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Law as an Instrument of Social Change

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Law as an Instrument of Social Change

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Abstract

To review law as an instrument of social change, one first has to address what one means by ‘law’ and by ‘social change.’ We can then examine the mechanisms through which law changes society. This article begins with methodological and definitional issues in studying law as an instrument of social change. It then reviews empirical findings about the mechanisms through which law changes society, focusing in particular on the debate about rights litigation as a social change strategy, the ways organizations respond to legal institutions and implement law, and the relationship between law and social movements.

Introduction

At least since Brown v. Board of Education ordered southern states in the United States to desegregate their schools, whether and how law operates as an instrument of social change has attracted intense scrutiny. This inquiry’s deceptively simple formulation masks significant complexity in the concepts of law, social change, and the relationship between them. Because different empirical and epistemological traditions approach these concepts quite differently, this variation broadens the understanding of law and social change and fuels a rich and expanding literature in the social sciences. This brief article cannot address all the facets of this rich literature. The long tradition that examines law as a dependent variable—a social institution that changes as society changes—will not be addressed here (see Friedman and Ladinsky, 1967; Chambliss, 1964). The role of law as an instrument in globalization, in expansion of capitalist markets, and in international development is quite important, but more suited to an in-depth exploration in its own right (see Globalization: Legal Aspects; Law and Development). Similarly, state actors can deploy law to repress resistance and thereby to suppress social change; although the authors touch on this point, this article cannot fully explore law’s role in suppression and social control (see Barkan, 1984; Fernandez, 2008; see Control: Social; Nazi Law).

Even within these constraints, law as an instrument of social change is a complex, fascinating, and controversial subject. William Graham Sumner argued that “legislation cannot make mores,” because laws that conflict with established social customs and norms cannot change them and are doomed to fail (Sumner, 1906: p. 77). Although prominent failures spring to mind—prohibition is one (Gusfield, 1986)–counterexamples are also easy to identify. These include the legal and social changes associated with the civil rights, women’s rights, and disability rights movements; environmental protection legislation; gay and lesbian rights reforms; and even antismoking legislation (see Civil Rights Movements; Law and People with Disabilities; Environmental Movements; Gay and Lesbian Movements). Even though law sometimes faces backlash and resistance in the polity (Krieger, 2000; Klarman, 1994; Rosenberg, 1991), in many instances legal change precedes social change and shifts in public opinion, and these legal changes affect both social relations and social meaning. How have those changes come about? Answering this question requires a clear idea of what is meant by ‘law’ and ‘social change.’

Defining Law

The concept of ‘law as an instrument of social change’ treats law as an independent variable that influences or causes changes in society. Research in this area conceptualizes law in many different ways. One approach is to focus on formal law, in the form of statutes, landmark judicial opinions, constitutions, and the like, to investigate how changes in formal law may bring about social change (see, e.g., Burstein and Edwards, 1994; Keck, 2009; Rosenberg, 1991). Much of this literature focuses on litigation, particularly impact litigation by social movements, and asks whether litigation is an effective strategy for bringing about social change (for a brief review, see Albiston, 2011). There is no consensus on the answer to this question.

A second approach follows the legal realist tradition (Fisher et al., 1993), expanding on the conception of ‘law’ to include the law in practice in courts, bureaucratic settings, and other settings (Blumberg, 1967; Feeley, 1992; Lipsky, 1980; Frohman, 1997; Ewick and Silbey, 1998). In this view, law includes not only the formal language of the statute, but also how that language is implemented, interpreted, and understood by institutional actors in the state or by individuals in everyday life. Formal law, in this conception, may have little social relevance because social and institutional processes affect how the law is translated into action. In addition, institutional relationships and incentives may produce unexpected and unintended consequences for legal reforms. In an early exemplar of this approach, Blumberg (1967) set out to examine how the US Supreme Court decisions in Miranda and Gideon, which provided new procedural protections and legal representation for criminal defendants, affected proceedings in American criminal courts. By studying
these legal changes on the ground, Blumberg discovered that long-standing relationships among prosecutors, judges, and defense counsel limited and distorted the impact of these decisions, pushed defendants into plea bargains, and prevented formal legal changes from doing much to improve criminal proceedings in the courts.

A third approach, often labeled the constitutive view, contends that ‘law,’ or ‘legality,’ is constructed through social interaction, wherein people mobilize legal concepts and language outside the courts to negotiate conflict or to interpret their experiences (Ewick and Silbey, 1998, 2003). The institutionalized legal meanings that emerge from these interactions become part of a broader cultural repertoire on which individuals may draw to understand and interpret social life, although legal meanings, once institutionalized, also constrain future interpretations (see Swidler, 1986; Sewell, 1992). In this view, law is defined to include customary practices that convey lawlike meanings, such as placing a chair in a newly shoveled parking place after a Boston snowstorm to mark ‘personal property’ even when no legally enforceable formal right exists (Ewick and Silbey, 1998). Constitutive scholars define law culturally, referencing the work of early legal anthropologists such as Malinowski, who conceptualized law “as a body of binding obligations, ... kept in force by reciprocity and publicity inherent in the structure of society” (Malinowski, 1926: p. 58). This approach resists defining law in terms of Western institutions like courts and legislatures. It requires only that people organize their lives in accordance with implicit rules of behavior that create order within society and are recognized by everyone. Modern scholars, including those in the legal pluralist tradition, contend that law in this broader cultural sense often exists alongside formal legal rules, and may be more important than formal law in the ordering of social interactions (Merry, 1988; Fuller, 1994; Moore, 1973; Macalay, 1963; Ellickson, 1986).

The way scholars define law can subtly shape their understandings of how law acts to produce social change. Some studies of law and social change take an instrumental approach, conceptualizing law as separate from society. According to this view, law acts upon society by providing remedies for harm, by punishing wrongdoing, by deterring unwanted conduct, by shifting moral values, and by providing a symbol around which to rally. This approach tends to assume that social actors have discrete policy goals that the law helps them attain. In contrast, constitutive approaches see social actors and their intentions as partially defined through legal concepts and constructs. For those who subscribe to this view, law is not separate from society but (at least partially) constitutive of it. Law creates and defines the concepts and categories of everyday life, such as private property, the corporation, the status of marriage, vagrancy, even disability (Sarat and Kearns, 1993). Comparative and historical studies reveal that seemingly natural categories such as these vary across legal regimes and national context (Stone, 1984; Ferree, 2003), and changes in these definitional legal concepts change society by redefining social categories and social meaning (Thompson, 1975). Nevertheless, the constitutive approach can still be seen as conceptualizing law as an agent of social change because law influences culture, even though culture also mediates law’s social impact.

These definitional debates teach that institutions, actors on the ground, and widely shared cultural beliefs shape what law will mean in practice. Attending to these mediating factors is crucial to understanding law’s effect on social change. The insight that law can be found not only in the courts and legislature, but also in bureaucratic organizations like workplaces and schools, in prosecutorial and police discretionary decisions, and in lawlike social customs and legal understandings that permeate everyday life, opens up many methodologies and locations for studying law as an instrument of social change.

**Defining Social Change**

Social change, the dependent variable in this inquiry, is similarly tricky to define. A common objective is to measure how society changes as the result of legal change, but there is no consensus about what constitutes social change. Social change resulting from law can include redistributing resources among social groups, reconfiguring social practices and interaction (disputing, collective action, and organizations), or reconstituting social meanings (definitions, constructs, values, and norms). Differences in empirical and epistemological approaches generate differences in conceptualizing social change; for example, studies may rely on quantitative or qualitative measures, and focus on direct or indirect changes resulting from law.

**Direct vs Indirect Effects**

Some approaches measure social change through the ‘direct effects’ of law, such as the material legal remedies ordered in judicial opinions. For example, Rosenberg (1991) found that Brown v. Board of Education, the landmark US Supreme Court decision ordering school desegregation in the American South, produced very little change in school integration patterns in the years immediately following the decision. Rosenberg’s straightforward approach immediately drew criticism that choices about how to measure social change were highly subjective, and the choice of measurement heavily influenced the researcher’s conclusions (Feely, 1993). For example, should the degree of social change be measured by comparing the results of litigation with the ideal outcome promised in the formal law (see, e.g., Rosenberg, 1991)? By comparing the results of litigation with the goals of the advocates, who brought the case to the Supreme Court (see, e.g., Feely, 1993)? By comparing the results of litigation with the status quo, had the case never been brought (see, e.g., Keck, 2009)? These are not just technical questions; they are deeply normative questions about what counts as meaningful social change.

Moreover, direct effects do not exhaust the possible social changes resulting from law. Rosenberg also considered some ‘secondary’ or ‘indirect’ effects of the Court’s decision. Although he found no change in broad public opinion after Brown (Rosenberg, 1991), Rosenberg did find that Brown generated significant and concerted resistance from Southern supporters of segregation (Rosenberg, 1991: pp. 84–85), suggesting that rather than undermining segregation, Brown may have reinforced Southern commitment to it. Once again, critics...
argued that these immediate changes did not exhaust the possible indirect effects of *Brown*. For example, the decision may have provided political cover that enabled legislative and executive action in the decade after *Brown*. It may have mobilized social movement protests against Jim Crow in the 1960s (Polletta, 2000). It may have empowered federal judges in the south, who had lifetime appointments, to rule for the plaintiffs in future cases (Klarman, 1994; McCann, 1993).

In a helpful discussion, Galanter (1983) lays out several ways in which courts and law might change society indirectly, through what he calls “general effects.” General effects come in many forms, from using legal penalties to encourage potential law breakers to avoid crime, to changing people’s rational, moral, or cognitive evaluations of a given social behavior. For example, criminalizing drunk driving stigmatized the practice and made it much less commonplace. Galanter conceptualizes this process as “enculturation,” or the widespread shifting or intensifying of moral evaluations of prohibited conduct such as discrimination or smoking (see also Berkowitz and Walker, 1967). Galanter also discusses how litigation mobilizes collective political action by “provid[ing] symbols for rallying a group, broadcasting awareness of grievance[s] and dramatizing challenge[s] to the status quo” (Galanter, 1983: pp. 125–126; see also McCann, 1994; Barkan, 1980). In this view, social change should be understood to include not only material remedial gains for the litigants of a case, but also an emerging oppositional consciousness among activists and the public (Morris and Braine, 2001; Marshall, 2003).

### Mechanisms through Which Law Brings about Social Change

With definitional questions out of the way, one asks: What are the mechanisms through which law might bring about social change? What are the conditions under which law can change society, or fail to do so? Assessing how courts, and by extension law, can change society requires evaluating the resources and capacities of various audiences as well as the indigenous law-like conventions in social locations subject to law (Galanter, 1983). Law’s instrumental effects on society are mediated by the actors who mobilize law, the institutions through which law is implemented, and the already-existing social order law seeks to change. Very few laws are self-enforcing; law must be mobilized to be effective. A victim of discrimination, for example, is unprotected under civil rights laws until he or she initiates legal action demanding that his or her rights be enforced. However, mobilizing the law often requires not only specialized knowledge about the law (or access to someone who has it), but also enough independent wealth to invest the time and money into pursuing a claim – unrealistic expectations for many if not most citizens. Furthermore, practical concerns, such as the need to maintain social relationships, as well as social norms can inhibit people from taking action to enforce legal rights (Bumiller, 1987; Morgan, 1999; Quinn, 2000). Obstacles like these may limit law’s effectiveness for social change because courts generally decide only the legal questions that parties bring to them. To illustrate, the authors will discuss three foci of the law and social change literature: the rights debate about the utility of litigation for social change, law and social change in organizations, and how social movements mobilize law to pursue social change.
The Rights Debate

The Rights Debate refers to the debate among scholars about the utility of rights litigation as a strategy for social change. Brown v. Board of Education was a catalyst for studying these questions because the strategic litigation campaign that led to Brown is the paradigmatic example of mobilizing law to change society. Several scholars tout how the NAACP’s litigation strategy brought about social change even in the absence of significant political clout (Kluger, 1976). In this view, underrepresented communities that lack meaningful access to the polity nevertheless can change social policy through legal strategies (Zemans, 1983). This view is sometimes labeled ‘liberal legalism’: the idea that constitutional and legal boundaries constrain politics, and therefore legal claims provide a powerful mechanism for producing equality and social change.

Liberal legalism has come under attack from scholars skeptical of the utility of litigation for social change. For example, Scheingold (1974) coined the term ‘myth of rights,’ the recognition that rights are not self-executing but must be mobilized to be effective. Empirical research soon demonstrated that mobilization was the exception, not the rule (Miller and Sarat, 1981). From the myth of rights perspective, rights litigation undermines collective action by atomizing collective grievances into individual problems and narrowing grievances to only legally actionable claims (McCann, 1986; Scheingold, 1974). Empirical research suggests that litigation fails to produce lasting social change because courts lack institutional authority to implement radical reforms (Rosenberg, 1991), legal victories can be evaded or dismantled without a sustained movement toward reform (Handler, 1978), and powerful opponents retain strategic advantages even within a formally neutral legal system (Galanter, 1974; Albiston, 1999). Rights litigation can even be counterproductive because it legitimizes a legal system that masks inequality by seeming to provide a remedy while producing little substantive change (Freeman, 1982, 1998; Tushnet, 1987).

Other scholars responded to this forceful critique of liberal legalism by advancing a more optimistic view based on the symbolic and strategic utility of rights litigation. In this view, rights litigation can change social meaning and give individuals symbolic recognition and personal dignity (Engel and Mungur, 2003; Williams, 1991). Even if legal victories are hard to enforce and maintain, rights litigation also mobilizes social movements working outside the legal system to bring about change. For example, McCann, in his study of the US Equal Pay Act movement, finds that pay equity litigation crystallized an issue around which activists mobilized, attracted media attention and participants to the movement, and changed participants’ conceptions of what might be possible (McCann, 1994). More instrumentally, the threat of rights litigation can provide leverage in negotiations and publicly embarrass opponents (McCann, 1994: pp. 140–153). Some of these mobilizing effects can occur even when litigation is unsuccessful (McCann, 1994; Nel Jaime, 2011). Thus, from this perspective, rights litigation affects more than legal outcomes because it can motivate activists to utilize additional avenues of change, such as protest or legislative advocacy (McCann, 1994; Nel Jaime, 2011).

This debate about rights and social change engendered a much broader understanding of the mechanisms through which law brings about social change, and an expansive view on the locations in which change might occur. Scholars have moved beyond a narrow focus on court-imposed legal remedies to consider movement-building effects, the development of oppositional consciousness, cover for legislative and executive branch actors to make significant changes, media attention and public agenda setting, the formation of collective identities, changes in everyday understandings and social interactions, and even changing perceptions of self-identity. These outcomes are highly interconnected, often triggering and reinforcing one another and driving mechanisms for even broader social reform.

A second important insight is that law may not have the same effects in all social locations. For example, research focusing on litigation in the courts suggests mixed outcomes. Some research suggests civil rights plaintiffs are relatively successful, while other research finds little material change following landmark court decisions (Rosenberg, 1991; Burstein and Monaghan, 1986; Burstein, 1991). Other research focused on everyday locations suggests that even informal rights mobilization can bring about change or even become a catalyst for collective action (Albiston, 2005, 2010). Similarly, some scholars find law positively constructs identity (Engel and Mungur, 2003), whereas others find that claiming rights imposes too great a cost by requiring claimants to recognize an injury and identify as a victim (Bumiller, 1987; Quinn, 2000). Although this literature offers no easy conclusions about law as an instrument of social change, it does highlight the rich set of mechanisms and locations through which law may change society.

Organizational and Institutional Resistance

Organizational settings such as schools, prisons, or employers are major targets of legal reforms, but law does not penetrate organizations automatically, without cost or distortion. Neo-institutional organizational theory treats organizations as open systems that respond to their environment, including law, in complex ways that tend to produce homogeneity among organizations in the same organizational field (Meyer and Rowan, 1977). Organizations tend to be isomorphic, or similar, in their structure and practices because they operate under a shared system of rules – regulations, norms, and cognitive schemas – derived from a common social environment (DiMaggio and Powell, 1991). Legal institutions are part of that environment, and isomorphic processes are thus a mechanism through which law changes society, or at least organizations in society. Law facilitates ‘coercive isomorphism’ by imposing similar, sanction-backed legal requirements on organizations in the same field, such as the tax code rules governing the structure and activities of nonprofits (DiMaggio and Powell, 1983: p. 150). Isomorphic processes can also be ‘mimetic,’ when organizations in the same field respond to ambiguous legal requirements by adopting the practices of other organizations that they perceive to be successful (Edelman, 1990). A third mechanism, ‘normative isomorphism,’ occurs when professionals who have similar training, such as lawyers or human resource managers, diffuse
common practices through professional associations and then bring those practices back to the organizations of which they are a part (DiMaggio and Powell, 1991). Often legal values such as due process provide professionals normative guidance in determining which practices are legitimate and effective (Edelman, 1990).

Each of these processes can affect whether law will influence existing organizational processes or become marginalized to prevent interference with other organizational priorities. For example, in response to coercive legal rules, organizations may offer symbolic compliance in the form of policies and structures visible to actors outside the organization but only loosely coupled to actual practice within the organization (Edelman, 1992; Orton and Weick, 1990). Internally, organizations may interpret and implement legal mandates in ways consistent with managerial objectives but inconsistent with legal norms and mandates (Edelman, 1992; Albiston, 2005). When legal requirements are ambiguous, organizations may turn to others in their field to identify compliance strategies that will confer legitimacy, even if those strategies were largely determined by the organizations themselves and not the requirements of law (Edelman, 1990, 1992). These strategies then diffuse throughout organizational fields and become institutionalized as the meaning of compliance (Edelman et al., 2001, 2011). Normative isomorphism operates through professionals who learn common practices through professional training and associations and then bring those practices back to the organizations in which they work. Through this mechanism, professionals may help diffuse widespread but inaccurate myths that drive organizational behavior in a homogenous but irrational direction. For example, Edelman (1992) found that human resource professionals exaggerated the risk of employment discrimination suits compared to their actual incidence in the courts. Over time, organizational definitions of what constitutes compliance often find their way into legal doctrine because judges defer to widespread organizational practices as evidence of compliance without probing whether those practices have any tangible effects on life within the organization (Edelman et al., 2011).

These processes produce organizational structures and practices that respond to law but do little to bring about social change. Once these practices and norms become institutionalized, they become difficult to dislodge through subsequent legal change, creating barriers to social change (Kelly, 2010; Albiston, 2005). For example, Kelly (2010) found that, in the United States, noncompliance with the Family and Medical Leave Act tracked prior institutionalized practices adopted to comply with the Pregnancy Discrimination Act, even though the law had changed to allow fathers as well as mothers to take leave. Organizational norms and practices that grow up around social institutions rather than legal mandates can also be difficult to change. For example, Albiston (2005) found that workers faced gendered resistance to family leave consistent with the institutionalized male breadwinner/female homemaker stereotype embodied in standard work schedules, even though statutory leave rights were gender neutral.

When law does penetrate organizations, typically an authoritative agent or organizational actor is involved. Kalev et al. (2006) found, for example, that workplace diversity programs that designated specific organizational actors to take responsibility for compliance were most effective at increasing the proportions of African-Americans and white women in private sector management. Similarly, Albiston (2005, 2010) found that workers who knew their rights could mobilize law as an authoritative discourse to reinterpret the meaning of taking leave and pressure employers to comply. McCann (1994) found that union advocates mobilized the threat of pay equity lawsuits to gain leverage in negotiations with employers. But organizational actors face competing incentives. Managers rewarded for production and profit rather than legal compliance may view lawsuits as simply a cost of doing business, and therefore see noncompliance with legal mandates as a calculated risk in a complex business environment (Stone, 1975). For this reason, organizations do not seem to operate as unitary, rational actors when they respond to legal sanctions. Rather, organizations and organizational actors manage symbols of compliance and the risk of legal sanction in complex and nonintuitive ways.

### Social Movements and Law

Although studies of law and social movements typically treat law as the dependent variable—the target of a movement’s attempts at change—law can also affect how social movements define their cause, determine their agenda, and choose their strategies for social change. Perhaps the most fundamental way in which law influences social movements is by shaping the social construction of a movement’s grievance, or the collective ‘naming’ of the social problem motivating the movement as unjust and subject to change (Felstiner et al., 1980). This process of collectively cultivating ‘oppositional consciousness’ is a crucial step in social movement formation (Piven and Cloward, 1977; Morris and Braine, 2001; see McAdam, 1982).

Law factors into this process as a set of norms affecting people’s understandings of their social world. The law’s broad promise to protect people against ‘discrimination’ and ‘inequality’ provides a framework for perceiving and articulating injustice (Albiston, 2005; Marshall, 2003) and it encourages the sense that taking action will make a difference (McCann, 1994: p. 89). Legal constructs may also facilitate the perception of social grievances as collective harms. The legal construction of stigmatized identities such as ‘criminal’ or ‘alien’ can generate a common political identity among otherwise unassociated individuals who collectively opposed their legal stigmatization (Eskridge, 2001). Rights are another legal construct that movement actors draw on informally to highlight the movement’s collective identity or collective experience of harm (Leachman, 2013). For example, women’s movements in the United States have articulated collective rights claims in the past that emphasize women’s shared vulnerability or common experience of societal discrimination (Pedrana, 2006; McCammon et al., 2007: p. 729; Ferree, 2003: p. 335). In these ways, legal constructions fuel perceptions of injustice and group identity, crucial elements of movement formation.

The legal mobilization literature also views law as a source of resources for social movement activists to mobilize, and these resources affect the movement’s organization, development, and ability to survive (McCann, 1994). In this respect, legal mobilization literature parallels the sociological resource mobilization scholarship, which argues that social movements
arise and succeed when they are able to mobilize resources from sympathetic elites or from indigenous sources within the movement (Jenkins, 1983). Rather than focusing on the material resources that movements marshal, legal mobilization scholarship examines how law generates symbolic resources that movement actors use to motivate and rally constituents (Scheingold, 1974; McCann, 1994; Merry and Stern, 2005; Silverstein, 1996; Polletta, 2000; Coleman et al., 2005) or to generate public support for movement goals (Marshall, 2003; see also Jenness, 1999). Movement rhetoric is often rife with references to law, including not just rights claims, but also claims about citizenship, popular sovereignty, and judicial deference (Leachman, 2013). Such legal framing is often an effective way of packaging a movement’s demands because the pervasiveness and cultural legitimacy of law make legal language resonate with a wide cross section of audiences (Snow and Benford, 1992; Pedriana, 2006: pp. 1727–1728; McCammon et al., 2007).

Social movement litigation also helps draw attention to injustice and put issues on the public agenda by attracting media coverage. Litigation strategies tend to attract more media coverage than other political tactics (McCann, 1994: p. 62; Silverstein, 1996: p. 198), directing public attention toward a movement’s legal demands (see Levitsky, 2006). Movement actors can draw on those high-profile litigation campaigns to encourage donations in fund-raising efforts (Boutcher, 2005; Nel Jaime, 2011). Movement litigation also tends to attract the attention of political elites (Pershly et al., 2007: p. 9), whom activists cultivate as powerful allies (Minkoff, 1999: pp. 1668–1669; Woods and Barclay, 2008) and use to leverage political concessions to movement demands (Handler, 1978: p. 92; Scheingold, 1974; Kolb, 2005). These studies illustrate the importance of linguistic and media resources both in their own right and as mediating mechanisms that generate additional material resources.

Third, the law shapes social movements’ ‘tactical repertoires,’ the set of practices available to activists to accomplish movement goals (see Ennis, 1987). Law as a set of formal rules and procedures affects the availability of litigation as part of movements’ tactical tool kit. Legal changes in the rules of standing opened up decades of environmental protection litigation that otherwise would not have been possible (Oren, 1976). Similarly, civil rights statutes provide a legal means to redress grievances about discrimination in employment and suppression of the franchise among minority communities (Albiston and Nielsen, 2007). Formal law may catalyze extralegal mobilization when a landmark judicial opinion generates a sense of hope or outrage (Andersen, 2005: p. 44; see Rosenberg, 1991: pp. 155–156). Litigation strategies may encourage a movement to undertake other forms of political action and grassroots organizing (McCann, 1994), for example, by providing a concrete focus or goal to demand (Boutcher, 2005; Coleman et al., 2005; McCann, 1994; Polletta, 2000).

Social movements that employ legal strategies may pay a price, however. Litigation is expensive, and may drain social movement resources away from potentially more effective strategies, such as protest or grassroots organizing (Rosenberg, 1991; Scheingold, 1974; see Hunt, 1990; but see Polletta, 2000). Although statutory individual rights provide a mechanism for addressing injustices such as discrimination, they tend to channel grievances into individualized litigation and discourage collective action (McCann, 1986; Scheingold, 1974). Litigation success, in part because of its visibility, may also mobilize a countermovement or cause the opposition to systematically resist legal reforms (Rosenberg, 1991; Klarman, 2005; Luker, 1983).

A price also may be exacted at the level of social meaning, identity, and the very definition of the cause. Using litigation as a social movement tactic can deradicalize the message and objectives of a movement, even if the litigation is successful. Existing legal rights and rules form discursive opportunity structures through which social movements may advance their causes. To access these opportunity structures, movement actors must shape their claims and demands to fit available legal templates. Because law is a relatively conservative institution, fitting claims to law’s discursive opportunity structures risks taming the movement’s demands and deradicalizing its agenda (Ferree, 2003). Furthermore, the law’s ability to attract resources may support lawyers as movement leaders and make litigation strategies dominant, moving more confrontational strategies such as protest to the margin (see Haines, 1984). In turn, lawyers as elite actors can reshape movement messages and goals even when the broader movement’s participants have different goals (Bell, 1976; Levitsky, 2006).

When identities are legally protected, litigation tactics tend to shape and define the identities around which movements mobilize, even if those legally expedient identities are not the ones activists or individuals would choose outside of law. Bumiller (1987) found, for example, that individuals who believed they had been discriminated against were reluctant to mobilize legal claims because they resisted taking on a victim identity required by discrimination law. Some gay and lesbian activists note how the pursuit of same-sex marriage has required plaintiffs to conform to a near-heteronormative family status to obtain legal rights, even though some movement activists would prefer to broaden the definition of who counts as family (Polikoff, 2008). Incremental social change, in this view, comes at the expense of more radical and far-reaching changes in how one understands identity and social relationships. Thus, when evaluating law as an instrument of social change, it is critical to consider which demands may have been marginalized or abandoned because a social movement relied on legal tactics rather than other mechanisms of social change (Albiston, 2011).

Conclusion

Sociolegal literature provides no definitive conclusions about the law’s role as an instrument of social change, but it has provided researchers with guidelines for constructing a more nuanced understanding of the relationship between law and social change. The literature has moved beyond questions of whether law matters for social change toward investigating the ways in which, and the mechanisms through which, law influences social change. The research also has moved toward identifying multiple forms of social change, including material and symbolic changes, as well as direct and indirect changes, and toward theorizing the relationship among these forms.
Scholarship addresses the law’s ability to generate social change in disparate social contexts and the various cultural and institutional factors that shape what law will mean in practice. These questions involve looking at the relationships among legal meanings, the social practices structured around those meanings, and the institutionalization of legal understandings that can promote radical change or retrenchment. The productive empirical work investigating these processes provides important theoretical frameworks for understanding how systematic factors may enhance or constrain the potential for social change through law.

See also: Civil Liberties and Human Rights; Civil Rights Movements; Civil Rights; Gay and Lesbian Movements; Human Rights, History of; Human Rights: Legal Aspects; Law, Mobilization of; Media and Social Movements; Movements, Social; Rights: Legal Aspects; Social Changes: Models; Social Movements and Political Violence; Social Movements, Geography of; Social Movements, History of; General; Social Movements: A Social Psychological Perspective.

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