12 See Anne-Marie Slaughter, *A New World Order* 65–103 (Princeton 2004). For interesting explorations of dynamics among complex and shifting regimes in the intellectual property context, see Laurence R. Helfer, *Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking*, 29 Yale J Intl L 1 (2004); Kal Raustiala and David G. Victor, *The Regime Complex for Plant Genetic Resources*, 58 Intl Org 277 (2004).

13 See Annelise Riles, *The Network Inside Out* (Michigan 2000).

14 For examples of the scholarly literature on geographic network theory and scale, see Kevin R. Cox, *Spaces of Dependence, Spaces of Engagement and the Politics of Scale, or: Looking for Local Politics*, 17 Pol Geog 1 (1998). For commentary on and debate over Cox's approach, see Katherine T. Jones, *Scale as Epistemology*, 17 Pol Geog 25 (1998); Dennis R. Judd, *The Case of the Missing Scales: A Commentary on Cox*, 17 Pol Geog 29 (1998); Michael Peter Smith, *Looking for the Global Spaces in Local Politics*, 17 Pol Geog 35 (1998); Kevin R. Cox, *Representation and Power in the Politics of Scale*, 17 Pol Geog 41 (1998); Lynn A. Staeheli, *Globalization and the Scales of Citizenship*, 19 Geog Rsrch F 60 (1999).

15 A law and geography approach considers the ways in which spaces shape law and law shapes spaces. See Jane Holder and Carolyn Harrison, *Connecting Law and Geography*, in Jane Holder and Carolyn Harrison, eds, *Law and Geography* 3, 3–5 (Oxford 2003)

> Our legal lives are constituted by shifting intersections of different and not necessarily coherently articulating legal orders associated with different scalar

networks. Using the examples of Tulsa and Portland, the piece considers the scale of US cities' involvement in the problem of climate change and its implications for climate policy.

The Article begins by examining two case studies of cities with very different geographic positionality, Tulsa and Portland, as examples of the relationship between networks and scale in the climate discourse. Although both cities are actively engaged in coalitions of localities attempting to make progress on climate change, the environment in which they operate is quite different. Tulsa's local politicians have relationships with the state's substantial energy industry—which includes major greenhouse gas emitters—while Portland long has had the political base to lead the nation in progressive action on climate change. The similarities and differences in the two cities' responses reflect their engagement in public, private, and nonprofit networks at multiple scales, which raises critical questions about how to view the scale at which these cities operate.

Building from this descriptive core, the Article then considers two potential narratives of the urban activity on climate change. The first draws from Janet Levit's work to provide a bottom-up lawmaking story of these two case examples. In their day-to-day microdecisions, cities engage with other private and nonprofit actors in an organic lawmaking process whereby practices become norms and norms embed in law. In the instant examples, Portland and Tulsa each independently embarked on a series of climate protective decisions, the former for environmentally altruistic reasons and the latter largely in response to budgetary pressures.[16] While individual municipal decisions—such as powering the mass transit system with natural gas rather than gasoline—have limited normative weight, such decisions collectively become enmeshed in formal law.

> spaces. The relations between these different legal spaces is a dynamic and complex one, but it is a pressing and important subject of inquiry given the ways in which codes operative at various scales intermingle.

David Delaney, Richard T. Ford, and Nicholas Blomley, *Preface: Where is Law?*, in Nicholas Blomley, David Delaney, and Richard T. Ford, eds, *The Legal Geographies Reader: Law, Power, and Space* xxi (Blackwell 2001). For examples of law and geography work, some of which explicitly draws from the discipline of geography, see Keith Aoki, *Space Invaders: Critical Geography, the "Third World" in International Law and Critical Race Theory*, 45 Vill L Rev 913 (2000); Matthew R. Auer, *Geography, Domestic Politics and Environmental Diplomacy: A Case from the Baltic Sea Region*, 11 Georgetown Intl Envir L Rev 77 (1998); Paul Schiff Berman, *The Globalization of Jurisdiction*, 151 U Pa L Rev 311 (2002); Richard T. Ford, *Law's Territory (A History of Jurisdiction)*, 97 Mich L Rev 843 (1999); Tayyab Mahmud, *Geography and International Law: Towards a Postcolonial Mapping*, 5 Santa Clara J Intl L 525 (2007); Kal Raustiala, *The Geography of Justice*, 73 Fordham L Rev 2501 (2005); J.B. Ruhl and James Salzman, *The Geography of Wetlands Mitigation Banking* (draft manuscript on file with author); Robert R.M. Verchick, *Critical Space Theory: Keeping Local Geography in American and European Environmental Law*, 73 Tulane L Rev 739 (1999). See also notes 101 and 119.

16 See Section II.

Thus, cities—in this case Portland and Tulsa—are not mere implementers of law from "above" but rather active lawmakers from "below."

The second narrative draws from Hari Osofsky's work on law and geography and, more specifically, in the context of these cases, examines Kevin Cox's claim that networks provide a helpful metaphor for understanding the spatiality of scale. Cox argues that:

> [T]he world is far more complicated than an easy equation of state-defined territorial scales to variably scaled spaces of dependence would allow. Local governments may form part of networks that bring together not just local interests but agents which have a degree of locational discretion between one local government jurisdiction and another.[17]

Cities are not only formulating their own policies on greenhouse gas emissions. They also participate in national and international networks of cities engaging the problem of climate change and interact on a day-to-day basis with the multinational corporations which they host. This simultaneous interface of the local, national, and global raises questions of cities' scale in a globalizing world. These cities' actions and relationships help to create what Cox terms "spaces of engagement" that allow for a continuous rescaling of the climate debate.[18]

The Article then brings together the bottom-up lawmaking and network stories. It argues for what we term a "bottom-up networking" approach and considers its implications for transnational legal responses to climate change. In such an approach, rescaling is at the core of a myriad of bottom-up lawmaking processes that confound state-centered conceptions of international law and efforts at effective treatymaking on climate change. The Article further contends that this thicker view of these cities' positionality with respect to scale could help to frame more effective local strategies on climate change. Without an understanding of cities as more than just "local" actors, approaches to climate regulation will miss important aspects of their current and potential impact on greenhouse gas emissions.

From this preliminary exposition of bottom-up networking, the Article concludes by considering the research questions that such an approach would open. It presents further descriptive and conceptual issues that we plan to explore in future pieces.

II. FROM THE COAST TO THE HEARTLAND

Portland and Tulsa provide useful points of entry for analyzing US cities' involvement in climate change because of how they fit into the country's geopolitics. They are not simply physically disparate locations on a map, but

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17 Cox, *Spaces of Dependence*, 17 Pol Geog at 20–21 (cited in note 14).

18 Id at 2.

rather represent different political and cultural configurations. The coasts, both East and West, have been leaders on emissions reductions and are most at risk from initial climate impacts. The interior, in contrast, contains much of the country's carbon wealth, with an economy deeply intertwined with energy production.[19]

As such, the work of these two cities represents the complexities of urban engagement of climate change. Portland demonstrates the outer edge of US cities' efforts with its resultant successes, but also the limits of what even sustained effort backed by political will can achieve in a growing municipality. Tulsa, in contrast, provides lessons in what relatively conservative, heartland cities can achieve on these issues and the complex navigation among actors that can result in progressive change. Moreover, both case studies reflect the intricate web of public, private, and nonprofit actors that constitute policy choices on climate change. This Section details these two stories in order to open broader questions about the appropriate role of cities in addressing climate change.

A. LEADING THE CHARGE FROM PORTLAND

As the US city with the longest effort at implementing sustainable carbon choices, Portland is an excellent laboratory for the complexities of urban emissions reduction. Portland's national leadership on issues of energy and climate began in 1979, when it became the first US city to adopt an energy policy.[20] This municipal policy was developed in the context of Oregon's state land use laws of the 1970s, which established a comprehensive scheme that included urban growth boundaries and long-range planning and encouraged citizen involvement at multiple scales.[21] By the time Portland again led the charge in adopting a carbon dioxide emissions reduction plan in 1993, more than 150 cities had used its energy policy as a model.[22]

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19 As Hari Osofsky has analyzed, this contrasting positionality is apparent in the briefs in *Massachusetts v EPA*, in which petitioner states were mostly coastal and respondent states were primarily interior. Petitioner states focused on specific harms that they faced from climate change, while respondents "scaled up" to focus on climate change as a global problem occurring over extensive timescales. Hari M. Osofsky, *The Intersection of Scale, Science, and Law in* Massachusetts v. EPA, 9 Oregon Rev Intl L __ (forthcoming 2007).

20 Rick Bella, *City Adopts Plan to Cut Emissions*, Oregonian E2 (Nov 11, 1993).

21 See Grewe, Anderson, and Butman, 18 Govt Fin Rev at 9 (cited in note 7). For more in-depth analyses of Oregon's land use controversies, see William G. Robbins, *Landscapes of Conflict: The Oregon Story, 1940–2000* (Washington 2004); W. Scott Prudham, *Knock on Wood: Nature as a Commodity in Douglas-Fir Country* (Routledge 2005). For a broader discussion of land use in the West, see William R. Travis, *New Geographies of the American West: Land Use and the Changing Patterns of Place* (Island 2007).

22 Bella, *City Adopts Plan*, Oregonian at E2 (cited in note 20).

Portland's goals and the substance of its plans have been ambitious and have provided an important template for cities that have begun more recently to pursue aggressive energy reduction strategies. As Timothy Grewe, Susan Anderson, and Lauren Butman—all involved in leading the administration of Portland's efforts—have noted, "[w]hat makes Portland unique is its institutionalization of sustainability as a core business driver."[23] At least as significantly, its struggles provide an important lesson about localities and climate change. Despite impressive per capita reductions, Portland's growth has made its total emissions goals more elusive. It thus serves as an example of the difficulties of balancing growth with emissions reduction.[24] This Section explores the mix of public leadership, private commitments, and nonprofit advocacy that shape Portland's efforts.

1. Public Leadership

Portland first began grappling with how to frame its climate change efforts in the early 1990s under the leadership of then-Commissioners Earl Blumenauer and Mike Lindberg. Together with their counterparts in eleven other cities around the world, Portland officials explored questions of how real climate change was and what cities could do to address it. [25] Through that dialogue, they created an informal network of cities committed to reducing greenhouse gas emissions to 10 percent below 1990 levels.[26] According to Susan Anderson, then-intern at and now-director of Portland's Office of Sustainable Development, "Back then, we didn't talk about global warming because people would've thought we were wacky . . . . We talked about making changes for the cost-saving benefits."[27]

In 1993, as a result of these dialogues, the Portland City Council unanimously adopted a carbon dioxide reduction plan that specifically focused on the gas's contribution to climate change. The plan covered a wide range of urban policy areas, including land use planning, transportation, energy efficiency, solid waste and recycling, urban forestry, and renewable energy.[28] Portland's carbon reduction strategy set the ambitious goal of reduction to 20 percent

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23 Grewe, Anderson, and Butman, 18 Govt Fin Rev at 9 (cited in note 7).

24 Rojo de Steffi, et al, *A Progress Report* at 1–2 (cited in note 10).

25 John Foyston, *Warming World, Cool City*, Oregonian E1 (Apr 21, 2006).

26 Id.

27 Id.

28 City of Portland Office of Sustainable Development, *Portland Climate Change Efforts* (April 2003), available online at <http://www.portlandonline.com/shared/cfm/image.cfm?id=112117> (visited Nov 17, 2007).

below 1990 levels by 2010.[29] It also became the first city in the United States to join the international coalition of Cities for Climate Protection, which has grown to include 691 cities around the world.[30]

Since making that commitment to aggressive greenhouse gas reduction, Portland has accumulated an impressive list of successes that include: 2 new major light rail lines and a 75 percent increase in public transit use since 1990; purchase of more than 10 percent renewable energy for its energy use; a recycling rate of 54 percent; construction of close to 40 high-performance green buildings; planting of over 750,000 trees and shrubs since 1996; weatherization of 10,000 multi-family units and over 800 family homes over a 2-year period; and establishing the Energy Trust of Oregon.[31] It reduced per capita emissions by 12.5 percent over that period, which puts it at the leading edge of urban achievement on climate change in the United States.[32]

And yet, despite all of these efforts and progress, its greenhouse gas emissions were still at slightly above 1990 levels in 2004, making a reduction to even its scaled back April 2000 goal of 10 percent below 1990 levels by 2010 quite difficult.[33] The biggest problem facing Portland in reaching its total emissions target is that more and more people inhabit it each year. Each new person adds emissions. Per capita emissions must be well below 1990 levels for total emissions to come down sufficiently.[34] Perhaps such a problem is not so serious. After all, by moving to Portland, those people may be reducing their carbon footprint. But it does raise the complexities of balancing urban growth with greenhouse gas reductions.

The critical question from a public policy perspective is how much further Portland can go under its current model of green economic development. From 2001 to 2004, Portland made significant additional progress. It continued monitoring emissions and supporting community education on climate change.[35] Its per capita building energy use declined 7 percent due in large part to the work of the Energy Trust of Oregon and the programs it has created for

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29 Portland Energy Office, *Carbon Dioxide Reduction Strategy: Success and Setbacks*, 1 (June 2000), available online at <http://www.portlandonline.com/shared/cfm/image.cfm?id=112113> (visited Nov 17, 2007).

30 Laatz, *City Council Hears Plan*, Oregonian at C6 (cited in note 7); ICLEI, *CCP Participants* (cited in note 7).

31 Rojo de Steffi, et al, *A Progress Report* at 1 (cited in note 10).

32 Id.

33 Id at 1–2; Portland Energy Office, *Carbon Dioxide Reduction Strategy* at 1 (cited in note 29).

34 See Rojo de Steffi, et al, *A Progress Report* at 1 (cited in note 10).

35 Id at 2.

customers of major energy utilities.[36] It debuted its central city street car and two light rail lines during that period.[37] By adding to its renewable energy resources, particularly wind power, Portland achieved the above-mentioned goal of purchasing 10 percent renewable energy and, in fact, reached just over 11 percent of its electricity from renewables in 2005.[38] Its continued efforts on recycling and tree planting also had an impact.[39] The city has ambitious goals for the future as well and will continue to be an important public policy laboratory as it leads the way.[40]

2. Private Commitments

Portland's public policy achievements on climate change have been coupled with area companies' early recognition that progressive steps on climate change could be good for their bottom line. For example, in 2001, Portland-based The Collins Companies[41] became the first forest products company to make a commitment to decrease its carbon emissions.[42] The Collins Companies established a goal of bringing emissions to 15 percent below 1990 levels within 8 years, which would prevent 150,000 tons of carbon dioxide.[43] Because its plan simultaneously aimed at saving millions of dollars, Collins modeled ways in which climate consciousness could be tied to profitability for a state dependent on the forestry industry.[44]

Collins was not the only Portland area business to take early action on climate change. For example, Nike Inc., which is based in Beaverton, Oregon, was one of the first five companies to join a Climate Savers agreement with the World Wildlife Fund and Center for Energy & Climate Solutions.[45] Portland-

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36 Id at 3–4.

37 Id at 4.

38 Id.

39 Id at 5.

40 Id at 5–6. Portland was recently ranked number one among US cities in terms of sustainability by SustainLane. See Warren Karlenzig, et al, *How Green Is Your City?: The SustainLane U.S. City Rankings* 21–24 (New Society 2007).

41 Its website provides extensive description of its green business efforts. See The Collins Companies, available online at <http://www.collinswood.com/> (visited Nov 17, 2007).

42 Brian J. Back, *Timber Company Takes Industry Lead in Effort*, Portland Bus J (Nov 16, 2001), available online at <http://www.bizjournals.com/portland/stories/2001/11/19/story7.html> (visited Nov 17, 2007).

43 Id.

44 Id.

45 Id.

based Progressive Investment Management set aside money for The Climate Trust in order to offset its emissions.[46]

Moreover, Portland is located in a state that has been among the leaders on climate change. Oregon is currently wooing climate-friendly business as its ski and wine industries worry about climate impacts.[47] In March 2007, German manufacturer SolarWorld AG announced that it would invest close to $400 million in a Hillsboro-based plant.[48] Wind and biofuel companies are also considering the state for their operations.[49] As Erin Anderson, Oregon representative for the National Environmental Trust has noted, "Oregon is positioning itself to be a leader in this new clean economy we're going to have to develop."[50]

As with the public policy analysis, there remain ongoing questions about how far public-private partnerships and corporate efforts on climate change can and should go. For example, the above-mentioned Energy Trust works with Portland General Electric, Pacific Power, and Northwest Natural—the energy utilities that service Portland and the broader Multnomah County in which it is located—on energy efficiency and renewable energy programs. After beginning operations in 2002, the Energy Trust provided incentives to over 200 businesses and 14,000 households in its first 2 years.[51] In 2006, it also added natural gas partnerships with Cascade Natural Gas Corporation and Avista Corporation.[52] However, as of 2006, Oregon still obtains over 40 percent of its electricity from coal.[53] Moreover, the state's ambitious work takes place against a backdrop of a deregulated utility industry that in the mid-to-late 1990s, prior to the creation of the Energy Trust, cut its energy conservation efforts by 60 to 70 percent.[54] Fully actualizing a green business model will still take significant forward movement.

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46 Id.

47 See Matthew Kish, *Climate Change Legislation Could Boost Oregon Economy*, Portland Bus J (Apr 6, 2007), available online at <http://portland.bizjournals.com/portland/stories/2007/04/02/daily51.html?jst=s_cn_hl> (visited Nov 17, 2007).

48 Id.

49 Id.

50 Id.

51 Rojo de Steffi, et al, *A Progress Report* at 3 (cited in note 10); Energy Trust of Oregon, Inc, *Who We Are*, available online at <http://www.energytrust.org/who/index.html> (visited Nov 17, 2007).

52 See Energy Trust of Oregon, *Who We Are* (cited in note 51).

53 See Michael Armstrong, City of Portland Office of Sustainable Development, *Climate Protection in Portland*, 28 (Nov 2006), available online at <http://www.portlandonline.com/shared/cfm/image.cfm?id=140409> (visited Nov 17, 2007).

54 See Portland Energy Office, *City of Portland: Carbon Dioxide Reduction Strategy Update*, 5 (Nov 1997), available online at <http://www.portlandonline.com/shared/cfm/image.cfm?id=112112> (visited Nov 17, 2007).

3. Nonprofit Advocacy

Nonprofit advocacy also plays a crucial role in the Portland context. The city's sustainable land use policies were deeply influenced, for example, by a 1988 study by the nonprofit group 1000 Friends of Oregon. That organization prevented a new bypass highway system by providing the city with a study comparing alternative ways to address population growth. In particular, "[t]he study demonstrated how a land use pattern of moderate density and pedestrian-friendly neighborhoods along a regional transit network could reduce driving and improve air quality."[55] That land use choice by Portland arguably played a key role in creating the urban structure that supports its innovative efforts on climate change.

Portland is home to a wide range of nongovernmental organizations ("NGOs"), including environmental organizations that work on issues such as land use, oceans and coastal concerns, water resources, conservation, and more general environmental protection.[56] A number of these NGOs are making specific efforts on climate change. Just to note a few examples of the diverse approaches these groups employ, Environment Oregon has an extensive campaign focused on advocacy at multiple scales.[57] The Ecumenical Ministries of Oregon has climate change initiatives that range in scale from the congregational level to the national level.[58] The Northwest Earth Institute, which aims to motivate individuals to change their foundational approaches, offers a course specifically focused on climate change.[59]

Moreover, some of these "nongovernmental" efforts involve innovative public, private, and nonprofit partnerships. For example, a leading Portland-based NGO on climate change, The Climate Trust, was established in 1997 when Oregon passed a law requiring new power plants built in the state to offset their greenhouse gas emissions.[60] The Trust provides greenhouse gas offsets to power plants, regulators, businesses, and individuals, and plays an active role in

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55 Grewe, Anderson, and Butman, 18 Govt Fin Rev at 9 (cited in note 7).

56 For examples of the types of environmental nongovernmental organizations operating in Portland, search "Portland" at <www.idealist.org.> (visited Nov 17, 2007).

57 See Environment Oregon, *Global Warming Solutions*, available online at <http://www.environmentoregon.org/global-warming> (visited Nov 17, 2007).

58 See Ecumenical Ministries of Oregon, available online at <http://www.emoregon.org/global_warming.php> (visited Nov 17, 2007).

59 See Northwest Earth Institute, available online at <http://www.nwei.org/> (visited Nov 17, 2007).

60 The Climate Trust, *About the Climate Trust*, available online at <http://www.climatetrust.org/about_us.php> (visited Nov 17, 2007). See also The Climate Trust, *The Climate Trust's History*, available online at <http://www.climatetrust.org/about_us_history.php> (visited Nov 17, 2007).

policy discussions. The Trust explains: "Our success is a result of our business oriented approach. The Climate Trust's projects are expected to offset nearly 2.6 million metric tons of carbon dioxide from $8.8 million in investments—making us one of the largest and most experienced offset buyers in the US and world markets."[61]

In sum, Portland represents the closest that the United States has to a success story on climate change. It demonstrates that urban areas have the capacity to change their emissions profiles dramatically through comprehensive planning efforts that rely upon partnerships between public, private, and nonprofit entities. However, the Portland example also reveals the core tensions presented by a green growth model. The cities participating in the Cities for Climate Protection now represent approximately 15 percent of global anthropogenic greenhouse gas emissions.[62] Whether or not they can bring emissions down significantly while they grow represents a crucial question facing climate change efforts based on prevailing economic models and goals.

B. BALANCING OIL AND THE POLITICAL CLIMATE IN TULSA

By 1920, Tulsa earned standing as the "oil capital" of the United States. While other cities soon surpassed the Tulsa metropolitan area in size and oil production, this legacy defines much of Tulsa's fabric and identity. Ostensibly, this legacy stands in tension with local efforts to control carbon emissions. Flames spilling from oil refineries on the west bank of the Arkansas River define much of Tulsa's skyline. To drive large pick-up trucks or SUVs is to many Tulsans a badge of local patriotism, a means to support the petroleum-based local economy, which has been exposed to dramatic boom/bust cycles in the past few decades with devastating economic impacts on the city. Until recently, many Tulsans viewed recycling initiatives as inconvenient (and costly) nuisances. And while numerous Ozone Alert days unpleasantly remind Tulsans of the environmental costs of energy consumption, no entity in Oklahoma has ever dedicated resources to measuring Tulsa's or the state's carbon footprint.[63] Against this backdrop, it is not surprising that former Tulsa Mayor and current US Senator from Oklahoma, James Inhofe, lambasts the problem of global

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61 The Climate Trust, *About the Climate Trust* (cited in note 60).

62 ICLEI: Local Governments for Sustainability, *About CCP*, available online at <http://www.iclei.org/index.php?id=811> (visited Nov 17, 2007).

63 Interview by Janet Koven Levit with Josh Davis, Policy and Research Analyst, City of Tulsa (Sept 25, 2007) (while the Oklahoma Department of Environmental Quality is tasked with such measurements, the State has never budgeted for such measurements) ("Davis Interview").

warming—and climate change advocacy—as "the greatest hoax ever perpetrated on the American people;"[64] he claims that this advocacy propagates a "big lie."[65]

In stark contrast to former Mayor Inhofe's stance, Tulsa's current mayor, Kathy Taylor, became the 500th mayor to join the Mayors Climate Protection Agreement, proclaiming that Tulsa is "[p]roud to be number 500!"[66] In addition to being the 500th mayor on a national scale, Mayor Taylor was the first mayor of a major metropolitan area in Oklahoma to sign the Agreement.[67] And, for the first time in Tulsa's history, Mayor Taylor developed and published an Energy Conservation and Efficiency Plan, a plan designed, in part, to reduce Tulsa's carbon footprint.[68] The City of Tulsa has thus led Tulsans and Oklahomans to climate change consciousness in the oil and gas heartland.

Mayor Taylor's decision was not without naysayers. Taylor's counterpart in Oklahoma City will not join the Agreement because he questions the solidity of "science of global warming" and "doesn't want to break from the Bush administration in signing an agreement similar to the Kyoto Protocol."[69] A local radio personality and columnist blasted Mayor Taylor for signing an agreement that is "based on the scientifically dubious notion that global warming is caused by human activity" and that requires "draconian restrictions on the economy . . . that would cost jobs;" he suggests that the Mayor's "unilateral" decision is incredibly out of sync with a community that keeps "sending the likes of Jim Inhofe to represent us in Washington."[70] Conspicuously, the oil and gas industry did not join the chorus of naysayers.

How did Tulsa, the quintessential oil and gas city, arrive at this threshold? A rather eclectic web of social activists, politicians, and private businesses converged to bring Tulsa to this paradoxical juncture. The remainder of this section identifies the socio-economic, political, and cultural forces that linked

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64 Jim Myers, *Heat Wave Has Senator Sticking to Beliefs*, Tulsa World A1 (July 22, 2006).

65 Id.

66 Office of the Mayor, Seattle, Washington, *US Mayors Climate Protection Agreement: Quotes from Participating Mayors & Environmental Leaders*, available online at <http://www.seattle.gov/mayor/climate/quotes.htm#quotes> (visited Nov 17, 2007).

67 Mayor Harold Haralson of Norman, Oklahoma, home to the University of Oklahoma, and a college town of a population significantly less than 100,000 (except on days that the Sooners have a home football game) joined the Agreement in August 2005. See David Sutter, *In An Effort to Cut Emissions . . . Tulsa Joins 'Green' Team*, Oklahoman 11A (May 15, 2007).

68 See City of Tulsa, *Conservation and Efficiency Plan*, (Apr 2007), available online at <http://www.cityoftulsa.org/OurCity/Mayor/documents/CityofTulsaEnergyConservationandEfficiencyPlan.pdf> (visited Nov 17, 2007).

69 Sutter, *In an Effort to Cut Emissions*, Oklahoman at 11A (cited in note 67).

70 Michael D. Bates, Op-Ed, *Her Honor, The Boss*, Urban Tulsa (May 23, 2007), available online at <http://www.urbantulsa.com/gyrobase/Content?oid=oid%3A17257> (visited Nov 17, 2007).

these actors in furtherance of emission reductions: (1) a burgeoning network of local environmentally "conscious" nonprofits and collectives; (2) a new administration in City Hall; (3) municipal budgetary shortfalls aggravated by the sharp increase in oil prices; and (4) an alliance between environmentalists and a local natural gas company in trying to block construction and operation of a new, coal-fired electricity plant.

1. The Nonprofit Sector

Over the past decade, an environmentally conscious nonprofit sector developed in Tulsa. While the local nonprofits are fledgling when compared with national organizations, each year they grow exponentially, becoming increasingly visible and vocal in local politics.[71] In addition, local nonprofits with an economic development, rather than an environmental, focus increasingly identify "sustainability" as a feature that will enhance the marketability of,[72] and concomitant investment in, Tulsa. One of these groups has also forged significant linkages with the transnational "cradle to cradle" (recycling) movement.[73]

While many in these groups would self-identify as social activists, many others are members of the business community, most notably the energy sector. For instance, Seneca Scott, a Tulsan and Operations Manager of Trivestco Energy, who is also President of the Oklahoma Sustainability Network ("OSN"), notes "[p]eople kid me about being employed in the oil and gas industry and being involved in sustainability. But a lot of the producers are concerned about having a clean environment."[74] Scott and others who have grown the environmental nonprofit sector advocate a type of rational, market-based environmentalism that balances "smart economic growth, a cleaner environment, and socially just developments."[75] These nonprofit organizations sat at the table as the Mayor decided to join the Agreement, assisting in

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71 See, for example, Sustainable Tulsa, available online at <www.sustainabletulsa.org> (visited Nov 17, 2007); Oklahoma Sustainability Network, available online at <www.oksustainability.org> (visited Nov 17, 2007); Cherry Street Farmer's Market, available online at <www.cherrystreetfarmersmarket.com> (visited Nov 17, 2007).

72 See, for example, The Channels: A Bold Vision for the Tulsa Region, *The Channels Overview*, available online at <http://www.tulsachannels.com/general.asp?id=2> (visited Nov 17, 2007) (describing the nonprofit group, Tulsa Stakeholders, Inc, whose mission is to create a sustainable tax base in Tulsa, as well as retain and attract talent and jobs to Tulsa).

73 See William McDonough and Michael Braungart, *Cradle to Cradle: Remaking the Way We Make Things* (North Point 2002).

74 David Page, *Sustainability Network Growing, Oklahoma Group Now Has Six Chapters*, Journal Record 1 (Apr 12, 2007).

75 E-mail from Seneca Scott, Past President, Oklahoma Sustainability Network, to Janet Levit (Sept 25, 2007).

gathering data, formulating implementation strategies, and marketing the Mayor's decision in a way that would be palatable to the broader public.

2. The Public Sector: The City of Tulsa

Tulsa would not have joined the Agreement when it did had it not been for an administration change. Mayor Kathy Taylor beat incumbent Bill LaFortune in April 2006, ushering in a period of significant change in City Hall. While some of this change is attributable to political winds—Taylor is a Democrat and LaFortune a Republican—most is attributable to Mayor Taylor's cosmopolitan, businesslike approach to government. Taylor ran for office after a long, successful career as a multinational lawyer, businesswoman, and Oklahoma's Secretary for Commerce and Tourism.[76] Taylor campaigned on a promise to run the City like a business and brings her extensive business experience to bear on municipal government. Specifically, Taylor articulated the value of perceptions—that the well-being of the City is linked, in part, to the way in which the City markets itself—the City reflects not only what "is" but also what residents, visitors, and businesses "think it is."[77] Additionally, in business, Taylor recognized the importance of networks and business contacts; in government, Taylor leveraged some of her business relationships on Wall Street and beyond to network with Mayors Michael Bloomberg and Richard M. Daley very early on in her term.[78]

Mayor Taylor's decision to join the Agreement was, in part, the convergence of her networking skills and her sharp knack for marketing and timing. Mayor Bloomberg, praised by fellow mayors and environmentalists for committing to transform New York City into the "green apple,"[79] allegedly orchestrated within the US Conference of Mayors the concept of Tulsa, and his

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76 See Taylor for Tulsa, *Mayor Kathy Taylor*, available online at <http://www.taylorfortulsa.com/mayor_taylor> (visited Nov 17, 2007).

77 Taylor for Tulsa, *Taylor for Tulsa—Priorities—Economic Development*, available online at <http://www.taylorfortulsa.com/priorities/economic_development> (visited Nov 17, 2007).

78 See *Mayor Bloomberg and Chicago Mayor Daley Kick-Off First Mayors Against Illegal Guns Coalition Regional Staff Conference*, NYC.gov Press Release (Oct 25, 2006), available online at <http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2006b%2Fpr375-06.html&cc=unused1978&rc=1194&ndi=1> (visited Nov 17, 2007); Sewell Chan, *Seeking a National Voice, 15 Mayors Meet on Gun Violence*, NY Times B1 (Apr 26, 2006).

79 The US Conference of Mayors, Press Release, *U.S. Conference of Mayors President Trenton Mayor Palmer Commends Mayor Bloomberg for Leadership on Climate Protection* (May 15, 2007), available online at <http://www.usmayors.org/uscm/news/press_releases/documents/500mayors_051507.pdf> (visited Nov 17, 2007).

friend Kathy Taylor, joining as the 500th city.[80] Seattle's Mayor Greg Nickels, the founder of the initiative, embraced the idea, seeing Tulsa's participation in the Agreement as emblematic of a growing demand for climate protection not merely on the coasts but also in the heartland.[81] Taylor understood that this would be an unprecedented global marketing splash for Tulsa and for her stewardship of it. Bloomberg announced Tulsa as the 500th City to join at the C40 Climate Summit, a transnational gathering of delegations from large cities, organized in part by the Clinton Foundation.[82] Tulsa received banner coverage from the US Conference of Mayors.[83] Tulsa also enjoyed positive press in the national print media and blogosphere.[84]

Additionally, Taylor understood that committing to municipal emissions reductions, under the auspices of the Agreement or any other initiative, was a sound, bottom-line business decision.[85] While $90/barrel for crude oil is beneficial to Oklahoma's traditional oil companies, such prices pose a significant burden to consumers. The City of Tulsa, with a substantial fleet of police, fire, public transportation, and construction vehicles, is a major consumer of traditional, emissions-producing fuels. Indeed, from fiscal year 2002 through 2006, while consumption remained level, municipal spending on "motor fuel" increased over 250 percent due to the surge in fuel costs.[86] During the same period, municipal coffers (and budgets) remained rather stagnant,[87] on account of the inextricable link between City revenue and sales tax, which is relatively inelastic vis-à-vis a few booming oil companies.

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80 Davis Interview (cited in note 63).

81 Id.

82 See Climate Summit: A Gathering of Leaders from the World's Largest Cities and Businesses, available online at <http://www.nycclimatesummit.com> (visited Nov 17, 2007).

83 See Mayors Climate Protection Center, Press Release, *600 Mayors in All 50 States and Puerto Rico Take Action to Reduce Global Warming*, (July 13, 2007), available online at <http://www.usmayors.org/climateprotection/climateagreement_071307.pdf> (visited Nov 17, 2007).

84 See *38 Mayors Gathered in Trenton to Discuss Infrastructure and Climate Protection*, Smart Money (Sept 14, 2007). See, for example, Guest Contributor, *Tulsa Mayor Signs Climate Agreement*, Freshare.net (May 21, 2007), available online at <http://www.freshare.net/exp/article/tulsa_mayor_signs_climate_agreement/list/> (visited Nov 17, 2007).

85 See generally City of Tulsa, *Conservation and Efficiency Plan* (cited in note 68).

86 Id at 4.

87 See City of Tulsa, *2007–2008 Budget and Capital Plan: Executive Summary*, available online at <http://www.cityoftulsa.org/OurCity/budget/documents/Sec02-ExecutiveSummary.pdf> (visited Nov 17, 2007) (discussing a difficult city budget situation as a function of a sales tax as the primary stream of revenue, as well as a shrinking sales tax base due to demographic shifts to the "suburbs"). See also City of Tulsa, *2006–2007 Annual Budget and Capital Plan: Introduction*, available online at <http://www.cityoftulsa.org/OurCity/budget/budget06-07/Sec01-Introduction.pdf> (visited Nov 17, 2007).

Thus, just as the City began searching for cost-saving mechanisms, the Agreement's "best practices," admittedly tailored to reduce emissions, offered a welcome roadmap for reducing costly fuel consumption and shifting to cheaper (and cleaner) forms of energy, most notably natural gas. The Mayor ordered department-by-department fuel consumption reductions, with an attendant threat of budgetary sanctions if departments did not meet targets;[88] instituted a "zero idling" policy for all City vehicles, with violations on "Ozone Alert Days" resulting in disciplinary action or even termination;[89] and proposed a new policy on "take home vehicles," [90] limiting police officers and other city employees from driving city-owned vehicles to and from home.[91] The City is also negotiating biodiesel contracts, and it has started purchasing fleet vehicles that run on compressed natural gas, a relatively cheap, clean, and abundant local resource.[92] The Mayor just received the City Council's approval to streamline municipal government by consolidating all City offices within one, energy efficient building.[93]

3. The Private Sector: The Natural Gas Industry

While Tulsa was once the oil and gas capital, today it is truly the natural gas industry that drives the local economy. A recent showdown between the local natural gas industry (led by Oklahoma City-based Chesapeake Corp., the largest privately owned natural gas producer in the country) and the electricity utilities operating in Oklahoma (Ohio-based AEP-PSO and Oklahoma-based OG&E), over the proposed building of the Red Rock coal-fired power plant illustrates this shift.[94] In waging this battle, Chesapeake cloaked its position in "green"-wear. In May 2007, as the Red Rock controversy boiled, Chesapeake introduced a new "clean and green" logo, evoking the earth and creating a graphic link between natural gas and "sound environmental choices" and a metaphysical link with environmental activists.[95] In addition, Chesapeake created and funded two organizations, the American Clean Skies Foundation and KnowYourPower.net

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88 See City of Tulsa, *2006–2007 Annual Budget and Capital Plan* at 39 (cited in note 87).

89 Id at 50.

90 Id at 51.

91 See id.

92 See id at 53–55.

93 Chad Previch, *Tulsa Making Plans for its New Address*, The Oklahoman A14 (July 14, 2007).

94 See AP Wire Services, *Plans for Coal-Fired Plant Ignite Debate*, Tulsa World A22 (Sept 3, 2007). Oklahoma is one of a dwindling group of states with tax credit incentives for coal-based power production. See 68 Okla Stat Ann § 2357.11 (West 2007).

95 *Chesapeake Greens Up Logo, Launches American Clean Skies Foundation*, Envir Leader (May 8, 2007), available online at <http://www.environmentalleader.com/2007/05/08/chesapeake-greens-up-logo-launches-american-clean-skies-foundation/> (visited Nov 17, 2007).

to market natural gas as a climate-protective, "clean burning" fuel.[96] Furthermore, Chesapeake dedicated significant resources to lobbying local (state) politicians, who themselves began equating coal with pollution, noting that global warming is an "undeniable fact," and publicizing an Oklahoma Climatological Survey that warned of local climate changes.[97] Finally, Chesapeake leveraged Red Rock's proximity to Tulsa to engage the City and the Mayor in a subtle campaign in opposition to Red Rock and in favor of natural gas.[98] In the end, the Oklahoma Corporation Commission rejected the Red Rock proposal.[99]

While Chesapeake's position was admittedly self-serving—and the marriage between the natural gas industry and environmental activists may be little more than one of convenience—the discourse of the debate played a role in shifting local environmental consciousness. The natural gas industry—the lifeblood of Oklahoma's economy—became the "savior" of global warming. While Oklahoma's senior Senator continues to argue that climate change is a "hoax," one aid to Mayor Taylor commented that he would be "hard pressed to find energy-related companies in Oklahoma who deny that climate change is a reality."[100]

III. BOTTOM-UP NETWORKS?

Tulsa's initiatives, admittedly years behind Portland on the climate protection trajectory, are embryonic, and it is still too early to assess whether Tulsa will convert its climate change talk into a meaningful walk. Yet, while the climate-related narratives in Tulsa and Portland diverge at many points, they

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96 For instance, the American Clean Skies Foundation launched a "Face It: Coal is Filthy" campaign that drew strong rebuke on Capitol Hill from the mining lobby. See John J. Fialka, *Chesapeake Energy Ends "Filthy" Ad Campaign*, Wall St J Online (Apr 26, 2007), available online at <http://blogs.wsj.com/washwire/2007/04/26/chesapeake-energy-ends-filthy-ad-campaign/> (visited Nov 17, 2007).

97 *Meacham Raises Global Warming Issue in Red Rock Debate*, Journal Record (Sept 7, 2007), available online at <http://www.knowyourpower.net/Articles/Meacham_raises_global_warming_issue_in_Red_Rock_debate.pdf> (visited Nov 17, 2007).

98 See Aubrey K. McClendon, Op-Ed, *Point/Counterpoint: Coal-fired Plant is Bad Idea, Bad Deal*, Tulsa World G4 (Aug 26, 2007) (McClendon, CEO of Chesapeake Energy Corporation, leveraged the proximity of Tulsa to the proposed coal plant, Red Rock, to dangle before Tulsans the specter of ozone alerts, pollution, negative "public health consequences," and noncompliance with EPA orders).

99 Chesapeake Energy, Press Release, *Comment from Chesapeake Energy Corporation Concerning Decision Regarding the Red Rock Power Plant*, Wall St J Online (Sept. 10, 2007), available online at <http://online.wsj.com/public/article/PR-CO-20070910-904461.html?mod=crnews> (visited Nov 17, 2007).

100 Davis Interview (cited in note 63).

nonetheless reveal underlying commonalities that illuminate the critical role that cities play in transnational climate change regulation.

This Section recounts the Portland and Tulsa stories through two theoretical lenses that are gaining traction within the international legal academy: (1) bottom-up international lawmaking—in managing day-to-day decisions, an organic community of on-the-ground actors, including cities, triggers an international lawmaking process; and (2) law and geography—these two "places" represent complex socio-legal "spaces" that operate across multiscalar networks.[101] While each account offers a richer narrative than traditional approaches to international law and lawmaking, this Article locates the richest narrative in the intersection of the two paradigms—an approach that we introduce here as "bottom-up networking" and plan to explore in greater depth in future scholarship.

A. A BOTTOM-UP STORY OF CITIES AND CLIMATE CHANGE

The Portland and Tulsa stories highlight the limitations of classic, international lawmaking narratives. More often than not, international legal scholars contemplate and analyze transnational issues like climate change from the "top-down," fixating on the world of jet-setting diplomats or Rose Garden signing ceremonies. In the traditional top-down approach to law and lawmaking, State elites enact rules (typically formal, treaty-based rules) that govern the practices and behaviors of those subject to the rules; in this account, lawmaking ensues well beyond the physical and metaphysical reach of law's subjects.

Yet assessing climate change initiatives through the lens of the Kyoto Protocol or other "top-down" international agreements[102] offers a woefully incomplete, impoverished portrait of climate change activity.[103] Private actors and nonprofits, as well as some public actors (principally from state and local government) coalesce not merely to implement edicts "from above," but also to

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101 The meaning of and relationship between place and space are explored in depth in geography literature. Although Osofsky has argued elsewhere that the nuances of these terms provide the opportunity for legal insights, the focus of this Article is more on multiscalar networks. Given that, this Article simply references that analysis and defines place as both a physical location and a conceptual construct and space as the material and conceptual grid on which places are located. For more in-depth analysis of these concepts, see, for example, Hari M. Osofsky, *The Geography of Justice Wormholes: Dilemmas from Property and Criminal Law*, 53 Vill L Rev ___ (forthcoming 2008); Hari M. Osofsky, *The Geography of Climate Change Litigation Part II: Narratives of* Massachusetts v. EPA, 8 Chi J Intl L 573 (2008); Hari M. Osofsky, *A Law and Geography Perspective on the New Haven School*, 32 Yale J Intl L 421 (2007).

102 See Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997), 37 ILM 22 (1998).

103 See Levit, 32 Yale J Intl L at 402–05 (cited in note 11).

fill lacunae in national and international regulation, or, alternatively, to counteract "top-down" decisions that are not palatable or practical for those on the ground, operating in the trenches. Thus, through a process of "bottom-up lawmaking," much international law surfaces.[104]

Bottom-up lawmaking is a participatory, organic process, where a diverse community of transnational actors—private parties, NGOs, and/or public (state, local, and national) officials—coalesce around shared, on-the-ground experiences and perceived self-interests. These actors' "micro-decisions," their day-in and day-out choices, are designed to navigate a myriad of on-the-ground exigencies and demands. Collectively, these "micro-decisions" assume normative significance, as decisions become norms and as norms at once reflect and condition future decisionmaking and practice. Over time, this patchwork of on-the-ground decisionmaking hardens as law, often embedding in a formal legal instrument (treaty, statute, contract, administrative regulation). Thus, whereas top-down international lawmaking is a process of laws internalized into day-to-day practice, bottom-up lawmaking is a process whereby practices and behaviors are externalized as law.

What are the essential elements of a bottom-up approach to lawmaking? The first focuses the lawmakers' identity and links their identity to a particular space—the "bottom." State elites, diplomats, and national politicians recede to the fringes, and, in their place, the grounded decisionmaker, or "practitioner," emerges as a powerful driver of international law and lawmaking. A bottom-up approach to lawmaking conceives of the "practitioner" in broad terms, including both public and private actors, some motivated by altruism and others motivated by profit, who join with others similarly situated in avocation (although often quite distant in location) to share experiences and standardize practices toward shared goals and in furtherance of perceived mutual self-interest. Practitioners, armed with intimate knowledge of niche trade and/or interest areas, grapple foremost with the nitty gritty technicalities of their day-to-day existence rather than the winds of geopolitics and diplomacy. Thus, whereas top-down lawmaking often traverses significant space between regulator and regulated, the bottom-up lawmaking process begins with minimal distance, often coincidence.

The second element of "bottom-up lawmaking" focuses on the normative trajectory—these are lawmaking processes, and the activities of practitioners are legally consequential. While isolated "practitioner" decisions are not initially international "law," according to a rather formal, narrow taxonomy,[105] these

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104 See generally Janet Koven Levit, *A Bottom-Up Approach to International Lawmaking: The Tale of Three Trade Finance Instruments*, 30 Yale J Intl L 125 (2005).

105 "International law" technically includes: (1) a treaty or other international agreement, as defined in the Vienna Convention on the Law of Treaties (May 23, 1969), art 2, 1155 UN Treaty Ser 331,

decisions ultimately become law, either by embedding directly in formal legal instruments or by collectively placing pressure on and shaping legal outcomes.

The Tulsa and Portland climate protection stories are in one regard bottom-up lawmaking tales, although in various states of scripting and development. In terms of "official" hierarchies, both Tulsa and Portland are on the "bottom" rung, subservient to Oklahoma and Oregon law, US law, and international law. In addition to this formal nesting, localities are functional climate change "practitioners" in that they close physical and metaphysical distance between climate change practices and decisionmaking. First, cities are corporate entities that consume energy and thus emit greenhouse gases. Second, cities physically "host" residents' and businesses' energy consumption and emissions. Third, day-to-day municipal decisions—from mass transit budgetary allocations to recycling programs, from street layout and sidewalks to economic development and sales tax incentives—echo, at times faintly and at times quite loudly, as climate change decisions.

Such micro-decisions, in conjunction with each other, bear hard legal consequences that have an impact on global emissions, especially in light of the substantial aggregate contribution of cities. Portland's climate-related decisionmaking was not so micro and atomistic—the Portland City Council, through binding city resolution, coupled policy change with hard emission reduction targets.[106] Similarly, while the Mayors Agreement is not "binding," Mayor Taylor's signature and subsequent micro-decisions, perhaps motivated as much, if not more, by budgetary considerations than the Agreement itself, carry real legal sanctions—budgetary cuts, personnel decisions, long-term natural gas purchase contracts, and incentives—and collectively will shape climate-related regulation at multiple regulatory scales.[107]

Yet micro-decisions within municipalities also shift perceived interests, motivations, and strategies of other transnational actors, namely those in the private sector, who in turn use the cover of municipal decisions to alter the course of hard law. For instance, in Tulsa, Mayor Taylor's environmental initiatives—her joining the Agreement and issuing Tulsa's Conservation Plan—provided Chesapeake with additional ammunition to push for changes in natural

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333; (2) customary international law; and (3) (and a true third) general principles of law. See Restatement (Third) of Foreign Relations Law § 102 (1987). See also Statute of the International Court of Justice (June 26, 1945), art 38, 33 UN Treaty Ser 993.

106 See Portland City Council Res 35995 (cited in note 8). See generally City of Portland and Multnomah County, *Local Action Plan* (cited in note 8).

107 See text accompanying notes 88–93 for discussion of sanctions that the City of Tulsa will impose for failure to comply with various provisions in the City of Tulsa, *Conservation and Efficiency Plan* (cited in note 68).

gas regulation at the state and federal levels.[108] Similarly, the commitments of Portland and Oregon to "green" business create an environment in which companies feel encouraged to try to get ahead of the regulatory curve on climate change.[109]

Finally, as the following sections will discuss at greater length, municipal decisionmaking creates a focal point for various actors to coalesce and thus to forge linkages and coalitions, which ultimately may chart the course of law. For instance, Portland's municipal decision to create the Energy Trust of Oregon effectively linked the private and nonprofit sectors in a very potent, norm-reinforcing manner.[110] In Tulsa, prior to signing the Agreement or rolling out the Conservation Plan, Mayor Taylor convened a meeting of twenty-four representatives from the City, the Metropolitan Transit Authority, county governments, local and statewide nonprofits, and the natural gas industry.[111] From an account of the meeting,[112] the purpose was not approval, but buy-in, and the byproduct was a burgeoning coalition that not only supported Chesapeake's legal battle against coal-fired energy but also helped to introduce environmental consciousness into mainstream, day-to-day discourse.

B. A LAW AND GEOGRAPHY STORY OF CITIES AND CLIMATE CHANGE

This bottom-up narrative opens up the need for a second story of Portland and Tulsa, one which focuses on public, private, and nonprofit dynamics taking place in multiscalar networks. The difficulty with the traditional international law account of cities—as virtually irrelevant except through their limited interaction with formal nation-state lawmaking—is not simply that it ignores the richness of the bottom. Rather, it misses the multiscalar dimensions of the international lawmaking process. Cities are interacting with international standards and across international borders, but also localizing them simultaneously. In other words, cities' engagement with the issue of climate change is a continuous process of simultaneous scaling up and scaling down. They engage local dimensions of the climate change problem, but do so in formal and informal communication with

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108 See McClendon, *Point/Counterpoint*, Tulsa World at G4 (cited in note 98). McClendon is the CEO of Chesapeake Energy Corp.

109 See notes 41–54 and accompanying text.

110 See notes 36 and 51–54 for discussion of the Energy Trust.

111 Davis Interview (cited in note 63).

112 Id.

policy dialogues at multiple levels of governance and with the multiscalar nature of emissions and their impacts.[113]

Geographer Kevin Cox's insights into networks and scale provide a framing lens for this second story. Cox postulates the politics of space as involving a dynamic interaction between what he terms "spaces of dependence" and "spaces of engagement."[114] He explains that "[s]paces of dependence are defined by those more-or-less localized social relations upon which we depend for the realization of essential interests and for which there are no substitutes elsewhere; they define place-specific conditions for our material well being and sense of significance."[115] In contrast, spaces of engagement are "the space in which the politics of securing a space of dependence unfolds."[116] Cox explains that these two types of spaces interact because "[p]eople, firms, state agencies, etc., organize in order to secure the conditions for the continued existence of their spaces of dependence but in so doing they have to engage with other centers of social power: local government, the national press, perhaps the international press, for example."[117]

Cox then argues that in order to understand the dynamics between these two types of spaces, we should treat the spatiality of scale as one of networks rather than arenas.[118] Or, in plainer language, instead of treating political contests as taking place within an enclosed level of governance, we should treat them as occurring across complex formal and informal networks. Although decisions formally occur in the place-specific contexts of Portland and Tulsa, they can only be understood through recognizing both places as enmeshed in complex networks of relationships.

Cox's geographic approach to networks and scale allows for a richer account of these two cities' efforts to address climate change. On the one hand, both Portland and Tulsa must grapple with spaces of dependence, which are created through the core local relationships that constitute the places that they are and that they strive to be. In each of the above examples the "where"

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113 Osofsky has discussed scaling up and scaling down in the context of climate change litigation. See Osofsky, 8 Chi J Intl L at 582–83 (cited in note 101); Osofsky, 9 Oregon Rev Intl L __ (cited in note 19); Hari M. Osofsky, *Is Climate Change an "International" Legal Problem?* (draft manuscript on file with Hari M. Osofsky).

114 Cox, *Space of Dependence*, 17 Pol Geog at 2 (cited in note 14).

115 Id.

116 Id.

117 Id.

118 See id at 2–3.

matters deeply. [119] Portland's location in Oregon and its coastal identity, as well as the particular arrays of actors at different points in time, make its leadership on urban emissions reduction possible.[120] Tulsa's physical connections to both oil and gas, as well as the conflicting pressures its public and business leaders face, form the foundations of its more fledgling efforts.[121] These "spaces of dependence" form the core of the bottom-up lawmaking story.[122]

And yet even those very local policies and relationships have multiscalar dimensions. As we unpack what drives the choices each city makes, they clearly influence and are influenced by networks that cross borders and levels of governance. Portland began down its path because of city-specific and state-specific decisions, but also because its leaders were talking to decisionmakers in other cities around the world.[123] Tulsa's choice to join that network formally thirteen years later reflects enmeshed local, state, national, and international dynamics. Shifts in its energy industry, political dynamics, and public perceptions of climate change created a space in which Tulsa could become the 500th US city.[124] Each city's spaces of dependence are shaped by and help to shape its spaces of engagement because of their enmeshment in multiscalar relationships.

C. THE VALUE OF BOTTOM-UP NETWORKING

The combining of these two stories brings us to a more complete narrative, that of "bottom-up networking." This final account views the networks being created by and shaping the decisions of Portland and Tulsa as constituted through simultaneous scaling up and scaling down processes. It recognizes the multiple components of international lawmaking, but particularly emphasizes the on-the-ground, smaller-scale details as a critical part of a larger-scale conversation and vice versa.

A bottom-up networking narrative enriches the previous accounts in three main ways. First, it assists with defining the "bottom" as a socially-constituted

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119 For an exploration of the impact of asking the "where" question more deeply, see Reginald Oh, *Re-Mapping Equal Protection Jurisprudence: A Legal Geography of Race and Affirmative Action*, 53 Am U L Rev 1305 (2004). In an environmental context, J.B. Ruhl and James Salzman have recently provided an interesting empirical study of the demographics of wetland banking. See J.B. Ruhl and James Salzman, *The Effects of Wetland Mitigation on People*, 28 Natl Wetlands Newsletter 1, 9–14 (Mar–Apr 2006), available online at <http://www.law.fsu.edu/faculty/profiles/ruhl/2006-effectsofBankingNWNL.pdf> (visited Nov 17, 2007).

120 See Section II.A.

121 See Section II.B.

122 See Section III.A.

123 See Section II.A.

124 See Section II.B.

and ever-shifting terrain. Consider, for example, the question of where we should locate the mayors of Portland and Tulsa in our international lawmaking hierarchy. A formal account might put them at the bottom, as they have no power to create nation-state consent. But as mayors around the world increasingly communicate[125] and their personal identities become more international,[126] have they become part of the elite decisionmakers? How do we tell that story differently, if at all, based on which city they represent and that city's geography? An unpacking of the spaces of dependence and engagement in the local allows for a constituting and reconstituting of the bottom-up story.

Second, a focus on the bottom helps to ensure that the network story is told in a more complete fashion. The predominant international lawmaking story grounded in the consent of sovereign and equal nation-states[127]—even if few international law scholars or practitioners subscribe to that narrative fully—shapes who and what belong at the center of our lens. To understand fully the spaces of dependence and engagement in these two case examples, we need to sift through the details and to grasp their scalar complexity. Bottom-up networking avoids the simple characterization of the mayors involved as purely local because it allows for the richness of their socio-legal identity.

Finally, and perhaps most importantly, the combining of these narratives allows for better policy on climate change because it locates municipal efforts more accurately. Greenhouse gas emissions and their impacts are infused with inequality and the specific dynamics of place.[128] To get at this problem, we not only need efforts at every scale, but we also have to be able to put them together. By focusing on the "bottom" and its embeddedness in networks simultaneously, a clearer picture of these cities as climate regulators emerges.

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125 Portland's initial efforts on climate change resulted from just such a dialogue. See Foyston, *Warming World*, Oregonian E1 (cited in note 25).

126 Mayor Kathy Taylor, with her international business experience, is an example of such a mayor. See notes 76–78 and accompanying text.

127 See Ian Brownlie, *Principles of Public International Law* 287–88 (Oxford 6th ed 2003); Michael J. Kelly, *Pulling at the Threads of Westphalia: "Involuntary Sovereignty Waiver"—Revolutionary International Legal Theory or Return to Rule by the Great Powers?*, 10 UCLA J Intl L & Foreign Aff 361 (2005).

128 See Osofsky, 8 Chi J Intl L at 585, 617 (cited in note 101); Maxine Burkett, *Just Solutions to Climate Change: A Climate Justice Proposal for a Domestic Clean Development Mechanism*, 56 Buffalo L Rev __ (forthcoming Spring 2008) (draft manuscript on file with Hari M. Osofsky); Hari M. Osofsky, *Contextualizing Climate Injustice* (draft manuscript on file with Hari M. Osofsky); Maxine Burkett, *A 'Tragic' Distraction: The Climate Justice Critique of Law and Economics* (draft manuscript on file with Hari M. Osofsky).

IV. CONCLUDING REFLECTIONS: CITIES AS MULTISCALAR ACTORS

Gerald Frug and David Barron conclude their article, *International Local Government Law*, by noting that, "There is a role for the international local government law in shaping the future of urban life. But that role cannot be defined piecemeal or without an appreciation of its impact on the local government law that now affects every city in the world."[129] We contend that bottom-up networking, through its holistic lens, has the potential to provide further illumination of that role.

This Article ultimately aims to open up a set of research questions. By beginning to unravel the significance of efforts by Portland and Tulsa on climate change, it asks how the "where" matters in greenhouse regulation.[130] In the process, the Article begins to explore how bottom-up and geographic analysis might enhance accounts of cities in a globalizing world.

We plan in future work on bottom-up networking to continue to develop these ideas further both conceptually and descriptively. As a conceptual matter, that effort will situate bottom-up networking more fully amid international legal theory, urban theory, and critical geography, with a particular emphasis on the ways in which legal pluralism might help to tie these streams together.[131] Descriptively, we intend to move beyond the specific context of cities and climate change to engage the broader policy implications of bottom-up networking.

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129 Frug and Barron, 38 Urban Lawyer at 62 (cited in note 11).

130 See note 119.

131 For examples of legal pluralist analysis of international and transnational issues, see Mark A. Drumbl, *Atrocity, Punishment, and International Law* 181–205 (Cambridge 2007); Harold D. Lasswell and Myres S. McDougal, *Jurisprudence for a Free Society: Studies in Law, Science, and Policy* (Martinus Nijhoff 1992); Elena Baylis, *Parallel Courts in Post-Conflict Kosovo*, 32 Yale J Intl L 1 (2007); Paul Schiff Berman, *Global Legal Pluralism*, 80 S Cal Rev 1155 (2007); William W. Burke-White, *International Legal Pluralism*, 25 Mich J Intl L 963 (2004); Janet Koven Levit, *Bottom-up Lawmaking Through a Pluralist Lens: The ICC Banking Commission and the Transnational Regulation of Letters of Credit*, 54 Emory L J __ (forthcoming Winter 2008); Myres S. McDougal and Harold D. Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order*, 53 Am J Intl L 1 (1959); Myres S. McDougal, Harold D. Lasswell, and W. Michael Reisman, *The World Constitutive Process of Authoritative Decision*, 19 J Legal Educ 253 (1967); Myres S. McDougal, Harold D. Lasswell and W. Michael Reisman, *Theories About International Law: Prologue to a Configurative Jurisprudence*, 8 Va J Intl L 188 (1968); Sally Engle Merry, *International Law and Sociolegal Scholarship: Towards a Spatial Global Legal Pluralism*, 41 Studies in L Pol & Socy __ (2007); Ralf Michaels, *The Re-State-Ment of Non-State Law: The State, Choice of Law, and the Challenge from Global Legal Pluralism*, 51 Wayne L Rev 1209 (2005); Osofsky, 26 Stanford Envir L J & 43 Stanford J Intl L at 181 (cited in note 11); Balakrishnan Rajagopal, *The Role of Law in Counter-hegemonic Globalization and Global Legal Pluralism: Lessons from the Narmada Valley Struggle in India*, 18 Leiden J Intl L 345 (2005).

The critical, multiscalar problems facing the world today make such analyses particularly important. As our formally-scaled legal systems grapple with the overwhelming complexity of issues like climate regulation, the details may lend much-needed policymaking flexibility. If each level of governance is actually multiscalar and the overlapping hierarchies are constructed through a blend of formal and informal relationships, perhaps international lawmaking can move beyond law's rigidity.