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LAW AND SOCIAL MOVEMENTS: Contemporary Perspectives

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■ **Abstract** Social movement scholars have long seemed little interested in law, and traditional legal scholars were little interested in social movement analysis by social scientists. However, recent years have seen growth of interest in the topic of law and social movements, with inquiry led by political scientists and law and society scholars. This review surveys that diverse literature, beginning with general theory regarding core concepts and then moving to a review of empirical studies organized around the multi-stage model derived from political process approaches and legal mobilization frameworks. The primary argument of the review is that law is contingent, and how it matters for social movements varies with the context and character of struggle. Most analysts agree that law generally works to support status quo conventions and hierarchical relationships, but sometimes law can be mobilized to challenge and even reconstitute the terms of institutional order.

INTRODUCTION

Rigorous study of law and social movements has been a surprisingly limited and marginal intellectual endeavor in the modern American academy.[1] Social science scholarship on social movements has documented many case studies in which legal claims, tactics, and actors figured or failed prominently, but these studies have rarely provided direct conceptual analysis about how law does or does not matter for the struggles at stake, and generally they have remained quite uninformed by sophisticated socio-legal analysis. In short, social movement scholars do not seem much interested in law. Traditional legal scholars in law schools, by contrast, have written at length about litigation campaigns, judicial actions, and normative aspirations for rights-based social justice connected to social movements. But most of this scholarship has remained court-centered, sticking close to official case law and actions of legal elites while remaining distant from grassroots movement activity. Most such study is neither empirically rigorous about identifying the key

[1]This review is a significantly revised and updated version of several essays that I have previously published in other volumes, including but not limited to McCann (1998, 2004).

elements of social movement organization, activity, and context nor theoretically informed by social movement theory.

Socio-legal scholars have drawn on social science traditions to provide manifold insights about both the ways that prevailing legal norms tend to legitimate social hierarchy and the complex manifestations of legal claims and tactics by groups aiming to challenge those hierarchies and injustices. Indeed, socio-legal scholars have contributed many types of studies—of judicial impact, interest group litigation, cause lawyering, the politics of rights, civil disputing, and everyday resistance, to name just a few—that are highly relevant to understanding the relationships of law and social movements. Again, however, most of this scholarship has granted at best passing notice to social movement theory.[2]

There are some signs that these tendencies have begun to change in the last decade, however, and that a productive dialogue is developing that connects previously separate modes of analysis regarding law and social movements. A lively debate developed in the mid-1990s between representatives of court-centered, top-down approaches to studying reform litigation and advocates of more legally decentered, movement-oriented studies of law. From initial debates spurred by several influential books (see Rosenberg 1991, 1992, 1996; McCann 1992, 1994, 1996, 2004) arose debates enlisting other scholars (Gottlieb & Schultz 1998) and many new studies of law, social movements, and judicial impact (Silverstein 1996, Canon & Johnson 1998, Polletta 2000, Marshall 2003, Pedriana 2004, Anderson 2005; M. Paris, unpublished manuscript). Whatever their differences, both camps adopted a generally sober view toward legal action as a resource for egalitarian social change and emphasized the study of contextual factors for understanding variable outcomes of litigation and other legal campaigns. A few years later a much cited volume of essays in the *University of Pennsylvania Law Review* (see especially Rubin 2001, Eskridge 2001, Siegel 2001) was dedicated to a separate analysis of law and social movements. Moreover, the most recent volume of the ongoing cause lawyering project by leading socio-legal scholars has focused specifically on the role of activist attorneys in social movements (Sarat & Scheingold 2006). Finally, scholars interested in social movement activity beyond the United States, in both national and transnational contexts, increasingly have focused on law and rights as important dimensions of struggles for justice.

Overall, these latter trends are welcome and signal promising lines of inquiry. However, there remain some problematic tendencies that limit even these recent scholarly efforts to connect law and social movements. For one thing, much of the new literature echoes old position-taking between those scholars who insist on complementary relationships between legal tactics and social movements and those who see mostly counterproductive tensions. This normative position-taking on the instrumental value of legal tactics is especially evident among law school scholars.

[2]Handler's (1978) classic drew heavily on resource mobilization models that were popular in the 1970s, and McCann (1986) integrated a mix of different theoretical elements into the study of law and social elements. But these are rare exceptions among scholarship prior to the 1990s.

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For example, Eskridge (2001) has written an influential set of articles aiming to correct the failure of social scientists who study social movements to appreciate law and legal actors. In making his case, he generalizes repeatedly that "law and legal actors are critical to the instigation and dynamics, as well as the goals" of identity politics by social movements (Eskridge 2001, pp. 421–22). By contrast, Brown-Nagin (2005) challenges such a view in a study of recent affirmative action cases, contending that "social movements and juridical law are fundamentally in tension. . . . Social movements are more likely to achieve their goals when they are free from the constraints imposed by law and lawyers—even the politically astute ones" (p. 1502). Such entrenched normative commitments often overdetermine empirical accounts and discourage attention to the complexities, contingencies, and ironies at stake in legal mobilization. This contrasts with most social scientists who, while varying in the degrees of inherent skepticism about the proclivities of lawyers, litigation, and courts for promoting egalitarian social change, tend to view the relationships of social movement mobilization as highly variable and contingent on a mix of legal and extralegal social factors that should be the subject of empirical inquiry. "How law does and does not matter" is the key question, not taking sides in debates over instrumental effectiveness. As McCann (2004) has put it,

> Legal mobilization does not inherently disempower or empower citizens. How law matters depends on the complex, often changing dynamics of the context in which struggles occur. Legal relations, institutions, and norms tend to be double-edged, at once upholding the larger infrastructure of the status quo while providing limited opportunities for episodic challenges and transformations in that ruling order.[3]

Such study of how law matters for social movements is infinitely more complex, mixed, variable, and contingent than can be captured in simple position statements.[4]

Moreover, little effort to develop generalizable theoretical frameworks for understanding social movement engagements with law in comparative perspective has informed much of the recent study. Both the legal mobilization approach grounded in political process models of social movements and judicial impact studies historically have emphasized the systematic study of sociopolitical context as essential. Theorizing by social movement scholars—from resource mobilization and

[3]See also Scheingold (1974), Rosenberg (1991), McCann (1998), and Lovell & McCann (2004).

[4]"Hence although law in the aggregate surely tends to support hierarchical power relations, analysis should be attentive to the variability of legal conventions and practices within different contexts. In particular, we should be sensitive to how different legal norms and institutional arenas over time offer varying degrees of opportunity or space for creative challenge. . . . This is the primary thrust of the decentered view of law advanced here: not only that law is pluralistic and relatively independent of the state, but that its role in sustaining traditional hierarchies, and hence in structuring potential strategies of resistance, varies significantly among different terrains of social struggle" (McCann 1994, pp. 9–10).

political process models to theorizing about new social movements, framing theory, and concepts of contentious politics—has provided catalysts to continued development of socio-legal theory. However, although some legal scholars borrow from and dabble in social movement theory, few are concerned about theoretical development. The general debate between legal optimists and pessimists has hardly encouraged development of comparative analytical theory. Scholars focusing on cause lawyering have provided many interesting new case studies and insights, but they too generally have contributed little to theory building about movement dynamics.

Finally, many of the more recent studies build on relatively narrow but unarticulated conceptions of law, mostly focusing on litigation outcomes and the roles of lawyers. Old debates about whether lawyers are privileged elites or effective grassroots allies, whether courts can be relied on to respond to marginal voices, and the like continue to thrive. Again, position-taking tends to occlude attention to variation and contingency, and analyses cabining law to litigation, lawyers, and case law talk past and mischaracterize other more expansive understandings of law as cultural norms that have a life in resistances to and transformative mobilization apart from, and often at odds with, mainstream elite constructions of law. The point is not that there is a single correct or best framework for understanding law, but rather that much scholarship is committed to making claims about law without clearly thinking through the complex, multiple dimensions of what often are recognized as law and legality. The result is more heat than light, in this author's view.

These deficiencies and differences in the literature pose a daunting challenge for a review essay on scholarship about law and social movements. My solution is to draw on one approach to organize my review of the disparate arguments and insights advanced by other scholars. The general legal mobilization approach best serves the purpose for at least four reasons. It is (*a*) the most expansive and synthetic approach, thus facilitating organized integration of different contributions; (*b*) the most extensively grounded in social movement theory, building on political process models but adding other elements from other theories; (*c*) least committed to a simple view about the role of law in social movements, adopting instead a tragic view about law's considerable constraints and limited opportunities that vary with context; and (*d*) most adaptable by scholars outside the United States working in comparative and transnational studies (see O'Brien 1996, Keck & Sikkink 1998, Rajagopal 2003, Diamant et al. 2005, Santos & Rodriguez 2005, Shin 2006). Astute readers might also recognize that this general approach shamelessly draws most on my own scholarship, which means I am also least likely to misrepresent its aims and logic.

LAW AND SOCIAL MOVEMENTS: DEFINING CONCEPTS

Conceptualizing Law

Much of the diversity in assessing how law matters for social movements derives from quite divergent ways of understanding and studying law itself. Most

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generally, we use the term law to signify different types of phenomena. We refer sometimes to official legal institutions, like courts or administrative bureaucracies; sometimes to legal officials or elites, such as judges, bureaucrats, or lawyers; and sometimes to legal norms, rules, or discourses that structure practices in and beyond official legal institutions (Thompson 1975). Most recent studies grant attention to all three usages, although in somewhat unclear or unsystematic ways. Legal realists and behavioralists, for example, tend to identify law primarily in instrumental, determinate, positivist terms. Law, in this account, matters to the degree that official institutional actions cause direct, immediate, tangible effects on targeted behaviors (Rosenberg 1991, Bogart 2002). Measured by such a standard, legal institutions and officials often appear to provide powerful support for the status quo but feeble sources for challenging the prevailing order. Legal scholars who focus on lawyers, litigation, and judicial impact tend toward this approach, even when addressing how legal action does or does not inspire movements. This instrumentalist/realist perspective tends to privilege judgments and debates about whether law is or is not useful for movements.

By contrast, interpretive, process-oriented legal mobilization approaches are typically much more expansive in conceptualizing law, especially regarding the legal norms and discursive logics at stake in many social struggles. The interpretive perspective begins by rejecting conventional positivist understandings of law largely limited to discrete, determinate rules or policy actions and policy actors. Rather, law is understood as particular traditions of knowledge and communicative practice. The focus is not simply on behavior but on the intersubjective power of law in constructing meaning. As such, attention is directed to how legal discourses and symbols intersect with and are expressive of broader ideological formations within societies (Hunt 1990, McCann 1994, McCann & March 1996). Attention to legal meanings does not necessarily preclude instrumental considerations about effects or impacts of litigation, lawyers, and courts, but the latter are not the exclusive or even primary focus of inquiry. Indeed, most legal mobilization studies focus on the legal naming, blaming, and claiming by social movement activists in spaces where the shadows of official law and actors are often quite dim.

Such an understanding of law as knowledge and linguistic practice calls attention to law's power as a constitutive convention of social life (Brigham 1996). This constitutive power is ambiguous. On the one hand, legal knowledges to some degree shape, or prefigure, the identities and practical activities of subjects in society. Learned legal conventions mold the very terms of citizen understanding, expectation, and interaction with others. Law thus is a significant part of how we learn to live and act as citizens in society. Legal constructs shape our very capacities to imagine social or political possibilities. Among the most important of liberal legal conventions constituting both national and transnational relations are what we call rights—those legal forms that designate the distribution of legitimate social entitlements and burdens among citizens.

On the other hand, law is also understood to be a resource that citizens utilize to structure relations with others, to advance goals in social life, to formulate rightful

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claims, and to negotiate disputes where interests, wants, or principles collide. Legal knowledges thus can matter as both ends and means of action; law provides both normative principles and strategic resources for the conduct of social struggle. Indeed, this is the core meaning of what many scholars label legal mobilization: "Law is mobilized when a desire or want is translated into an assertion of right or lawful claim" (Zemans 1983). Most such specific legal claims refer, of course, to settled, relatively uncontested entitlements. But at other times citizens interpret laws in different ways, reconstructing law in the process to fit shifting visions of need and circumstance; we reconstitute to some degree the law that constitutes us. In this sense, legal conventions are understood as a quite plastic and malleable medium, routinely employed to reconfigure relations, redefine entitlements, and formulate aspirations for collective living. The concept of rights consciousness—as a developing understanding of social relations in terms of rights—has been particularly important for analysis of law and social movements throughout the world (McCann 1994, Marshall 2003).

This indeterminacy or plasticity of legal conventions is limited, of course. Legal practices carry with them their own inherent constraints on what is accepted as legally sensible or compelling, whereas governing authorities often impose even tighter constraints on accepted meaning through organized force. Official institutions function to police the range of law's legitimate meanings, to enforce boundaries on those meanings, and to use selectively organized violence against those who violate official readings of law or who are outside law's inherent protections. But law also thrives outside of such direct police power intervention, and outside of courtrooms in particular, where official legal meanings rule only indirectly as a possibility of intervening force to settle disputes or enforce particular legal practices. Indeed, this possibility, either implicit or explicitly threatened, that official third parties (such as judges or police) might intervene tends to shape social interaction and bargaining relations far more than actual direct official interventions (Galanter 1983).

It is law's complex life throughout society—within workplaces, corporate boardrooms, neighborhoods, and communities and throughout institutionalized public spaces of national and transnational politics—under the shadow of official rule on which most conflict-based, process-oriented studies of law and social movements focus attention. Indeed, the primary project of legal mobilization analysis is aimed at the constitutive role of legal rights both as a strategic resource and as a constraint, as a source of empowerment and disempowerment, for struggles to transform, or to reconstitute, the terms of social relations and power (see Scheingold 1989, Silverstein 1996). This understanding is especially important for appreciating the increasing power of human rights norms around the world, within polities and transnational or international arenas where authoritative legal institutions are often underdeveloped or contested.

One more aspect of law fills out the picture. In short, most scholars in the process-oriented, constitutive approach presume that law is a partial and contingent force in society. This calls attention, on the one hand, to the fact that legal

tactics of social movements are usually coordinated with other political tactics such as legislative lobbying, partisan electoral advocacy, media campaigns, information disclosure, or public protest. Indeed, much study emphasizes that litigation and other official legal actions are most commonly and effectively utilized as a secondary or supplementary political strategy in social movement struggles. Similarly, this literature emphasizes that lawyers often are not only, or even primarily, litigators; they negotiate, counsel, coordinate, and even sometimes work to educate and mobilize movement constituents and resources (McCann & Silverstein 1998). The legalistic, litigation-obsessed propensities of some lawyers thus can divert or drain movement energies, but this is hardly always the case. On the other hand, the legal mobilization approach recognizes as well that legal conventions constitute just one of the many variable types of norms that govern and give meaning to social life. This suggests that any assessment of specific legal mobilization practices by social movements must be undertaken with reference to the larger context of multiple legal and extralegal norms or discourses that structure social relations.

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Social Movements

The core term "social movements" is defined in quite variable ways by scholars, including by specialists on the topic. Tilly's (1984, p. 306) definition is as useful as any. A social movement is

> a sustained series of interactions between powerholders and persons successfully claiming to speak on behalf of a constituency lacking formal representation, in the course of which those persons make publicly visible demands for changes in the distribution or exercise of power, and back those demands with public demonstrations of support.

The problem with this definition is that it does not clearly distinguish social movements from interest groups, minority political parties, protesting mobs, civil disobedience, terrorist violence, and other forms of collective action. Scholarly efforts have been made to differentiate social movements by what they want, whom they represent, and what tactics they use—but few such efforts are entirely successful at an abstract level. The dilemma is exacerbated, further, by the fact that the organization and activities of what we call social movements often overlap with, grow out of, or transform into other forms of organization over time in complex, elusive ways. Indeed, frustrations over defining the boundaries of the term social movements have led several leading scholars to abandon the concept for the broader, more inclusive label of contentious politics (McAdam et al. 2001).

Despite these caveats, however, I limit the range of activity referred to as social movements for the purposes of this review. Social movement activity here is identified broadly with social struggles of a particular type. First, social movements aim for a broader scope of social and political transformation than do other more conventional political activities. Although social movements may press for tangible short-term goals within the existing structure of relations, they are animated by

more radical aspirational visions of a different, better society. Second, social movements often employ a wide range of tactics, as do parties and interest groups, but they are far more prone to rely on communicative strategies of information disclosure and media campaigns as well as disruptive symbolic tactics such as protests, marches, strikes, and the like that halt or upset ongoing social practices. One of the surprising findings of much research is that litigation and other seemingly conventional legal tactics sometimes can be fused with such disruptive forms of political expression. Law sometimes serves disorder as well as order (Lowi 1971). Litigation can provide a form of, or forum for, rebellion (Meranto 1998) as well as a lethal weapon in social conflict (Turk 1976).

Third, social movements tend to develop from core constituencies of nonelites whose social position reflects relatively low degrees of wealth, prestige, or political clout. Although movements may find leadership or alliance among elites and powerful organizations, the core indigenous population of social movements tends to be "the nonpowerful, the nonwealthy and the nonfamous" (Zirakzadeh 1997). It is worth noting that this definition can include reactionary or highly conservative as well as progressive or left-leaning movements, although the overwhelming amount of academic study concerns the latter groups. Fourth, the discussion below includes traditional modernist social movements focusing on class relations and material politics as well as new (or postmodern) social movements that emphasize a broad range of principled social justice commitments, including especially human rights (Beuchler & Cylke 1997). Lastly, this review addresses social movements that develop within particular nations, generally focused on states as targets or means of transforming societies, as well as transnational movements for human rights, environmental change, peace, and the like. Studies of transnational activism have developed rapidly in recent years and tend to rely on dynamic process-based approaches similar to those emphasized here (Keck & Sikkink 1998, Santos & Rodriguez-Garavito 2005). Indeed, cooperation among transnational and domestic national social movements on human rights issues is one of the most important manifestations of contemporary legal mobilization politics (Sarat & Scheingold 2001).

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LEGAL PRACTICES OF SOCIAL MOVEMENTS: A BROADLY PROCESS-BASED OVERVIEW

With these general understandings in mind, we can now review some of the insights generated by scholars about law and social movements. The legal mobilization approach in particular envisions social disputing or struggles as processes that involve different moments or stages of development and conflict. This discussion of law's workings in various social movements proceeds by focusing on potential stages of conflict. At each stage, I attempt to give examples of instances in which legal tactics and practices have proved empowering as well as disempowering for various movements.

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I must emphasize at the outset, however, that legal practices or mobilization activities rarely are imposed as exogenous or alien forces on social relations. Social terrains of struggle themselves are always constituted by a complex array of institutional norms, relations, and structures of power, including in most cases legally authorized norms backed up by the violence of individual states, coalitions of states, or transnational institutions like the United Nations. Hence, legal mobilization politics typically involves reconstructing legal dimensions of inherited social relations, either by turning official but ignored legal norms against existing practices, by reimagining shared norms in new, transformative ways, or by importing legal norms from some other authoritative source into the context of the dispute. Again, law often significantly supports prevailing social relations as well as provides limited resources for challenging those relationships. This is one point on which virtually all scholars agree. Social movement struggles often entail struggles over the very meaning of indeterminate, contradictory legal principles.

Finally, law's meanings and constitutive force vary dramatically with different contexts. One major preoccupation of scholars is in identifying those factors internal and external to law that shape its relative significance. Scholars who focus on top-down approaches to judicial impact outline the variables that most influence the force of court decisions (Rosenberg 1991, Canon & Johnson 1998). Similarly, scholars who focus on process-based approaches to studying law in social movements emphasize various contextual factors. Opportunity structures, movement resources, and discursive terrains or legal consciousness are familiar organizing categories for such analyses. Some of the most interesting and important contributions of scholarship on social movements derive from this attention. Unfortunately, however, limited space does not permit discussion of these issues in the remaining pages of this essay. The best remedy for these important omissions is to read the leading original studies themselves.

Law and the Genesis of Social Movements

Perhaps the most significant point at which law matters for many social movements is during the earliest phases of organizational and agenda formation. The core insight has been expressed by Scheingold's (1974) well-known argument regarding the "politics of rights" (p. 131). As he put it, it is possible for marginalized groups "to capitalize on the perceptions of entitlement associated with (legal) rights to initiate and to nurture political mobilization." This process of what is conventionally labeled "rights consciousness raising" can be understood to involve two separate, if often intimately related, processes of cognitive transformation in movement constituents.

The first of these cognitive transformations entails the process of agenda setting by which movement actors draw on legal discourses to name and to challenge existing social wrongs or injustices. As such, legal norms and traditions can become important elements in the process of explaining how existing relationships are unjust, in defining collective group goals, and in constructing a common identity

among diversely situated citizens (Schneider 1986, McCann 1994). "One of the main tasks that social movements undertake . . . is to make possible the previously unimaginable, by framing problems in such a way that their solution comes to appear inevitable," note Keck & Sikkink (1998, pp. 40–41). Some scholars emphasize ways in which sense of injury and political challenge are formulated in legal terms from the outset, while yet others emphasize the process of translation from nonlegal grievances to legal claims (M. Paris, unpublished manuscript). In either case, scholars emphasize how the very identities, interests, and ideals of movement activists can be constituted by, or even against, law (Brigham 1996).

A second related way in which legal practices can contribute to movement building is by reconstructing the overall opportunity structure within which movements develop (Anderson 2005). This insight draws on the common scholarly premise that movement formation and action are more likely in periods when dominant groups and state-authorized relationships are perceived as vulnerable to challenge (Piven & Cloward 1979, McAdam 1982). Advances through formal legal advocacy—and especially through high-profile litigation—many times have contributed to this sense of vulnerability among both state and nonstate authorities. In particular, judicial victories can impart salience or legitimacy to general categories of claims, such as equal rights, as well as to specific formulations of challenges within these broad legal traditions (Scheingold 1974, Burstein & Monaghan 1986, Burstein 1991a,b, Silverstein 1996). Indeed, many scholars have noted a sort of contagion effect generated by rights litigation over the past 40 years in the United States (Tarrow 1983, Epp 1998), by legal rights mobilization increasingly in other regions such as the European Union (Cichowski 2002), and by human rights advocacy around the world (Keck & Sikkink 1998). There is some evidence that legal mobilization often succeeds in movement building because the mass media tend to be particularly responsive to rights claims and litigation campaigns for social justice, although this evidence is primarily limited to the U.S. experience (McCann 1994, Haltom 1998) and is contested even there (Rosenberg 1991). It is also worth noting that such opportunities for mobilization typically define just one of several potential venues for activity, each of which may vary widely in its promise. Moreover, opportunities often carry with them significant constraining or disciplining logics whereby legal action requires moderation of claims, narrowing of demands, or forfeiting of other tactics. The history of U.S. labor activism exemplifies this point well (Forbath 1991), as do the legacies of labor struggle, gay and lesbian rights advocacy (Cain 1993, Anderson 2005), and other modes of human rights advocacy (Dezalay & Garth 2001) in various regions of the world.

These two dimensions of legal activism typically are interrelated in social movement development. For example, formal legal actions like litigation can work initially to expose systemic vulnerabilities and to render legal claims sensible or salient to aggrieved citizens. As marginalized groups act on these opportunities, they often gain sophistication and confidence in their capacity to mobilize legal conventions to name wrongs, to direct blame, to frame demands, and to advance their cause. When citizens "begin to assert their 'rights' that imply demands for

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change," Piven & Cloward (1979) noted long ago, there often develops "a new sense of efficacy; people who ordinarily consider themselves helpless come to believe that they have some capacity to alter their lot" (p. 4).

This complex process of legal catalysis was illustrated by the U.S. civil rights movement in the 1950s. A program of litigation leading up to the famous 1954 *Brown v. Board of Edu*cation decision was vital to the evolving civil rights movement in two ways. First, it sparked southern blacks' hopes by demonstrating that the southern white power structure was vulnerable at some points and by providing scarce practical resources for defiant action (Glennon 1991). Second, the increasing pressure on the southern white power structure to abolish racial domination led to a massive, highly visible attack—including legal assaults as well as physical violence—on the formal black leadership group, the National Association for the Advancement of Colored People (NAACP). These reactions in turn forced a split between local NAACP leaders urging more radical forms of protest action and the more bureaucratic, legally oriented leaders of the national organization. The result was a burst in both the momentum of the grassroots protest campaign among southern blacks generally and their frustration about the effectiveness of legal tactics alone. "The two approaches—legal action and mass protest—entered into a turbulent but workable marriage" (Morris 1984, p. 39; see also Polletta 1994). Moreover, the resulting escalation of conflicts between whites and blacks on both fronts expanded the scope of the dispute to include Washington officials, federal courts, the northern media, and national public opinion. Court decisions alone thus did not cause, by moral inspiration, defiant black grassroots action or, by coercion, federal support for the civil rights agenda. Critics like Rosenberg (1991) are correct in making this narrow claim. But legal tactics pioneered by the NAACP figured very prominently in the ongoing process of elevating civil rights claims and intensifying the initial terms of racial struggle in the South.

Similar dynamics have been evident in the movements for the rights of the disabled, gay rights, animal rights, and women's rights in the United States. These examples are especially interesting because they demonstrate that conclusive, far-reaching victories in courts or other official forums are not necessary to achieve this legal catalyzing effect. The wage equity issue in the United States, for example, largely developed in response to the limitations of traditional court-approved affirmative action policies for remedying discrimination against women workers locked into segregated jobs. After a string of defeats in the 1970s, the wage equity movement won a small victory in wage discrimination law at the Supreme Court level and one pathbreaking lower court ruling, which later was overturned on appeal. But in the five-year interim between the first and the last of these three rulings, movement leaders effectively used legal actions—despite doctrinal case law limitations—to organize women workers in hundreds of workplaces around the nation. A massive publicity campaign focusing on court victories initially put the issue on the national agenda and alerted leaders that wage equity was the working women's issue of the 1980s. Lawsuits were then filed on behalf of working women as the centerpiece of a successful union and movement organizing strategy

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in scores of local venues around the nation. Again, the evidence suggests not that court decisions worked to enlighten working women about their subordination, as sometimes is claimed. Rather, sustained legal action over time worked to render employers vulnerable to challenge, to expand the resources available to working women, to provide them a unifying claim of egalitarian rights, and to increase both their confidence and sophistication in advancing those claims (McCann 1994). Other scholars more recently have expanded on such insights in important ways by drawing on concepts of movement legal "framing" developed by social scientists (Marshall 2003, Pedriana 2004).

These latter insights are particularly relevant to appreciating the considerable power of human rights advocacy in defining challenges to authoritarian regimes. Indeed, framing social issues as human rights issues has often been quite effective and empowering for movement mobilization. Abel (1995) has shown how "speaking law to power" provided a potent orienting frame for mobilizing challenges to apartheid in South Africa. The enterprise of renaming women's rights as human rights, and specifically of challenging female circumcision as violence against women, has redefined the symbolic terrain of struggle and mobilized support by nongovernmental organizations (NGOs) for women's issues around the globe in recent decades (Keck & Sikkink 1998). There is also evidence that rights advocacy, often supplemented by litigation or other legal tactics, has generated considerable movement-building impetus in the European Union (Cichowski 2002), various parts of Latin America (Santos 1995, Cleary 1997, Meili 2001), and East Asia (O'Brien 1996, Diamant et al. 2005, Shin 2006).

Legal action often fails as a resource for expanding social movement activism, of course, largely owing to the absence of favorable social conditions. Extra-legal social factors undermined to some degree various environmental justice campaigns and actions for the poor or homeless (Harris 2004) in the United States. Many labor rights campaigns against the sweatshop conditions of U.S.-owned factories in developing countries and human rights campaigns against authoritarian violence, such as the massacre of protesting students in Mexico City's Tlatelolco Plaza and in Central Europe (Keck & Sikkink 1998), have proved similarly limited in capacity to mobilize strong movement support and public attention. Feminists in Israel likewise were unable to use notable victories in the Israeli High Court of Justice as effective grassroots mobilizing resources (Woods 2001).

Moreover, legal tactics have arguably worked sometimes to discourage, thwart, or contain social movement development. For example, the successful litigation represented by *Brown* clearly anchored the civil rights movement on a narrow desegregationist track, marginalizing black leaders with quite different visions of justice and transformation (Anderson 2003) and arguably containing or co-opting the possibilities of movement development. One common critique is that legal tactics divert resources to lawyers who focus on litigation rather than on grassroots mobilization and other forms of potentially more effective political organizing (Scheingold 1974, McCann & Silverstein 1998). There is some limited evidence for this tendency for particular struggles in many countries (McCann 1986,

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Rosenberg 1992, Morag-Levine 2001, Brown-Nagin 2005) as well as for the thesis that lawyers are often co-opted or constrained by the elite institutional relations in which they are enmeshed (Handler 1978). Dezalay & Garth's (2001) argument about the containment of human rights lawyers' agendas in Latin America resulting from their dependence on U.S. foundations and target states identifies an especially sobering pattern of constraints in this regard.

Legal Mobilization as Political Pressure

Other dimensions of social movement activity involve a common legal dynamic. In particular, legal advocacy often provides movement activists a source of institutional and symbolic leverage against opponents. This coercive, adversarial dimension of legal mobilization in many ways is the flip side of its generative or consensus-building capacities. As in movement-building efforts, this second dimension of legal mobilization often but not always entails some measure of litigation or other formal legal action. In fact, we shall see that triumph in the courts is not always necessary to either short- or long-term successful legal leveraging. This is hardly a pathbreaking insight, of course, for it has been the primary focus of related studies on judicial impact (Rosenberg 1991, Canon & Johnson 1998, Bogart 2002). The uses of legal tactics and threats to compel informal resolution of everyday private disputes regarding divorce settlement, contractual obligations, liability for property damages, and the like are familiar to legal scholars (Galanter 1983). However, the complex dialectical relationship between formal and informal legal action in social movement politics has generally received less scholarly attention (but see Handler 1978, Olson 1984, Silverstein 1996).

There are several ways in which litigation offers formidable tactical leverage for social policy advocates. For one thing, institutions and groups targeted by reformers often are well aware that litigation can impose substantial costs in terms of both direct expenditures and long-term financial burdens. Indeed, court costs in major public disputes—over race and gender discrimination, unsafe workplaces, or environmental damage, for example—may run in the millions of dollars and can tie up economically vital operations for years. More important, powerful public and private interests typically fear losing control of decision-making autonomy—whether concerning capital investment, wage policy, externalized costs, or the like—to outside parties such as judges. Hence, they have a stake in cutting potential losses by negotiated settlements of conflicts directly with reform activists. Finally, one should not discount the symbolic normative power of rights claims themselves. Because populations around the world increasingly are responsive to rights claims, defiant groups often can mobilize legal norms, conventions, and demands to compel concessions even in the absence of clear judicial or other official support (Scheingold 1974, 1989; Handler 1978). Again, media propensities to publicize legal rights claims, especially when taken to official tribunes and linked to dramatic information disclosure, can magnify the public power of legal mobilization pressure tactics in many settings (McCann 1994, Keck & Sikkink 1998).

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The implicit promise at stake here is that political struggles may advance more quickly, cheaply, and effectively when conducted in the shadow of favorable legal norms and threats of judicial intervention. Such legal gambits are hardly costless guarantees of success for social reformers, of course. Initiating legal action often does not generate concessions from powerful opponents, and thus may commit movement supporters to long, costly, high-risk legal proceedings that they can afford far less than their institutional foes. Even more important, eventual defeat in official forums can sap movement morale, undercut movement bargaining power, and exhaust movement resources. Consequently, legal leveraging is most successful when it works as an unfulfilled threat, but activists must be willing to follow through occasionally with action or lose considerable clout. In any case, the symbolic manifestations of law, as both a source of moral right and threat of potential outside intervention, invest rights discourse with its most fundamental social power.

It stands to reason that legal leveraging practices tend to depend on the existence of independent judiciaries or other official legal institutions, rules granting standing for legal action by relevant social movement groups, and a well-developed support structure of lawyers, organizations, and financial resources for legal advocacy (McCann 1994, Epp 1998). These conditions have long existed to some degree in the United States, especially with the proliferation of public interest law firms and cause lawyers in the post–World War II era. Many other nations have traditionally possessed some but not all of these elements. For example, many nations have national courts and constitutions, but those judiciaries often lack independence and, partially as a result, strong networks of legal advocates for opposition movements (Epp 1998). However, formal institutional structures, access to rights advocates, and networks of support for legal mobilization have proliferated across the globe at both national and transnational levels. The explosion of human rights, environmental, peace, and indigenous people's NGOs and cause lawyers along with the growth of regional (European Court of Justice) and international (World Court, United Nations) adjudicatory institutions has facilitated the rise of legal leveraging as a key tactic of social movement politics around the globe (Sarat & Scheingold 2001). Most notably, as Keck & Sikkink (1998) demonstrate, transnational human rights organizations often ally with domestic groups to produce boomerang pressures for change that effectively bypass traditional forms of state resistance.

As noted above, the deployment of legal resources to pressure dominant groups takes place at different points of movement struggles. I address two types of instrumental leverage here.

Generating Responsive Action

One phase of many struggles entails using legal tactics in an effort to generate responsiveness to basic policy demands, or at least some partial concessions, by the state or other authority. Silverstein (1996) has demonstrated how this tactic has generated some relatively important effects by the U.S. animal rights movement

in recent years. In a variety of instances, she illustrates, litigation has been used to dramatize abuses of animals, to embarrass particular institutional actors, and to win favorable media attention. When carefully coordinated with demonstrations and other media events, high-profile litigation worked as a double-barreled threat, at once mobilizing public opinion against targeted abusers and threatening costly legal proceedings and possible defeats in court. Overall, such legal tactics have proved to be one of the movement's most effective modes of forcing change by state and nonstate authorities alike. Paris (unpublished manuscript) and Reed (2001) have separately demonstrated a similar dynamic in the very different state-level campaign for egalitarian school finance reform in the United States.

Such examples confirm again some often overlooked aspects of legal leveraging tactics. For one thing, these cases illustrate that repeated clear victories in courts or other official institutions are not necessary to effective legal mobilization. In some successful struggles, lawsuits have failed to generate appellate decisions directly authorizing many of the new rights and remedies that activists sought. The ability to win at least some small advances on related issues and to win a hearing in court for major claims often poses enough actual costs (bad publicity, legal fees) and potential risks (of judicially imposed policies) to pressure opponents into making significant concessions (Frymer 2003). Moreover, the very framing of issues in terms of rights can transform debates and add weight to claims. It is important to underline again, however, that legal tactics tend to be most useful in concert with other tactics, such as public demonstrations, legislative lobbying, collective bargaining, electoral mobilization, and media publicity. The fact that legal norms and institutional maneuvers constitute only one dimension of movement strategy complicates evaluation of their discrete contributions, to be sure. But, in each movement noted above, both activists and specific case histories confirm the importance of such contingent, secondary legal actions. Other notable examples of such legal leveraging dynamics could be cited from the environmentalist, consumer, women's rights, wage equity rights, civil rights, and disability rights movements in the United States.

Legal leveraging is often different and difficult in nations with less independent and powerful courts than in the United States. However, such tactics have generated influence for women's rights movements in specific European nations (Epp 1998), in the European Union (Cichowski 2002), in Latin America (Keck & Sikkink 1998, Santos & Rodriguez 2005), in East Asia (Diamant et al. 2005, Shin 2006), and in Israel (Woods 2001), Egypt (Moustafa 2003), Iran (Osanloo 2002), and other Middle Eastern nations. Human rights activity and litigation have provided a notable force for challenging authoritarian rule in Latin America, South Africa, Egypt, and other nations as well. Indeed, groups like Amnesty International and broader networks of rights activists have changed the whole calculus of politics within and between nations. Feldman (2000) has demonstrated in similar fashion how both rights and legal mobilization efforts have had great impact even in Japan, a nation where independent courts and cause lawyers traditionally have not played a major role in public policy.

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Important examples of when legal tactics either have failed to generate or even have impeded progressive change are notable as well, however. The abortion case arguably offers a revealing legacy. Although U.S. feminists won support for women's right to choose in *Roe v. Wade*, the provision of both medical services and financial aid to pay for exercising those rights did not materialize to any great degree. What is more, *Roe* became the focus of a significant conservative countermovement bent on denying, or at least substantially restricting, the capacity of women to choose the abortion option (Rosenberg 1991). In short, legal tactics not only failed to leverage real change; they arguably undermined the potential for change that alternative tactics might have produced (but see Lemieux 2004). Similar patterns of failed campaigns can be seen in response to legal mobilization efforts around the globe, especially in places lacking strong legal traditions, institutions, and support structures of organized activists. Coglianese (2001) argues that the environmental movement was co-opted by bureaucratic processes and lost its critical, transformative vision in large part owing to its legalistic strategies. Morag-Levine (2001) has shown how litigation-focused, rights-oriented approaches imported from the United States fail, and actually divert effective politics, in more corporatist political contexts such as in Israel. Finally, rights-based legal mobilization efforts have generated backlashes in virtually every part of the world, including the United States, where social movements have attempted to challenge hierarchical social power and authoritarian state rule.

Policy Implementation and Enforcement

Legal leveraging often figures prominently at the policy implementation stage of political struggles as well. This is important, for gaining acceptance of new laws or policies on the books without effective policy implementation accomplishes little. And it is at this stage that many scholars, with some justification, have contended that legal tactics are most limited in significance. The most common explanation for these constraints is that both national and transnational courts generally lack the independence and resources to enforce their decisions against recalcitrant groups in government and society (Scheingold 1974, Handler 1978, McCann 1986, Rosenberg 1991).

Nevertheless, legal mobilization studies have provided some useful insights into how law can and sometimes does matter for struggles over policy implementation. In particular, a host of empirical inquiries have documented how legal tactics—and especially actual or threatened litigation—can help movement activists to win voice, position, and influence in the process of reform policy implementation, whether sanctioned by state or nonstate authorities. These include policy areas regarding the environment, gender and race discrimination, and the rights of the disabled, among others in the United States. There is evidence for similar dynamics in the European Union and in various nations around the world, but the politics of legal leveraging at implementation has been studied rather less than other stages of social movement activity.

Law is often especially important to one specific aim of many outsider groups—that of formalizing policy formulation and implementation processes. Formality, as understood here, refers to the degree to which relations are conducted according to procedures and standards that are public, general, explicit, and uniform (Lowi 1971). The core premise at stake here is that dominant groups tend to prefer relatively insular (autonomous or hidden) modes of discretionary policy implementation unhampered by standardized procedures, substantive guidelines, transparency, and outside supervision. In such informal settings, established prerogatives of powerful elites can more easily prevail to minimize costs, maintain control, and protect their own privileges while granting empty symbolic gestures to challengers. By contrast, marginalized groups often can benefit from more formalized processes in which specified procedural rights and substantive standards can be employed to render accountable dominant interests who control the bulk of material and organizational resources (Delgado et al. 1985).

Social movement groups often use litigation specifically to create such formal institutional access to state power or other institutions as well as to apply pressure to make that access consequential. In this way, legal resources may provide a series of more refined tools—basic procedures, standards, and practices—along with blunt leveraging tactics for shaping the structure of ongoing administrative relations at the remedial stage of struggles over policy (Galanter 1983). For example, Edelman (1990) has demonstrated how employers routinely established in-house offices to avoid litigation and maintain an appearance of good faith compliance with race-based affirmative action principles in the United States during the 1970s. Although initially established for largely deceptive or defensive purposes, such offices occasionally mobilized antidiscrimination norms and the specter of litigation to force real changes from within many corporate and state institutions. In many nations, this concern for formality likewise has led human rights and other activists to work for increased independence of courts, of judicial appointments, of the legal profession, and of procedures identified with the rule of law in an effort to provide leverage against recalcitrant state and social interests. Indeed, transnational NGOs, local opposition groups, and judges often form alliances that strengthen courts and groups alike against authoritarian or undemocratic rule. This process can be seen in Egypt, Israel, various Latin American nations, and the European Union since the 1980s, and even to some degree in various historical moments of American politics.

Of course, as judicial impact studies suggest, legal leveraging may offer as little to reformers in policy implementation battles as at other stages of struggle (Handler 1978, Rosenberg 1991). The fact that judges and other legal officials shrink from cases requiring great technical knowledge and experience may make leveraging tactics less effective generally at the policy implementation stage. Moreover, openly hostile courts can greatly undercut opportunities and deny resources in ways that actually disempower movement actors in the policy process. And even when courts act favorably for disadvantaged groups, injustice in most institutional settings will go unchallenged in the absence of well-organized constituencies

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willing to mobilize legal resources for change. Indeed, apparent advances in official law may add insult to injury for marginalized citizens lacking organizational resources. In short, law's relative formality does not always help reformers and may constitute a considerable constraint on action. Again, understanding these variations requires analysis of law's workings within the larger web of social relations where struggle occurs.

THE LEGACY OF LAW IN/FOR STRUGGLE

A final dimension of movement activity requires the most complex, subtle, and unique reflections both about law and about social change. This can be labeled the legacy phase. It concerns the aftermath of movement struggles for people, relationships, and institutions throughout society. Legacies surely include movement agents and targets of specified policy reform actions, but they can include far more general or unintended implications as well. These latter sorts of implications are the least studied aspect of law and change, so I rely heavily on my own research to illustrate very briefly my point.

In my own studies of wage equity in over a dozen organizational settings in the United States, I found that the direct and tangible policy accomplishments were modest but important (McCann 1994). While women's jobs were accorded rather less than full equity, women often received increases of 10% to 25% in their wages. But interviews with women revealed that the increases were not the only, or even the most important, gain. Rather, women workers repeatedly reported matters of what we might call workplace empowerment. They testified that their individual sense of efficacy as citizens was greatly enhanced and that their identification with other women workers had been increased markedly. The latter was related to a growth in the organizational power of women within their unions and of their unions relative to their employers. Many women specifically talked about the significance of increased rights consciousness that resulted from the legal mobilization efforts around wage equity. The result is that, in most workplaces, the pay equity struggle quickly gave rise to new issue demands for maternity leave, fringe benefits, job mobility opportunities, better work conditions, and the like. In short, the very context of discursive possibility and relational power often was transformed to some degree.

Such evidence makes it hard to deny that law and legal mobilization activity made a difference in many people's lives and institutional situations. At the same time, my study did not find this same outcome everywhere. In some venues, there was little clear trace of positive change; in some workplaces, conditions had even deteriorated and women involved in the earlier struggle had largely given up or left. Similarly mixed legacies can be traced in the aftermath of the black civil rights movement, the second wave of women's rights activism, environmental legal advocacy, prisoner rights advocacy, animal rights, and other movements in the United States. Yet other movements—including advocacy for gay and lesbian

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rights, welfare rights, and rights of the homeless—have found very little at all to cheer about in the records of legal action. Indeed, legal rights claiming and appeals to official legal institutions in many cases have generated far more backlash or countermobilization from reactionary political forces in the United States (Rosenberg 1991, Goldberg-Hiller 2002, Haltom & McCann 2004, Dudas 2003, but also see Lemieux 2004).

It is quite early to assess the legacies of rights-based legal mobilization by social movements in other parts of the world, but evidence likewise suggests a wide range of implications. Specific human rights struggles have often generated considerable drama and transformed the terms of political struggles, but patterns of significant change in social relations, state power, and material welfare have been more variable. As noted above, legal mobilization efforts have generated the full gambit of short-term impacts on social relations, and variability in the longer-term implications—from transformative legacies to backlash—are only to be expected. Attention to the backlashes and retrenchment following rights-based movement struggles defines one of the most important and interesting areas of future inquiry for socio-legal scholars.

That brings us back to the starting point on which most analysts agree: Legal mobilization tactics do not inherently empower or disempower citizens. Legal institutions and norms tend to be Janus-faced, at once securing the status quo of hierarchical power while sometimes providing limited opportunities for episodic challenges to and transformations in that reigning order (Scheingold 1974). How law matters depends on the complex, often changing dynamics of the context in which struggles occur.

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