



PLP RESEARCH PAPER

Literature Review on the Use and Impact of Litigation

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The Public Law Project (PLP) is an independent national legal charity. Our mission is to improve public decision making and facilitate access to justice. We work through a combination of research and policy work, training and conferences, and providing second-tier support and legal casework including public interest litigation.

Our strategic objectives are to:

- Uphold the Rule of Law
- Ensure fair systems
- Improve access to justice

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INTRODUCTION

Strategic legal action is a promising, potential tool for driving change in the systems that perpetuate severe and multiple disadvantage. Yet it can also be costly, risky, time-consuming and, under certain circumstances, counterproductive. Lankelly Chase and Public Law Project (PLP) want to learn more about whether use of the law can effectively address the root causes of systemic disadvantage rather than simply solving one-off issues that are symptoms of deeper problems.

Use of the law can be daunting and there are a number of ways in which it has become more difficult in recent years. Changes to the rules on legal aid, the tightening of the regulations on the use of judicial reviews by voluntary sector organisations and the introduction of court fees can make it difficult to even consider a legal solution. In combination with limits being placed on the ability of the voluntary sector to engage in campaigning and advocacy work, use of the law can seem out of reach to many organisations.

However, in other ways there has never been a better time to consider using legal approaches to address disadvantage. Austerity politics and a shrinking state have brought many injustices faced by those who are marginalized to light. This leaves room for the courts to address important questions in the area of human rights and administrative fairness. Many judges appreciate the expert advice and research that voluntary sector organisations can offer to the judicial process. The UK Supreme Court has explicitly acknowledged that third-party interventions in legal cases can make an important contribution to the interpretation of law and promote an understanding of the needs of vulnerable individuals and communities. Internationally, a growing number of human rights legal instruments and mechanisms means that groups have a wider array of possible venues in which to pursue complaints than ever before. Many of these are relatively new and untested.

In this paper we review the existing academic literature on the use and impacts of litigation and legal challenges. This literature review constitutes a first step in addressing some of the questions underpinning this project. The aim here is to survey existing scholarship on use of the law to promote social change. This can serve as a basis for exploring the literature further and will help us draw out some of the lessons that may be useful for shaping PLP and Lankelly Chase's thinking going forward.

Research Questions

The overarching question that PLP and Lankelly Chase wish to answer is:

How best can legal advice and assistance be deployed to achieve or facilitate systemic (rather than symptomatic) change in relation to people facing severe and multiple disadvantage?

In order to address this question in a comprehensive and convincing way we have identified three lines of enquiry central to this project.

Conceptual questions

- **Definitions:** What does “systems change” mean in the context of using the law? What can theoretically be achieved on a systemic level through use of the law and what cannot?

- **Theory of change:** What is the theory of change underpinning the idea of achieving systems change through use of the law? What are the various causal pathways through which systems change can occur through the deployment of legal approaches?

Empirical questions

- **Use of litigation:** How common are various uses of law amongst organisations that work with people facing severe and multiple disadvantage? When they deploy law is it mainly addressing symptomatic or systemic change? Do these organisations engage with law proactively or do they tend to fall into the “law hesitant” or even “law hostile” category? What are the barriers in place that prevent these organisations from using litigation or deploying public law principles?
- **Impact of litigation:** How effective are legal tools in helping to facilitate or achieve systemic change across different issue areas? Are some types of issues (e.g. discrimination) more effectively addressed than others (e.g. entitlement to social care benefits) through use of the law? Are some targets of litigation (e.g. local authorities, some government departments) more amenable to systemic change through litigation than others (central government, arms-length bodies)? If so, what characterises and differentiates these various issues and targets?

Learning and reflection questions

- **Assessing impact:** How do we measure success/failure in assessing the use of the law? How do we define “impact” in thinking about using legal approaches to facilitate systems change? How can we identify the contribution that the use of legal tactics might make in a broader campaign that may also include lobbying, communications work and campaigning?
- **Data-gathering and analysis:** What types of data on law, policy, practices and societal discourses should we collect in order to accurately assess systems change through use of the law? Over what time-frame? How much of this is available publicly and how much would need to be gathered by PLP or partner organisations?
- **Learning:** How should we select case studies when trying to learn more generally about the impact of use of the law for systems change? How can we design a learning process that will ensure that unintended negative consequences (e.g. regression in rights and benefit entitlements, negative press coverage, detrimental impact on potential litigants) are identified and avoided as soon as possible? How can the learning process facilitate ongoing reflection?
- **Ethical approach:** How can those with lived experience be brought into efforts to deploy the law? What is the impact of participation in legal action on people facing severe and multiple disadvantage? Is it empowering or disempowering? How can the deployment of legal tools be best designed to minimize any potential harms? How can we promote “voice accountability” in legal efforts to promote systems change?

While this literature review does not (and cannot) speak directly to all of the research questions it offers an important opportunity to reflect on the understanding we currently have about use of the law as a tool and it highlights gaps in our knowledge.

QUESTIONS TO PROMOTE REFLECTION

*'An interest in the practical should not preclude, on the contrary it should invite, a lively interest in theory. For practices unavoidably blossom into theories, and most theories induce practices, good or bad.'*¹

We include a number of questions here to guide reflection and help you link the findings of the academic literature with practical experience:

- How do different scholars conceptualize “social change”? How do the definitions in the literature relate to our understandings of “systems change”?
- What do we understand “systems change” to mean? At what level? What layers of complexity / boundaries exist?
- How do you think different groups / partners might conceptualize these issues? Where might the points of divergence be?
- What examples of (i) effective (ii) ineffective litigation strategies do we have based on experience?
- What empirical findings from existing research can you relate to your own experience? What findings are at odds with your experience?
- Much of this literature is based on studies of the United States. What issues are going to be similar/different in the UK and why?
- What socio-economic / political contextual issues are important to you at this stage? In what ways do you anticipate these changing?

¹ Frank, J. (1947). “A Plea for Lawyer Schools.” *Yale Law Journal*/56: 1303.

THE LAW AND SOCIAL CHANGE

Questions about the role and impact of litigation, legal actors and legal institutions in movements for social change have long been a key area of scholarly enquiry for political scientists and socio-legal scholars. A key area of interest on the role of 'things legal' in political systems and society concerns "legal mobilization". The term embodies contested academic terrain as there is no sharply defined or universally accepted meaning. One of the earliest and most cited formulations put forth in the political science literature is that 'the law is... mobilized when a desire or want is translated into a demand as an assertion of rights'.² In its narrowest applications, the term 'legal mobilization' refers to high-profile litigation efforts for (or, arguably, against) social change. More broadly, it has been used to describe any type of process by which individual or collective actors invoke legal norms, discourse or symbols to influence policy or behaviour.

Until relatively recently, the literature on the impact of litigation was largely focused on the United States and on implicit (or explicit) assumptions of national judicial exceptionalism: the belief that the American legal and regulatory system and style and heightened levels of rights consciousness are unparalleled elsewhere in the world. More recent comparative work and research on transnational legal mobilization has prodded this assumption and shown that comparison is not only possible but also useful in trying to understand which elements of American legal mobilization are generalizable to other contexts and which are not.

Some assume that the use of law by voluntary sector organisations is a relatively novel phenomenon among UK-based groups interested in addressing disadvantage and discrimination. However, Carol Harlow and Richard Rawlings in their seminal book, *Pressure through Law*, challenge the idea that turning to the courts or use of the law by voluntary sector organisations is a uniquely American phenomenon or a particularly new one.³ Harlow and Rawlings define pressure through law as "...use of the law and legal techniques as an instrument for obtaining wider collective objectives."⁴ They argue that legal cases taken by groups advocating for social change can be identified in Britain as early as 1749 when abolitionists used the court to test conflicting views of slavery in common law.

Over the last decade a burgeoning academic and policy literature on use of the law has documented how some voluntary sector organisations rely on a wide range of legal tactics in the UK.⁵ This includes: providing expert legal advice; developing and coordinating legal research and strategy; providing financing or aid in finding sources of financing for use of the law; sponsoring or coordinating non-legal research that may support particular legal claims;

² Zemans, Frances K. (1983) "Legal Mobilization: The Neglected Role of the Law in the Political System." *American Political Science Review* 77(3): 690–703.

³ Harlow, C., & Rawlings, R. (1992). *Pressure through law*. London: Routledge.

⁴ Ibid, p. 1.

⁵ Bondy, V., Platt, L., & Sunkin, M. (2015) *The Value and Effects of Judicial Review: The Nature of Claims, their Outcomes and Consequences*. London: Public Law Project; Hilson, C. (2002). "New social movements: the role of legal opportunity." *Journal of European Public Policy*, 9(2), 238-255; Public Law Project (2008) *Third Party Interventions: A Practical Guide*. London: Public Law Project; Public Law Project (2014) *Guide to Strategic Litigation*. London: Public Law Project.

providing publicity about legal issues and developments; and developing or participating in legal networks and facilitating the exchange of ideas.⁶

The following discussion addresses two key questions related to the use and impact of legal mobilization:

1. Under what conditions are groups more likely to turn to the courts to try to achieve social reform?
2. What difference does it make when they do mobilize the law?

⁶ Epp, C. R. (1998). *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press; King, J. (2012) *Judging Social Rights*. Cambridge: Cambridge University Press.

EXPLAINING USE OF THE LAW

Much existing research on the mobilization of law by both individuals and groups seeks to explain why groups may or may not turn to the courts. It is important to understand this because the conditions that explain why a group may or may not turn to court may be related to the conditions that ultimately lead to the success or failure of the use of strategic legal action. The literature has identified a number of different theoretical explanations for the decision to use or eschew legal tools. Although the discussion here separates literature according to the type of theoretical explanation put forward, this categorization is not a strict one. Most research now draws on some or all of the explanations below.⁷

Political Disadvantage Theory

Political scientists have often traced the turn to the courts by groups 'disadvantaged' in traditional political arenas. Early studies, relying mainly on case studies of the American civil rights movement, argued that groups lacking influence over members of the executive, legislative or regulatory bodies are more likely to turn to the courts to pursue their policy goals. Early examples of this research include the work of Vose whose study of interest group litigation in housing discrimination cases in the segregated South throughout the 1950s found that groups lacking access to the executive and legislative branches of government will consequently seek redress through the courts.⁸ Until the 1980s, when its generalizability began to be tested, the 'political disadvantage' thesis underpinned a scholarly consensus about what motivates collective actors to turn to the courts. While the 'political disadvantage' thesis was successful in explaining the high profile, yet very specific case of the National Association for the Advancement of Colored People's (NAACP's) adoption of a legal strategy, it has since been shown to be less convincing when applied to cases of other collective actors' use of the courts. Counter examples include Epstein's study of the successful use of litigation strategies by 'politically advantaged' conservative groups in the 1980s and the body of research on conservative legal advocacy organizations.⁹ Recent research however has continued to identify 'political strength or weakness' as a factor conditioning the turn to the courts.¹⁰

Resource Mobilization Explanations

To complement the 'political disadvantage' thesis, which largely focuses on the ability of actors to access and successfully influence political decision-makers, another group of scholars chose to focus on the resources actors (both individual and collective) are able to mobilize to explain the decision to litigate. Among these scholars the term "resources" is used broadly and can include the money and time to support litigation efforts. Now, virtually all studies of legal mobilization call attention to the fact that the ability to mobilize the law is highly variable and contingent upon available resources. In 1974, a seminal article by Marc

⁷ See the recent review article Conant, L (et al.) Forthcoming. "Mobilizing European Law" *Journal of European Public Policy*.

⁸ Vose, C. (1959) *Caucasians Only*. Berkeley: University of California Press.

⁹ Epstein, L. (1985) *Conservatives in Court*. Knoxville: University of Tennessee Press; Southworth, A (2009) *Lawyers of the Right: Professionalizing the Conservative Coalition*. Chicago: Chicago University Press.

¹⁰ Bouwen, Pieter, and M. McCown. "Lobbying versus litigation: political and legal strategies of interest representation in the European Union." *Journal of European Public Policy* 14.3 (2007): 422–433.

Galanter considered why the 'haves' in society come out ahead in litigation efforts.¹¹ Galanter argues that well-resourced organizational litigants are more likely to take a long-term view of litigation and become 'repeat players' in the courts. In his seminal comparative work, Charles Epp takes up many of these themes in arguing that the effects of enumerated rights are not as direct as envisioned because they depend on resources, which he refers to as a 'support structure', for legal mobilization.¹²

Legal Opportunity Structures (LOS)

Procedural rules shaping access to courts for both individual and collective actors have long been identified as important factors in explaining variation in legal mobilization activity. In early political science research, the standing rules governing who is able to sue and under what circumstances was the focus. Scholars have recently begun to develop legal opportunity structure (LOS) approaches which explicitly focus on variables both conditioning access to the judiciary and which account for the role of judges and the judicial system in the policy output process. LOS scholars have noted, with near unanimity, that the extent of access significantly shapes the emergence and progress of legal action.

Framing and Translation Approaches

Two closely-related emerging theoretical concepts used to account for variation in legal mobilization activity are "framing" and "translation". Framing analysis has generally been used by scholars to identify and deconstruct the attribution of meaning which groups and individuals give to (legal) discourses, activities, strategies and identities. For example, Lisa Vanhala examines the changes in framing of disability over time away from a medical or social welfare-related identity to a rights-related one and shows how this shift helps to explain which disability groups are more likely to turn to the courts in the UK and Canada.¹³ Anna-Maria Marshall makes a similar argument on the individual level in her research on the types of frames women use to understand their experiences of sexual harassment.¹⁴

A parallel body of work explores legal translation – the process through which reformers transform their policy goals into plausible legal claims.¹⁵ Heather Schoenfeld uses the concept of "translation" to show how the decisions prison-reform litigators made about the type of legal argument they would put to the court unintentionally contributed to policy feedback effects that led to a rise (as opposed to a reduction) in mass incarceration.¹⁶ Much of the research on framing and translation overlaps with work on legal consciousness which

¹¹ Galanter, M. (1974) "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," *Law & Society Review* 9(1): 95–160.

¹² Epp, C.R. (1998) *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press.

¹³ Vanhala L. (2011). *Making Rights a Reality? Disability Rights Activists and Legal Mobilization*. New York: Cambridge University Press.

¹⁴ Marshall, A. (2003). "Injustice frames, legality, and the everyday construction of sexual harassment." *Law & Social Inquiry*, 28(3), 659–689.

¹⁵ Paris, M. (2010) *Framing Equal Opportunity: Law and the Politics of School Finance Reform*. Stanford, CA: Stanford University Press.

¹⁶ Schoenfeld, H. (2010) "Mass Incarceration and the Paradox of Prison Conditions Litigation." *Law & Society Review* 44(4): 731–768.

explores the two-way process between how individuals give form and meaning to the law and, in turn, how law shapes not just behaviour but cognition, values, and identities as well.¹⁷

BARRIERS TO USING THE LAW

From this literature it is possible to identify a number of different barriers that organisations face in using strategic legal action.¹⁸ These include:

1. **Levels of legal knowledge:** This refers to awareness of the law generally as well as knowledge about specific rights and obligations contained within the law. Among organisations there may be a lack of knowledge that an issue could be addressed through use of the law or a human rights-based approach or a lack of confidence about doing so.¹⁹
2. **Legal basis:** In order to use law there needs to exist relevant legislation or other instruments which groups can act upon. Organisations and individuals making claims must articulate them so that they fall within existing “legal stock”.²⁰ If there is no legal basis at the domestic or international level then use of the law becomes difficult.
3. **Financial resources:** The cost of using the law will vary enormously depending on the types of activities pursued. However, it is well documented that pursuing a legal challenge can be extremely costly. Marc Galanter argues that well-resourced organizational litigants are more likely to take a long-term view of litigation and become ‘repeat players’ in the courts and are also more likely to come out ahead in court proceedings than “one-shot” players.²¹
4. **Legal resources:** Access to specialist legal advice and to lawyers is sometimes a necessity to deploying the law.²² This will vary depending on the type of legal activity being pursued.
5. **Access to justice:** The degree to which organisations have access to justice has been shown to significantly shape the emergence and progress of legal action. This concerns the existence of an accessible and well-functioning justice system as well as the

¹⁷ Genn, H. (1999) *Paths to Justice: What people do and think about going to law*. Oxford: Hart Publishing; Ewick, P and S. Silbey (1998) *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press; Sarat, A and T Kearns, eds.(1993) *Law in Everyday Life*. Ann Arbor: University of Michigan Press.

¹⁸ This analysis draws on Vanhala, L. (2016) “Framework for better use of the law by voluntary sector organisations”. *Baring Foundation Working Paper Series*. London: Baring Foundation.

¹⁹ Marshall, A. (2003). “Injustice frames, legality, and the everyday construction of sexual harassment.” *Law & Social Inquiry*, 28(3), 659–689; Paris, M. (2010). *Framing Equal Opportunity: Law and the Politics of School Finance Reform*. Stanford: Stanford University Press; Pedriana, N. (2006). “From Protective to Equal Treatment: Legal Framing Processes and Transformation of the Women's Movement in the 1960s.” *American Journal of Sociology*, 111(6), 1718–1761; Ewick, P and Silbey, S.S. (1998) *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press, 1998.

²⁰ Andersen, E. A. (2005). *Out of the Closets and into the Courts: Legal Opportunity Structure and Gay Rights Litigation*. University of Michigan Press

²¹ Galanter, M. (1974). “Why the ‘haves’ come out ahead: speculations on the limits of legal change.” *Law and Society Review*, 9(1), 95–160.

²² Epp, C. R. (1998). *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press.

regulations on what may be litigated, who may litigate and where such litigation may occur. All of these factors shape the likelihood of an organisation turning to the law.²³

6. **Organisational culture:** Some organisations may be ideologically reluctant or opposed to using the law or rely on particular legal tactics because of identity politics within the organisation. A group's constituency and/or trustees must understand themselves (or beneficiaries) as rights-holders in order to consider taking a legal or human rights approach to an issue.²⁴
7. **Potential unintended consequences:** There are a number of potential risks to using legal tactics. For example, there are potential reputational costs if a group takes and loses high-profile strategic cases that are unpopular among the membership, stakeholders or the wider public. Legal victories can also result in political or public backlash under some circumstances (discussed further below).²⁵
8. **Division of labour:** In some sectors there are one or two key organisations that are effective and inclusive in their strategic use of the law. In these sectors other groups may not feel the need or desire to deploy legal tactics because that terrain is already covered.²⁶
9. **Fear of jeopardising relationships:** Some fear that using law – particularly litigation – might harm institutional relationships and jeopardise access to power-holders. Research has shown that this is not necessarily the case and should be assessed on a case-by-case basis.²⁷

²³ Andersen, E. A. (2005). *Out of the Closets and into the Courts: Legal Opportunity Structure and Gay Rights Litigation*. University of Michigan Press; Rhode, D. (2004). *Access to Justice*. New York: Oxford University Press.

²⁴ Vanhala, L. (2009) "Anti-discrimination Policy Actors and their use of Litigation Strategies: The Influence of Identity Politics." *Journal of European Public Policy* 16(5), 738-754.

²⁵ Keck, T. (2009) "Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights" *Law & Society Review* 43(1), 158-186; Vanhala, L. (2011) "Social Movements Lashing Back: Law, Social Change and Socio-legal Backlash in Canada." *Studies in Law, Politics and Society* 54, 113-140.

²⁶ Vanhala, L. (2011) *Making Rights a Reality? Disability Rights Activists and Legal Mobilization*. New York: Cambridge University Press.

²⁷ Bouwen, P., & McCown, M. (2007). "Lobbying versus litigation: political and legal strategies of interest representation in the European Union." *Journal of European Public Policy*, 14(3), 422-433. Morag-Levine, N. (2003). "Partners No More: Relational Transformation and the Turn to Litigation in Two Conservationist Organizations." *Law & Society Review*, 37(2), 457-509; Vanhala, L. (2016) "Legal Mobilization under Neo-corporatism: Environmental NGOs before the Conseil d'Etat in France." *Journal of Law and Courts* 4(1): pp 103-130. Zackin, E. (2008). "Popular Constitutionalism's Hard When You're Not Very Popular: Why the ACLU Turned to the Courts." *Law & Society Review*, 42(2), 367-396.

ASSESSING THE IMPACT OF USE OF THE LAW

The literature on legal mobilization has also explored the conditions under which legal mobilization is likely to be successful, with many definitions of “success” deployed. Assessments of whether litigation is likely to be successful in prompting social reform has depended on:

- the outcome of interest: e.g. victory in a legal case, successful policy change, progressive change in administrative practices, positive change on-the-ground and change in social movement dynamics);
- the breadth of stakeholders included in the analysis: e.g. cause lawyers, activists, street-level bureaucrats).
- the time frame for analysis

Early Scholarship

From the early 1970s a generation of scholars interested in the gap between “law-on-the-books” and “law-on-the-ground” sought to assess whether “impact litigation” (as it was then generally referred to) was making a meaningful difference to disadvantaged groups, with a disproportionate focus on the plight of African-Americans in their quest for civil rights and desegregation. This section explores some of the key themes in this scholarship which has served as an important foundation for contemporary research which is discussed below.

Stuart Scheingold’s seminal book *The Politics of Rights: Lawyers, Public Policy and Political Change* set out to understand whether lawyers and litigation could play a role in altering the course of public policy in favour of relatively disadvantaged groups. Scheingold described and criticized a broad ideological view of law, politics and change that he labelled “the myth of rights”. He described the myth of rights and its importance as follows:

Legal frames of reference tunnel the vision of both activists and analysts leading to an oversimplified approach to a complex social process – an approach that grossly exaggerates the role that lawyers and litigation can play in a strategy for change. The assumption is that litigation can evoke a declaration of rights from courts; that it can further, be used to assure the realization of these rights; and, finally, that realization is tantamount to meaningful change.²⁸

Scheingold therefore expressed “serious doubts about the capabilities of legal and constitutional processes for neutralizing power relationships.” The “authoritative declaration of rights” was “usually only the beginning of a political process where power relationships loom rather large.”²⁹ In short, according to Scheingold, the idea that legal rights are directly empowering is misleading. However, he further argued, on a more optimistic note, that what was not available directly through rights was available indirectly: the belief in rights constitutes a resource that could be deployed politically so as to procure indirectly through the political process what he thought was unavailable through legal channels. He called this

²⁸ Scheingold, S. (2004) *The Politics of Rights: Lawyers, Public Policy and Political Change*. Ann Arbor: University of Michigan Press, p. 5.

²⁹ Ibid, p. 84.

the “politics of rights”. Scheingold argued that if activists and lawyers become more aware of the limitations of legal strategies in isolation then use of the law could be a vital, if ancillary, weapon in struggles for social change. The research “underscore[d] the crucial importance of thinking about legal tactics in combination with other modes of political action.”³⁰

It is worth noting that in developing his argument Scheingold was drawing predominantly on the example of U.S. civil rights litigation and the goal of NAACP lawyers to desegregate schools, to have equal access to justice and to unfettered voting rights. He noted that constitutional entitlements affirmed by the Supreme Court were in themselves largely ineffectual and that desegregation proceeded only after the civil rights movement gathered momentum. The distinctive message of *The Politics of Rights* is that the litigation contributed indirectly to the emergence and success of the civil rights movement. On the one hand, the judicial validations of civil rights claims generated hopes that fed the organizing efforts of African Americans and their supporters. On the other hand, the sweeping backlash and extra-legal resistance to the rights declared by the Supreme Court sparked the support of northern liberals and some elites.³¹ Taken together, these *unintended* consequences of litigation helped to destabilize the political stalemate that had protected segregation.

Other research at the time came to more pessimistic conclusions about the potential of public interest law. Joel Handler’s assessment of social justice-minded litigation, *Social Movements and the Legal System: A Theory of Law Reform and Social Change*, concluded that litigation alone could not reform field-level practice in the consumer, environmental, civil rights, and welfare rights arenas due to the exercise of vast administrative discretion – what he called the “bureaucratic contingency”.³² Building on this Gerald Rosenberg’s widely debated and now classic book *The Hollow Hope: Can Courts Bring About Social Change?* offers an even more bleak assessment of the use of the law to achieve change. Rosenberg sets out to answer the following question: Can courts make a difference in terms of producing significant social reform and if so, under what conditions? The book surveys attempts to use the courts to produce significant social reform in civil rights, abortion, women’s rights, the environment, reapportionment, and criminal rights and draws on a wide range of data. Rosenberg concludes that

U.S. courts can almost never be effective producers of significant social reform. At best, they can second the social reform acts of the other branches of government. Problems that are unsolvable in the political context can rarely be solved by the courts.

Rosenberg argues that this is the case because courts are constrained in three ways:

1. The bounded nature of constitutional rights prevents courts from hearing or effectively acting on many significant social reform claims, and lessens the chances of popular mobilization.
2. The judiciary lacks the necessary independence from the other branches of government to produce significant social reform.

³⁰ Ibid, p. 85.

³¹ NeJaime, D (2011) “Convincing Elites, Controlling Elites” *Studies in Law, Politics and Society* 54: 175-211.

³² Handler, J (1978) *Social Movements and the Legal System: A Theory of Law Reform and Social Change*. New York: Academic Press.

3. Courts lack the tools to readily develop appropriate policies and implement decisions ordering significant social reform.

Rosenberg argues that even if these constraints are overcome, elites, inert bureaucracies and special interests may work to prevent change. So to achieve change these constraints must be overcome and certain conditions must be present:

1. **Positive incentives:** Rosenberg notes that courts may effectively produce significant social reform when other actors offer positive incentives to induce compliance. One of the most effective inducements is money. Where government provides money to those institutions or bureaucracies which implement court decisions, bureaucrats may be more willing to do what the court orders.
2. **Costs:** Courts may effectively produce significant social reform when other actors impose costs to induce compliance.
3. **Leveraging market forces:** Courts may effectively produce significant social reform when judicial decisions can be implemented by the market. If existing institutions do not have to change for change to occur, such change is more likely. If individuals or groups that are supportive of the decision are both free and able to create their own institutions to implement court decisions rather than rely on existing institutions to do it then change is more likely.
4. **Leverage for reform-minded administrators:** Courts may effectively produce significant social reform by providing leverage, or a shield, cover, or excuse for persons crucial to implementation who are willing to act.

To summarize, the use of public interest litigation to secure systemic change was thus challenged by critics from both the left and the right in this early scholarship. The critiques have varied, but have centred on four basic claims.

1. **Effectiveness:** the empirical research found that litigation itself will not lead to reform social institutions, except under very specific conditions.
2. **Legal co-optation:** the over-reliance on courts diverts effort from potentially more productive political strategies. Scholars argued that litigation can disempower the groups that lawyers are seeking to assist and that legal strategies can dissipate activism.
3. **Accountability:** The third line of critique revolves around issues of accountability and the inclusion of those affected by an issue in strategic decision-making.
4. **Backlash:** Much of this scholarship found that courthouse victories by public interest lawyers fuelled a conservative reaction seeking to: limit federal authority over civil rights; cut back on economic and environmental regulation and social welfare; and foreclose litigation opportunities by imposing procedural and financial constraints. At the same time there was a growing conservative advocacy movement deploying legal strategies and an increasingly conservative federal judiciary being put into place.

Much of the literature during this early phase found that judicial decrees without a political base are vulnerable to chronic non-compliance, public backlash, statutory reversal or judicial retrenchment. In many contexts, courts lack the necessary expertise, legitimacy, and enforcement resources to secure lasting change. And in other contexts, public interest organizations lack the resources to represent more than a small fraction of deserving claims. “Bailing with a thimble” is how many leaders define the challenge. The conclusion many scholars reached in this first wave of research is that public interest litigation results in “too much law and too little justice”.³³

Contemporary Research

A more recent wave of research shows how these critiques have generally failed to adequately acknowledge the contributions and the complex ways in which legal proceedings can support political mobilization and, at times, result in systemic change. Charles Epp, in his chapter *Law as an Instrument of Social Reform*, suggests looking beyond “mechanistic conceptions of judicial impact” which tend to highlight courts’ limited powers of enforcement and administrative agencies’ capacities for evasion and resistance.³⁴ Epp notes that other capacities of courts, particularly institutional legitimacy in creating authoritative legal norms and the ability to structure litigation incentives, lends to the courts some power to effect longer-term policy changes. He notes that more recent social science research finds that court-structured law may have a broader social-reform impact than once thought.

This new wave of scholarship starts from the premise that litigation has limits, but goes on to question how it can best advance social justice. Its key claims are:

1. Litigation is a political tool, that when used strategically, can stimulate meaningful change and complement other political efforts.
2. Whether litigation “works” or not must be judged in relation to available alternatives.
3. In order to evaluate the social change potential of litigation in a given circumstance, it is necessary to examine the conditions – political, economic, cultural, and organizational – within which a lawsuit operates.

This literature also moves away from the courts and judicial decisions as the focus of analysis to explore the participation and impact of a range of other actors. These include: activists, bureaucrats and cause lawyers.

Activists

One of the most cited scholars taking a social science approach in this body of work, Michal McCann, argues for the need to move beyond strictly positivist causal analyses of the relationship between court decisions and social outcomes. McCann promotes research that traces the complex process by which litigation shapes social meaning and informs individual

³³ Cummings, S and Rhode, D. (2009) “Public Interest Litigation: Insights from Theory and Practice” *Fordham Urban Law Journal* 36, p. 603.

³⁴ Epp, C.R. (2008) “Law as an Instrument of Social Reform” in *The Oxford Handbook of Law and Politics* edited by K. Whittington, R.D. Kelemen, and G.A. Caldeira. Oxford: Oxford University Press.

and collective action.³⁵ McCann, studying pay equity reform in the U.S., showed that pay equity activists used rights claims:

- to recruit and build local social movements;
- as leverage to compel concessions from employers; and
- as bargaining tools during implementation of employers' pay equity policies.

Significantly, he observed that ambiguous court decisions, and even hostile court decisions, served as potent resources for activists, who creatively reinterpreted those decisions in the service of their interests.

Together this research found that a lawsuit that receives widespread attention (whether successful in court or not) can:

- raise public consciousness
- put an issue on the political agenda
- stimulate political activity by revealing the vulnerability of structural arrangements that once seemed impervious to change
- enhance the threat of imposing litigation costs if decision makers fail to find political solutions.

Bureaucrats

In his path-breaking book on the impact of litigation, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*, Charles Epp notes that he deliberately chose a longer time perspective than previous research to study the impact of litigation in three areas: police use of force, workplace sexual harassment, and playground safety. He finds that in the past generation a common policy model of legalized accountability has grown and consolidated. It focuses on bringing bureaucratic practice into conformity with evolving legal norms. This model does this through:

- law-inspired administrative rules
- human resources and managerial training tailored to these rules
- systems of internal oversight aimed at assessing compliance with the rules and training.

Epp writes that:

Ultimately, law-inspired administrative reform has remade the professional norms and identities of the managerial professions, shifting them decisively from a celebration of insulated discretionary expertise to a celebration of fidelity to legal norms.

This grew out of an interaction between bottom-up pressure, in the form of activist demands as articulated through litigation, and top-down policy-making, in the form of professional administrators' managerial responses to these pressures. Epp notes in the conclusion that his work only goes so far to examine the administrative policies and positions rather than the

³⁵ McCann, M. (1994) *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.

practices on the ground which is where meaningful change will lie for those facing severe and multiple disadvantage.

One body of work that does examine practices on the ground examines the practices of “street-level bureaucrats” in assessing whether litigation can result in social reform. Michael Lipsky, a pioneering scholar in this area, has deemed those who operate at the front lines of public services “the ultimate policymakers”.³⁶ In general, the literature on street-level bureaucracy has tended to find that there are numerous barriers that stand in the way of effective front-line service delivery on the part of governmental bodies. These include:

- organizational culture;
- organizational settings;
- limited resources and excessive demand;
- the emotional demands of direct client contact.

A distinctive feature of socio-legal research on frontline service delivery has been a concern with question such as whether the activities of “street-level bureaucrats” are *legally* compliant; whether frontline workers follow the guidance of courts and what explains variation in compliance. Simon Halliday in his book, *Judicial Review and Compliance with Administrative Law*, has set out a framework to help explain the gap between law-in-the-books and law-in-action within street-level bureaucracies.³⁷ He has argued that the extent of the gap is determined, in part at least, by the extent of street-level bureaucrats’ legal knowledge, legal competence, and legal conscientiousness. Street-level bureaucrats’ varying abilities to understand and work with legal materials and their varying attitudes and stances toward the importance of lawfulness is part of the broader context that affects the nature of law-in-action.

Halliday builds on this in a recent article with co-authors which analyses empirical data on front-line decision-making about one legal concept – *vulnerability* in UK homelessness law.³⁸ The research found “a small oasis” of consistent legal compliance across three UK case studies. They suggest that this unusual finding can be explained by the character of the particular legal provision in question. They argue that the vulnerability test within homelessness legislation and jurisprudence is:

1. Simpler than other aspects of the legislative scheme.
2. Less offensive to frontline officers.
3. More accommodating of the pressures within the decision-making environment that countervail against legal compliance (what Maurice Sunkin has called the “liveability of law”)³⁹

They conclude that when it comes to the implementation of public law, including its development in the courts, two factors must be taken into account: 1) the legal abilities and

³⁶ Lipsky, M (1980) *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*. New York: Russell Sage Foundation.

³⁷ Halliday, S. (2004) *Judicial Review and Compliance with Administrative Law*. Oxford: Hart.

³⁸ Hunter, C.M., Bretherton, J. Halliday, S. et S Johnson (2016) “Legal Compliance in Street-Level Bureaucracy : A Study of UK Housing Officers” *Journal of Law and Policy* 38(1): 81-95.

³⁹ Sunkin, M. (1989) “Judicial Review’s Liveability” *Legal Action* 10; Sunkin, M. (2004) “Conceptual Issues in Researching the Impact of Judicial Review on Government Bureaucracies.” In *Judicial Review and Bureaucratic Impact*, edited by Marc Hertogh and Simon Halliday. Cambridge: Cambridge University Press.

propensities of the bureaucrats and 2) the character of legal provisions demanding compliance.

Cause Lawyers

Research based on the U.S. experience has also focused on the important role played by the lawyers that work with civil society organisations. In the early 1970s Stuart Scheingold broke fresh ground with *The Politics of Rights* by challenging mainstream approaches that focused on judges and courts and instead exploring the role played by lawyers in influencing public policy processes. The literature on public interest or “cause” lawyering explores the ways in which lawyers negotiate professional versus political commitments, the relationships they have with client groups, social movements and the state and the ways in which legal mobilization is initiated, conducted and sustained.⁴⁰

Katie Ghose’s excellent and practical book, *Beyond the Courtroom: A Lawyer’s Guide to Campaigning* is one of the few examples of volume for UK lawyers whose advocacy “does not stop at the courtroom door.”⁴¹ It focuses on how lawyers can engage with the executive and Parliament as well as how to operate in the European policy-making arena and deal effectively with the media and work with campaigners. A particular strength of the book is the way it encourages lawyers who may be comfortable with taking test cases to think about how this relates to broader campaigns. Ghose identifies three core strengths that lawyers can bring to campaigning activity:

- Legal action or the threat of it up their sleeve which makes decision-makers sit up and listen;
- Valuable knowledge from the ‘sharp end’ (their clients) about the impact (intended or otherwise) of law and policy;
- Expertise about the legal system.

A 2007 special issue of the California Law Review helped prompt another shift in reflecting on the role of lawyers in promoting social justice. Jennifer Gordon, in her article, *The Lawyer is not the Protagonist: Community Campaigns, Law and Social Change*, documents a shift towards campaign-based lawyering where lawyers saw their challenge as:

- helping a group assess the local effects of political and economic changes taking place on municipal, national and global levels;
- strategizing about how best to intervene in that landscape

⁴⁰ Boukalas, C (2013) “Politics as Legal Action/Lawyers as Political Actors: Towards a Reconceptualisation of Cause Lawyering” *Social & Legal Studies* 22(3): 395–420; Marshall, A and D Hale (2014) “Cause Lawyering” *Annual Review of Law and Social Science* 10: 301–320; Hilbink, T (2004) “You Know the Type...: Categories of Cause Lawyering” *Law & Social Inquiry* 29(3): 657–698; Sarat, A. and Scheingold S, eds. (1998) *Cause Lawyering: Political Commitments and Professional Responsibilities*. New York: Oxford University Press; Sarat, A. and Scheingold S, eds. (2001) *Cause Lawyering and the State in a Global Era*. New York: Oxford University Press; Sarat, A. and Scheingold S, eds. (2006) *Cause Lawyers and Social Movements*. Stanford: Stanford University Press.

⁴¹ Ghose, K. (2005) *Beyond the Courtroom: A Lawyer’s Guide to Campaigning*. London: Legal Action Group, p. x.

- figuring out how legal tactics could bolster and protect the group's efforts to carry out the larger strategy.⁴²

The questions they asked included: what doors could law open? What stories could it tell? What time could it buy? What promises could it exact? What power could it build? Their core questions, according to Gordon, were not asking "what legal levers can I pull to fix this problem?" But instead "how can legal levers put the group in a position to achieve its goals?"

Gordon found that community campaign groups have sought to create both "hard law" (legally-enforceable obligations) and "soft law" (recommended standards). This included establishing standards from good corporate citizenship, procedures that mandate information-gathering and procedures to guarantee community participation in future decisions made by private actors. She notes that the prevalence of these soft law frameworks was largely the pragmatic outcome of the relative political weakness of these organizations and the communities they represent. They may be helpful in reshaping the playing field on which the campaign is carried out, but do not constitute scoring a goal in itself.

William Simon has proposed a model of lawyering that promotes flexibility, transparency, evaluation and inclusive participation in institutional decision-making processes. While he raises questions about the winner-take-all approach of traditional impact litigation strategies, he believes that litigation, when combined with inclusive political processes, can be put to pragmatic ends. Sabel and Simon found that when deployed strategically, lawsuits can destabilize entrenched institutional structures that have systematically failed to meet their obligations and remained immune to traditional forces of political correction.⁴³ They argue that in the U.S., public interest litigation has moved away from remedial intervention modelled on command-and-control bureaucracy toward a kind of intervention that they call "experimentalist". Instead of top-down, fixed-rule regimes, the experimentalist approach emphasizes ongoing stakeholder negotiation, continuously revised performance measures, and transparency. Their study finds this experimentalist approach in all of the principal areas of public law intervention in the U.S.: schools, mental health institutions, prisons, policy and public housing.

⁴² Gordon, J. (2007) "The Lawyer is Not the Protagonist: Community Campaigns, Law, and Social Change" *California L. Rev.* 95, p. 2133.

⁴³ Sabel, C and Simon W. (2004). "Destabilization Rights: How Public Law Litigation Succeeds" *Harvard Law Review* 117, p 1015.

CONCLUSION AND NEXT STEPS

So, how effective is litigation and a reliance on the courts for advancing an organization's goals? In short, it's a mixed picture. The early scholarship discussed above tends to suggest that law is biased toward the status quo and reinforces social hierarchies. To the extent that "outsiders" rely on law and rights-based strategies, a pessimistic picture emerges about the role of courts as venues for social change. According to this body of work litigation is a conservative strategy dominated by elites and it saps energy from more political and broad-based grassroots organizing.

More recent scholarship has focused on the more subtle, nuanced, and dynamic ways that law affects social movement processes and the longer term and wide ranging impacts. This line of scholarship has focused on how law structures the very terrain that activists navigate in their struggles to reconstitute social relations. In line with this perspective, the research agenda has been directed toward the indirect, or symbolic, effects of law and litigation, focusing on how activists have used litigation to leverage power from targeted groups, build organizational resources, and mobilize constituents. This line of research also questions the assumption that lawyers necessarily co-opt and channel movement strategies – demonstrating that legal strategies are often incorporated in conjunction with other political strategies.

Jennifer Gordon captures much of the nuance of contemporary research when she notes that lawyers working with campaign groups often now seek to measure the success of their work in relation to how much power the groups develop and how much closer it brings them to achieving their vision. In this view, the potential utility of litigation cannot be assessed on a general level. She writes:

[Litigation] can neither be condemned nor endorsed in the abstract and the forms of its deployment, its usefulness, and its pitfalls must always be worked out in relation to a particular organization or movement set in a particular context.

A central theme is that the effective use of litigation requires a strategic analysis of the forces that shape its outcome, including:

- Organizational capacity
- The likelihood of success on the merits
- The challenges of enforcement
- The possible political responses

Scott Cummings and Deborah Rhode find that "litigation is an imperfect but indispensable strategy of social change."⁴⁴ In their important article, *Public Interest Litigation: Insights from Theory and Practice*, they find that:

1. **Litigation is never sufficient:** it cannot effectively work in isolation from other mobilization efforts.
2. **Money matters:** how public interest law is financed affects the kinds of cases that can be pursued and their likely social impact. A deep understanding of

⁴⁴ Ibid.

financial constraints and opportunities in different practice contexts is therefore critical to effective reform.

3. **The importance of systematic evaluation:** Cummings and Rhode suggest that only through more reflective assessments of the impact of litigation can its full potential in pursuit of social justice be realized.

They also find that the challenges vary across substantive areas. For example,

- Environmental organizations have what seems to be the most favourable opportunity structure in terms of public support, access to funding and liberal standing rules. But they also confront problems of massive global dimensions and opponents with substantial resources and political leverage.
- Civil rights and women's rights groups bump up against cultural complacency – the perception that “we've solved that”.
- Children may seem more sympathetic than other groups but they have neither the votes nor money necessary for political leverage.
- Greater challenges arise with groups that Americans find easy to demonize such as prisoners, death-row defendants and undocumented immigrants.

For the next phase of this project we will draw on this work to begin to lay out some principles for assessing the effectiveness of use of the law.⁴⁵ Cummings and Rhode identify four key lessons for lawyers who seek social impact which will serve as the foundation for the methodology and reflective learning processes of this piece of work:

1. **Clear goals and measures of progress:** The importance of clarity in objectives and specific measures of performance. At a minimum, a strategic approach needs processes for:
 - Identifying objectives and establishing priorities among them;
 - Selecting projects that will best advance those objectives; and
 - Overseeing performance and evaluating how well objectives are being met.
2. **Developing appropriate measures of long-term impact:** An example comes from Gary Blasi's study of litigation against a Los Angeles slumlord.⁴⁶ In a series of lawsuits against the building owner, a neighbourhood legal aid office declared victory: it prevented evictions, obtained significant monetary judgements, and used the litigation to organize a tenants union. However, the litigation was unable to force structural changes in the way the landlord operated that would have prevented future code violations or in the broader market through an increase in the supply of habitable housing. Blasi questions whether a different strategy might have been a better use of limited resources. However, that question would never even have surfaced if the study tracked only short-term outcomes, not long-term results.

⁴⁵ Cummings and Rhode (2009) “Public Interest Litigation”. See also Rhode, D (2009) “Rethinking the Public in Lawyers' Public Service: Pro Bono, Strategic Philanthropy, and the Bottom Line” *Fordham L. Rev* 77, p. 1435; Blasi, G. (2009) “Framing Access to Justice: beyond Perceived Justice for Individuals”, *Loy. L.A. L. Rev.* 42, p. 913.

⁴⁶ Blasi, G (2009) “Framing Access to Justice: beyond Perceived Justice for Individuals”, *LOY. L.A. L. REV.* 42, p. 913.

3. **The value of collaboration:** Given the scale of problems they are typically addressing, public interest legal initiatives stand to benefit from extensive consultation and strategic alliances to help produce significant changes. This can help at all stages of the litigation process from pre-litigation research, through to preparing the litigation strategy, campaigns and communication work and the “legacy phase” of litigation including implementation and further lobbying and/or legal enforcement
4. **Accountability:** Cummings and Rhode argue that public interest organizations need structures for ensuring adequate feedback and learning. In commenting on the Los Angeles slumlord case, Blasi noted that too often legal aid and public interest lawyers go “for years feeling effective without ever actually examining the empirical facts to validate that feeling”. Organizations that want to maximize their social impact need the opportunity to assess their long-term impact and safe spaces to share their difficulties.

FURTHER READING

This includes a small selection of books and articles that may be of interest.

Epp, C. R. (1998). *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press.

A well-researched, authoritative study of the role of legal mobilization in the emergence of a jurisprudence of rights. Argues that the effects of enumerated rights are not as direct as envisioned because they depend on a "support structure" for legal mobilization. The cross-national comparative approach with case studies of the U.S., Canada, India and the UK breaks new ground.

Epp, C. R. (2009). *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*. Chicago: University of Chicago Press.

Focuses on three disparate policy areas – workplace sexual harassment, playground safety and police brutality in both the United States and the United Kingdom – Epp explains how activists and administrative professionals used legal liability, lawsuit-generated publicity, and innovative managerial ideas to pursue the implementation of new rights.

Epp, C. R. (2008). "Law as an instrument of social reform" in *The Oxford Handbook of Law and Politics*. Edited by Keith Whittington, R. Daniel Kelemen and Gregory A. Caldeira. Oxford: Oxford University Press.

A concise survey addressing the question of why groups seeking social reform resort to litigation and whether and how court-made law is an instrument of social reform.

Felstiner, W., Abel, R., & Sarat, A. (1980-1981). "The emergence and transformation of disputes - naming, blaming, and claiming..." *Law and Society Review*, 15(3), 631-655.

A classic socio-legal study focusing on the micro-politics of legal mobilization and the relationship between formal litigation and informal disputing processes.

Galanter, M. (1974). "Why the 'haves' come out ahead: speculations on the limits of legal change." *Law and Society Review*, 9(1), 95-160.

One of the most widely cited articles in the law and society literature. Theoretically influential development of the idea that differential resources of money, time and legal representation affect the capacity to mobilize the law. Suitable for undergraduates and a must-read for graduates.

Glendon, M.A. (1991) *Rights Talk: The Impoverishment of Political Discourse*. New York: The Free Press.

Draws on comparative law, political theory and sociology to construct a critique of American rights discourse. Argues that there is a tendency to translate every social conflict into a clash of rights thus undermining notions of responsibility and compromise. Sure to spark classroom debates.

Ghose, K. (2005) *Beyond the Courtroom: A Lawyer's Guide to Campaigning*. London: Legal Action Group

A seminal book for UK lawyers interested in linking their work with campaigning activity. Starts with a discussion about how lawyers are faced head on with the wider consequences

of existing law and policy and the many different ways in which problems can (and cannot) be addressed through use of the law.

Harlow, C., & Rawlings, R. (1992). *Pressure through law*. London: Routledge.

A predominantly descriptive account of British interest group activity in the courts that covers a range of historical and contemporary examples. The outlining of the types of institutional factors that shape legal mobilization activity is useful from a theoretical perspective but is now out-of-date.

Hertogh, M & Halliday, S. (2004). *Judicial Review and Bureaucratic Impact: International and Interdisciplinary Perspectives*. Cambridge: Cambridge University Press.

Asks the questions: How effective are the courts in controlling bureaucracies? What impact does judicial review have on the agencies which are targeted by its rulings? Includes fundamental conceptual and methodological issues and explore a number of empirical case studies.

Marshall, A. (2003). "Injustice frames, legality, and the everyday construction of sexual harassment." *Law & Social Inquiry*, 28(3), 659-689.

Combines two theoretical frameworks – *legal consciousness* and social movement theory – to analyze political disputes in the workplace.

McCann, M. (1994). *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.

A widely-cited and influential book. A study of more than two dozen campaigns for pay equality in the United States drawing on extensive interview and survey data. The interpretive, decentered framework challenges positivist political science. The emphasis on individual activists and their activities contrasted sharply with work that had until then largely focused on judicial outcomes and impact.

Rosenberg, G. N. (1991). *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University of Chicago.

Few books have generated as much subsequent research and debate. A top-down study assessing the judicial impact of social reform litigation in a number of policy areas that suggests that social change via the judiciary requires the cooperation of other actors. A clearly written and spirited treatment of the subject that has been widely cited by academics and practitioners.

Sarat, A., & Scheingold, S. (Eds.). (1998). *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford: Oxford University Press.

Collection of essays balancing theoretical overviews with descriptive case studies exploring the relationship between cause lawyers and the organized legal profession. Global in focus with articles covering Israel, Britain, Indonesia, Malaysia, Argentina, Brazil and Cuba. Criticized for the exclusion of any research on right-leaning cause lawyers.

Sarat, A., & Scheingold, S. (Eds.). (2001). *Cause Lawyering and the State in the Global Era*. Oxford: Oxford University Press.

Explores how cause lawyers respond to the constraints, opportunities, and imperatives associated with globalization and state transformation.

Sarat, A., & Scheingold, S. A. (Eds.). (2006). *Cause Lawyers and Social Movements*. Stanford CA: Stanford University Press.

An excellent collection of essays put together by the pre-eminent scholars in the field that convincingly re-situates the topic in the social movement literature. Explores the life-cycle of movements, the work that cause lawyers do and its impact on social movements and the roles cause lawyers play beyond the courtroom.

Scheingold, Stuart A. (1974) *The Politics of Rights: Lawyers, Public Policy, and Political Change*. New Haven, CT: Yale University Press.

Deconstructs the “myth of rights,” namely, the supposition that the realization of rights is tantamount to effective change. The second edition includes an incisive new preface by Scheingold reviewing the expansive body of work that was spawned by his original (1974) findings. The second edition was published in 2004.

Schoenfeld, H. (2010). "Mass Incarceration and the Paradox of Prison Conditions Litigation." *Law & Society Review* 44(4), 731–768.

A strategic narrative analysis that bridges work on framing and translation to explain how prison conditions litigation in the 1970s inadvertently contributed to a rise in mass incarceration in the U.S.

Vanhala, L. (2011). *Making Rights a Reality? Disability Rights Activists and Legal Mobilization*. New York: Cambridge University Press.

Draws on research on collective framing processes to explore the ideational shift in the disability rights movement and how this change contributed to an increased reliance on legal mobilization in Canada and the UK.

Zemans, F. K. (1983). “Legal Mobilization: The Neglected Role of the Law in the Political System.” *American Political Science Review*, 77(3), 690–703.

Introduced, articulated and developed the conceptual understanding of legal mobilization that has underpinned most subsequent research.

Relevant Academic Journals

Most research on legal mobilization is published in socio-legal journals which tend to be broadly interdisciplinary and publish work on the range of issues and questions on the relationship between law and society. Socio-legal journals that publish research of all types and using all methods include *Law & Society Review*, *Law & Social Inquiry* and *Journal of Law and Society*. *Social & Legal Studies* concentrates more on critical approaches to contemporary and historic issues. *Studies in Law, Politics and Society* (previously known under the titles *Research in Law and Sociology* and *Research in Law, Deviance and Social Control*) is published annually and is particularly interested in historical, comparative and ethnographic approaches. In contrast, launched in 2004, the *Journal of Legal Empirical Studies* is a relative newcomer and was established to fill a gap in the field of socio-legal studies. It aims to disseminate research based on empirical (largely quantitative) and experimental methods. Research on collective legal mobilization is also published in many of

the top political science journals although this tends to be more sporadic and is sometimes done in the form of special issues or continuing debates about theoretical developments. The *Journal of Law & Courts* and *Law & Policy* are journals devoted to the exploration of law and politics. The *Law and Politics Book Review* is an excellent resource holding an online archive of book reviews of relevant publications dating back to the early 1990s.



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