Review Essay

The Rights Revolution and Support Structures for Rights Advocacy

Ann Southworth

Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective.* Chicago: University of Chicago Press, 1998. Pp. xv + 326 pages. $17.00 paper.

The American judiciary has dramatically increased its protection for individual rights since the 1950s, when the United States Supreme Court began deciding and supporting a host of new constitutional claims, including freedom of speech and the press; rights against discrimination on the basis of race and sex; privacy rights; and due process rights in criminal and administrative proceedings. Critics and defenders of this dramatic increase in judicially proclaimed individual rights often attribute this transformation in the law to activist judges.

In *The Rights Revolution*, Charles Epp challenges the view that activist judges are primarily responsible for the expansion of judicially protected individual rights in the United States. He also rejects theories that our rights revolution is attributable to the existence of a constitutional bill of rights or to a culture of rights consciousness. Although Epp concedes that all of these factors may contribute to rights revolutions, he asserts that organizations, lawyers, and money are indispensable ingredients. He argues that judicial attention and approval for individual rights grows out of "deliberate, strategic organizing by rights advocates" (p. 2). Strategic rights advocacy succeeds, he says, only when there is a "support structure" for legal mobilization consisting of organizations dedicated to establishing rights, committed and able lawyers, and sources of financing.

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Epp also ties his argument about the causes of the rights revolution to debates about whether judicially protected rights illegitimately interfere with democratic processes. Epp asserts that the strong support structure for individual rights claims in the United States reflected widespread support (p. 5) for individual rights. Therefore, he concludes, the process that produced the expansion of judicially protected individual rights is not undemocratic.

Epp probably is correct that the support structure for rights advocacy was integral to the rights revolution in the United States and that it is essential for mobilizing legal rights in other liberal democracies as well. He makes an important contribution by challenging the conventional emphasis on judicial leadership and by explaining in detail how each element of the support structure—organized groups, willing and competent legal counsel, and financial resources—significantly contributed to strategic rights advocacy. He also introduces a helpful comparative element to the analysis of legal mobilization. His case studies of India, England, and Canada strongly suggest that other favorable conditions—an activist judiciary, a strong bill of rights, and a culture that frames disputes in terms of rights—may not be sufficient to generate a rights revolution in the absence of a strong support structure for rights advocacy.

However, several weaknesses detract from the significant achievements of this book. Although Epp marshals substantial evidence suggesting that support structures are crucial for legal mobilization, his definition of legal mobilization excludes a large realm of rights activism that occurs outside the Supreme Court and, indeed, outside the courts altogether. Moreover, he relies primarily on one measure of legal mobilization to reduce and quantify his claim about the relationship between support structures and legal mobilization in the courts. Epp, in trying to isolate support structures from other favorable conditions to prove his thesis, underestimates how these factors are likely to influence one another. Finally, he does not adequately support his intriguing claim that the rights revolution in the United States was not undemocratic because it grew out of a broad-based support structure.

Despite these limitations, Epp's book is significant, not only for what it accomplishes directly but also for the new research it is likely to spawn. Even if Epp might have employed a broader and more complex definition of legal mobilization, his insight about how support structures influence legal mobilization through the courts may be equally applicable to other contexts as well. One can hope that his book may inspire other scholars to begin where he left off, by exploring how support structures influence legal mobilization in all the arenas in which law is negotiated, made, and enforced.

The remainder of this essay elaborates on Epp's findings about the relationships between support structures and mobilization in the courts and considers how his thesis might apply to a broader conception of legal mobilization. It also explores how Epp's argument informs my own research on conservative cause lawyering, many aspects of which I am pursuing with John Heinz[1] and Anthony Paik,[2] with financial support from the American Bar Foundation.

I. Support Structures and Likelihood of Litigation Success

Epp's central project, proving that support structures are essential for mobilizing rights, draws on previous scholarship that considers how resources and access to committed lawyers influence one's ability to mobilize legal rights. Galanter (1974) showed that "repeat players," actors who use the courts often, have advantages over "one-shotters," who only rarely resort to the courts. These advantages include resources for litigating; sophistication about law and legal processes; access to specialists, including competent and committed lawyers; and negotiating credibility attributable to the party's commitment to building "bargaining reputation." Although Galanter generally was skeptical about the capacity of "have-nots" to secure social change through litigation, he explained how organizing them into groups who could secure repeat-player advantages could improve their prospects. Thus, Galanter began to explain why support structures might enable "have-nots" to succeed in the courts.

Epp advances the argument substantially by examining a particular area of conflict in the courts—individual rights claims—and by carefully demonstrating how support structures have contributed to legal mobilization in countries where they have been strong and how their weakness or absence in other countries has impeded legal mobilization. He pays particular attention to the United States, showing how the rise of organized advocacy groups here, beginning just before 1920 and accelerating in the 1950s, has been critical to the rights revolution. Advocacy organizations have provided a cadre of expert lawyers. They also have coordinated research, facilitated the exchange of ideas, and generated publicity around individual rights agendas. The growth of private foundations and the creation of government-sponsored legal aid programs supplied financial support for rights advocacy.

[1] John P. Heinz, Northwestern Law Professor and Distinguished Research Fellow at the American Bar Foundation, is formally collaborating with me on the network analysis described in Part IV, but he has played an indispensable role in all aspects of this research design.

[2] Anthony Paik is a doctoral student in the Department of Sociology at the University of Chicago.

Increasing diversity in the American legal profession allowed access to lawyers whose ideological commitments coincided with the interests of individual rights claimants. All of these elements, he argues, fostered sustained judicial attention to civil liberties and civil rights in the American courts.

Epp explains the fate of individual rights movements in India, England, and Canada primarily in terms of the strength of their support structures for individual rights advocacy. For each of these countries, he chronicles the history of efforts to develop advocacy campaigns for individual rights and provides details about organizations and funding.

In India, where courts have only modestly expanded protection for individual rights, many rights advocacy organizations emerged in the late 1970s in response to Indira Gandhi's imposition of emergency rule in 1975. However, most of these organizations disbanded several years later as India's upper classes and political parties withdrew financial support (p. 97). Those that remained, including a substantial number of women's organizations, were fragmented, poorly funded, and unable to support continuing litigation campaigns. The legal profession, composed almost exclusively of men from the dominant castes, offered few committed activist lawyers to facilitate litigation campaigns. Resources for individual rights litigation generally have been limited to lawyers' voluntary contributions and claimants' own commitments.

In England, where a modest rights revolution has occurred with respect to administrative procedure, prisoners' rights, and sex discrimination, but not as to criminal procedure, Epp shows how advocacy organizations and quasi-governmental Community Law Centres supplied a network of lawyers, researchers, and activists committed to expanding legal protection for certain types of individual rights claims. Nevertheless, these organizations lacked the financial resources of their counterparts in the United States, and they generally have been unable to pursue focused litigation campaigns. Epp identifies significant differences in the strength of the support structures for various types of individual rights claims in England and shows how these differences might account for variations in the success of these claims. He explains, for example, how the Equal Opportunities Commission made up for the absence of well-funded women's rights advocacy organizations by pursuing a dual strategy in the European Court of Justice and domestic courts beginning in the 1980s (pp. 151–53). Epp attributes the failure of criminal procedure rights claims to limitations on legal aid for criminal appeals and to a "culture" of nonadversary criminal defense (p. 147). Credit for significant litigation victories in prisoners' rights cases goes to a small band of activist lawyers who won a few important cases and thereafter

convinced the Legal Aid Board to grant aid to continue their campaign (pp. 147–49).

Since 1960, the Supreme Court of Canada has created a wide range of new individual rights, particularly with respect to criminal procedure and women's rights. Many of these cases have been decided since 1982, when Canada adopted a new constitutional bill of rights, the Charter of Rights and Freedoms. Canadians often attribute this expansion of individual rights to the passage of the Charter, but Epp explores how Canada's support structure also contributed to this revolution. He documents a huge increase in the number of rights advocacy organizations and the emergence of networks of sympathetic lawyers and organizers long before the passage of the Charter. He shows how government funding for legal aid, including two programs that sponsored test-case litigation, dramatically increased in the 1970s. A large cadre of young, liberal Canadian law professors advocated a growing role for judges on civil rights and civil liberties issues, and civil liberties and women's rights organizations contributed directly to the creation of the Charter by participating in its drafting and lobbying for its passage (pp. 187, 191).

These case studies refute the notion that activist judges are primarily responsible for rights revolutions, and they suggest that organized support for rights litigation may be at least as important as either receptive judges or constitutional bills of rights. Epp's thesis is significant for those who might strategize about how to expand judicial protection of individual rights in countries where rights revolutions have not yet occurred. If support structures are critical, rights activists should focus on expanding the infrastructure for sustained litigation campaigns. The appointment of sympathetic judges and the adoption of bills of rights will not result in any vast expansion of judicial protection of individual rights without organizations, lawyers, and resources to press claims in the courts.

II. Defining, Measuring, and Explaining Rights Revolutions

Epp's argument focuses on rights revolutions generated through the courts—on the conditions necessary for expanding *judicial* protection of individual rights rather than broader questions about circumstances necessary for securing individual rights in all the various arenas in which rights are negotiated. Some scholars have used the term "rights revolution" to include rights mobilization outside the courts as well. In *After the Rights Revolution: Reconceiving the Regulatory State*, Cass Sunstein (1990:24–31) uses the term to describe the explosion of legal rights proclaimed primarily by Congress and the President in the 1960s and 1970s. In *The Rights Revolution: Rights and Community in*

Modern America, Samuel Walker (1998:iv) defines the rights revolution to include "a broad array of formal rights codified in law and court decisions . . . [and] a new rights consciousness, a way of thinking about ourselves and our society." A similarly broad definition underlies Mary Ann Glendon's (1991:4) argument that a rights culture pervades American discourse and Neal Milner's (1989:669) explanation of how "rights talk" persists in debates about mental health policy. Epp uses the term "rights revolution" in a narrower sense to mean legal mobilization through the courts, "the process by which individuals make claims about their legal rights and pursue lawsuits to defend or develop those rights"(1998:18).

Epp's work reflects a research tradition whose premise is that laws are unlikely to significantly influence behavior unless they are successfully mobilized by claimants who have the commitment, ability, and resources to enforce them through the courts (e.g., Burstein & Monaghan 1986; Burstein 1991; Lempert & Sanders 1986:396–97; Zemans 1983). Statutes, regulations, and judicial decisions, in this view, produce little voluntary compliance (e.g., Zemans 1983:995). Rights recognized in other arenas, whether official state forums, such as legislatures and agencies, or nongovernmental arenas, such as the workplace, the media, and private interactions, require judicial enforcement to be effective. Thus, Epp focuses on the essential role that organizations, lawyers, and money play in mobilizing judicial protection of individual rights.

Courts, however, are not the only arenas in which activists invoke rights claims and attempt to give them legal force, and they are not the only institutions to have contributed to the expansion of individual rights. Although litigation played a prominent role in the individual rights revolution in the United States (Freeman 1975; Scheingold 1974; Tushnet 1987), activists also pursued individual rights claims before agency officials and legislatures, in the press and the workplace, and on the streets. (Carson 1981; Piven & Cloward 1979; Tushnet 1994:47–50). Many critics of civil rights litigation contend that individual rights litigation has accomplished little where it has not been accompanied by legislative and executive branch support (e.g., Dolbeare & Hammond 1971; Horowitz 1977; Rosenberg 1991). Social reform advocacy has "take[n] place wherever important decisions are made affecting the interests of client groups—in all branches and levels of government, in the media, in the private sector" (Handler 1978:3). In fact, individuals sometimes use rights language to assert claims that government officials have not even formally recognized and enforced (McCann 1994:7; Minow 1987:1867).

Other scholars have developed broader conceptions of legal mobilization that encompass advocacy in these other arenas. Bor-

rowing from Galanter (1983:127), Michael McCann's (1994:6) theory of legal mobilization treats law more "as a system of cultural and symbolic meanings than as a set of operative controls. It affects us primarily through communication of symbols—by providing threats, promises, models, persuasion, legitimacy, stigma, and so on." This approach also recognizes how rights are claimed and negotiated in a wide variety of settings, including courts but also legislatures, agencies, the workplace, the media, public squares and private interactions (Silverstein 1996:12), and how these various forms of activism influence one another in complex ways. The pluralistic character of law gives activists "some measure of choice regarding both the general institutional sites and the particular substantive legal resources that might be mobilized to fight policy battles and advance movement goals" (McCann 1994:9).

This broader conception of legal mobilization fairly accounts for how activists actually use law to accomplish social change. They often pursue legislation, administrative advocacy, grassroots organizing, and public education as alternatives or complements to litigation (McCann & Silverstein 1998; Olson 1984; Silverstein 1996). Indeed, committed activists sometimes choose to work in arenas other than the courts, even when they have the resources to pursue litigation campaigns. They may do so because they conclude that other forums will be more receptive to those claims (Katzmann 1986),[3] because they believe that advocacy in those other forums will produce more enduring change, or because they fear that litigators may otherwise usurp leadership roles within the movement (Meili 1998:488–89).

Epp's neglect of legislation and administrative advocacy as arenas of legal activism is especially notable. Like much of the legal mobilization literature, whose background assumption is that rights declared by statutes and courts are worth little if rights holders are unwilling or unable to enforce them, Epp's work does not explore how legislation and regulations sometimes contribute directly to social change by influencing behavior and norms. Epp does note that legislation plays an important role in creating support structures, by establishing legal services programs, enforcement agencies, and fee recovery rules for successful litigants (1998:64), and he identifies instances in which legislation provides a legal basis for individual rights *litigation* (e.g., p. 164). However, legislation and regulations often contribute much more directly to social change by inducing people to voluntarily comply (Mayhew 1968:3), influencing attitudes and norms (Berger 1978:208–211; Cantril 1944:228), and bolstering grassroots organizing activities (Freeman 1975:239). As Malcolm

[3] Robert Katzmann (1986:160) observed about disability rights activism: "[C]ontrary to the conventional wisdom, courts were not the engine that powered the rights ethos; they ultimately were less supportive of it than was either Congress or the bureaucracy."

Feeley has observed, "[L]aw is most often set in motion by people who apply it to themselves and to each other without benefit of explicit mobilization of legal institutions" (1976:515). Although the real power of statutory rights and rule-based claims is often highly contingent on other factors, these laws often contribute directly to the negotiating power of holders of rights through largely invisible processes.

Take just a few examples relating to the individual rights revolution in the United States. President Truman's 1948 Executive Order declaring that the armed services would be integrated (Exec. Order No. 9981, 3 C.F.R. 722 [1948]) led to the integration of the armed forces without judicial intervention (Berger 1978:39). The Civil Rights Act of 1964 and the Elementary and Secondary Education Act of 1965, which made $1 billion available to school districts that did not discriminate, contributed substantially to desegregating schools, at least as much as the Supreme Court's decision in *Brown v. Board of Education* (Klarman 1994; Rosenberg 1991:49–50). The Civil Rights Act of 1964 also gave African Americans almost immediate access to hotels, restaurants, theaters, hospitals, and swimming pools that had previously denied them entry. (Berger 1978:59–60). Title VII of the Civil Rights Act of 1964 (28 U.S.C. § 2000a-2000e-17 [1998]), which prohibits discrimination in employment on the basis of race, religion, national origin, or sex, has profoundly changed how employers make hiring, promotion, and firing decisions (Walker 1998:38), and not all of that change can be attributed to litigation to enforce Title VII (See Burstein 1998:145–46).

Even if Epp is right in defining individual rights mobilization as the process of pursuing lawsuits to enforce those rights, he does not accomplish the monumental task of proving that support structures are essential for rights revolutions. His methods of measuring legal mobilization and of isolating support structures from other conditions that might influence legal mobilization are no match for the challenge of unraveling the complex social and political processes that generate rights revolutions. Epp relies heavily on one quantitative measure of legal mobilization—the percentage of the Supreme Court docket devoted to individual rights cases. This measure excludes lower courts and administrative agencies, where much of the work of implementing Supreme Court decisions and legislation takes place (Weatherly & Lipsky 1977).[4] He treats other favorable conditions—judicial leadership, favorable constitutional provisions, and cultural receptivity to rights claims—as either existing or not, and he does not always explain adequately how he reaches debatable conclusions about how to characterize these conditions.

[4] To his credit, Epp's latest research adopts another measure of legal mobilization; it focuses on rights in administrative policies at the lowest level of the system.

Epp, in explaining why the rights revolution failed in India, for example, claims that "all the key conditions for a rights revolution in conventional analyses—a favorable constitutional structure, judicial support, and rights consciousness—were met in India" (1998:90). Yet his own discussion shows serious weaknesses in India's constitutional framework and cultural impediments to a rights revolution. With respect to women's rights, Epp notes that India's constitutional guarantees of legal equality for women have been found inapplicable to "personal laws" associated with India's major religious communities, and that those personal laws powerfully discriminate against women (pp. 79, 80). He asserts that Indian society was receptive to women's rights claims based on evidence that members of India's women's movement used the language of rights (pp. 76–77), but he does not assess the strength of that movement or whether rights consciousness was widely shared. He concludes that the Indian judiciary "did all they could to develop an egalitarian, due process revolution" (p. 88), but he also notes several instances in which they upheld blatantly discriminatory employment rules in the airline industry.[5] While Epp might well be right that the lack of support structures for individual rights litigation in India, more than any other factor, explains why no rights revolution occurred there, he does not persuasively demonstrate that the other key conditions for a rights revolution actually were met.

Epp offers Britain as an important test of his theory because it has no constitutional bill of rights and because judges in Britain, particularly those on its highest court, the Appellate Committee of the House of Lords, are extremely conservative. Epp asserts that Britain's rights revolution was modestly successful with respect to women's rights claims because Britain's Equal Opportunities Commission pursued a dual litigation strategy in the European Court of Justice and in domestic courts designed to incorporate favorable European Court of Justice precedents into British law (1998:151–53). Other factors also worked in favor of women's rights claims, however. As Epp describes in rich detail, the increasing influence of European law and the passage of anti-discrimination legislation effectively created a legal framework for women's rights claims despite the absence of a constitutional bill of rights. Moreover, many of Britain's judges below the House of Lords were receptive to such claims (p. 131), and the language of rights had become prevalent in British discourse (p. 114). Thus, a rights revolution in Britain does not vindicate Epp's theory about support structures, although it is completely consistent with it.

[5] These rulings upheld a mandatory retirement age of 58 for male "pursers" and 35 for female "hostesses" and a rule that hostesses must resign if they marry within 4 years of being hired (p. 88).

These difficulties with the examples of India and Britain illustrate how hard it is to isolate various factors that might contribute to rights revolutions in order to prove that support structures are essential. As Epp observes in his conclusion (pp. 200–01), support structures often flourish when other favorable conditions exist—e.g., bills of rights, judicial receptivity, and governmental support. Support structures emerge where activists, lawyers, foundations, and other sources of financial support identify opportunities for legal advocacy (Wasby 1995:26–45). Litigation opportunities depend on finding some favorable combination of legal arguments, based on either constitutional law or statute, and/or receptive judges. Support structures for litigation campaigns wither when these conditions are not met. Thus liberal law reform organizations generally have weakened or altered their tactics in recent years as Congress and the judiciary have become more conservative and more resistant to expanding individual rights (McCann 1989:231) and as foundations have withdrawn support for legal rights advocacy (Walker 1985). Support structures for law reform litigation on the political right have flourished as judges have become more receptive to the agenda of the right, as Congress has passed favorable new legislation, and as conservative foundations have poured money into strategic litigation campaigns. The interrelationship of support structures and other favorable conditions make proving Epp's thesis highly problematic

III. Democracy and Judicial Activism

Critics of judicially declared rights assert that there is a deep tension between democratic processes and rights. Robert Bork (1990:9) has described the rights revolution as "the transportation into the Constitution of the principles of liberal culture that cannot achieve those results democratically." Nathan Glazer (1975:123) similarly has asserted that activist judges have placed Americans "under the arbitrary rule of unreachable authorities." Even some defenders of the rights revolution concede that judicial activism is undemocratic and impermissible except where directed toward improving the machinery of democratic government or protecting minorities (e.g., Ely 1980).

Epp asserts that both critics and defenders exaggerate the role of judges in the rights revolution and that their concern about undemocratic processes is unfounded (1998:5). He argues that "sustained attention and approval for individual rights grew primarily out of pressure from below, not leadership from above" (p. 3) and that it depended on "the backing of a broad support structure" (p. 5).

If Epp could show that the rights revolution in the United States reflected the participation and support of a broad-based

movement, he might be able to make a powerful argument that the processes that produced judicially created rights were not significantly less democratic than our legislative processes, which are themselves seriously flawed (see Mayhew 1974; Macey 1986; Miller 1989). Epp supplies some evidence supporting that conclusion. He identifies the key organizations supporting rights advocacy, including government enforcement agencies, as well as the primary funding mechanisms, including government-funded legal aid. He also emphasizes how the rights revolution brought before the Supreme Court a more diverse set of litigants than the business interests that had dominated the docket before World War I, and a more diverse group of lawyers representing those litigants. However, Epp does not analyze how democratic the new rights advocacy organizations actually were or whether they represented the wishes of broad constituencies. He does not address a significant literature asserting that the organizations that have led America's rights revolution have not been terribly democratic (Freeman 1975:100; cf. McCann 1986:170–208), that their lawyers too often have pursued their own ideological commitments at the expense of clients' interests (e.g., Bell 1976; Lopez 1992:23), that lawyer-led litigation strategies generally have been only weakly tied to social movements (Handler 1978), and that litigation sometimes has impeded grassroots organizing (McCann 1986; Rosenberg 1991:339; Bellow & Kettleson 1978; cf. White 1987–88). Thus Epp has not supplied all the evidence that would be necessary to demonstrate that the rights revolution depended upon a *widespread* support structure.

Epp's argument focuses on how resources—advocates, organizations, and money—influence judicial processes. However, nothing in his theory suggests that these resources must come from diverse sources, that the lawyers involved must be broadly representative, or that the organizations that pursue such litigation must pursue the interests of broad constituencies in order for rights revolutions to succeed. Indeed, one of the intriguing implications of his book is that support structures theoretically could spring from well-funded and tightly orchestrated campaigns waged by a few individuals or corporations.

IV. Research Concerning Support Structures on the Political Right

As I suggested in Part II, Epp's argument about the importance of support structures for legal mobilization in the courts also may apply to legal mobilization in the broader sense, beyond the courts. Despite the difficulties of isolating the influence of support structures from other factors that might contribute to rights revolutions, I nevertheless am persuaded that strong support structures are essential for successful legal and policy advo-

cacy and are therefore worthy of study. Indeed, my own research with Jack Heinz and Anthony Paik on conservative cause lawyering might be seen as a study of support structures—the organizations, lawyers, and resources that sustain conservative advocacy. This section briefly describes aspects of this research that relate to Epp's thesis.

We define conservative advocacy as including various strands of an uneasy but fairly successful coalition in American politics in recent years, including libertarians, business conservatives, and social conservatives (Hodgson 1996). Although we have conceived of this research primarily as a study of the lawyers who serve conservative causes, the project has required close attention to other components of the support structure—the organizations these lawyers serve and the resources that sustain such advocacy. Thus our research examines client organizations working on the national level to advance conservative causes and the lawyers who serve those organizations.

We limited the number of organizations and lawyers in this study by selecting "issue events"—legislative events on issues important to various strands of the political right—and identifying organizations that appear in news accounts of those events. These client organizations seek to influence public policy on school choice, prayer in schools, pornography, homosexual rights, abortion, guns, property rights, affirmative action in employment and education, unions, law enforcement, tort reform, taxes, trade, immigration, and national security.[6]

Of the 80 organizations in this study, at least 70 used lawyers in some capacity—as litigators, officers, members of boards of directors, legislative lobbyists, advisors, or researchers. This study assumes that support structures may influence the success of rights advocacy wherever it occurs, and, therefore, it considers how lawyers serve organizations on the political right in all the various arenas in which law is negotiated, created, and mobilized. These forums include not only courts, legislatures, and agencies but also board rooms, where lawyers influence organizations' priorities; think tanks, where lawyers sometimes generate studies that become the basis for legislation; and the press, where lawyers help shape public debate about law and policy.

We do not yet know much about the mix of strategies used by lawyers and clients on the political right, but we do know that many organizations are using litigation to create and enforce rights, including rights that are opposed to the rights at the heart of Epp's research. Lawyers are seeking precedents establishing the following rights: parents' rights to make decisions for their

[6] Not all of the lawyers in this study would accept the label "conservative." Nor would all the lawyers and organizations included in this study welcome association with one another. Indeed, one of the tasks of this study will be to identify various fault lines, as well as lines of cooperation, among client organizations and the lawyers who serve them.

children; students' and teachers' rights to free exercise of religion in public schools; property owners' rights against regulatory takings; individuals' rights not be discriminated against pursuant to affirmative action programs; workers' rights to work without belonging to a union; students' and professors' rights to free speech on university campuses; crime victims' rights to see criminals receive swift and certain punishment; citizens' Second Amendment right to bear arms; and states' rights against federal government intrusion. The Supreme Court's docket for the 1999–2000 term was packed with cases involving issues important to the political right and teed-up by advocacy organizations and cause lawyers in our study.[7] At a time when many activists on the left have lost confidence in litigation as a vehicle for social change, activists on the right are investing heavily in strategic litigation.

This research on the support structures for conservative advocacy also will address some of the questions suggested by my critique of Epp's defense of judicial rights creation. Is the support structure for advocacy on the right fueled by money and other resources contributed by large constituencies or, instead, by a few foundations, law firms, and wealthy individuals? Are the organizations that these lawyers serve broad-based grassroots organizations or groups composed of and led by elites? Are the governance structures of these organizations broadly participatory or highly centralized?

Apart from whether client organizations are democratic or representative, there remain issues about the allocation of decisionmaking control between lawyers and clients. Cause lawyers on the left have been dogged by charges that they, rather than clients, control the attorney-client relationship and select strategies. Whether or not that charge is fair,[8] the underlying empirical question is important for assessing whether lawyers' behavior and norms correspond with professional standards and for understanding lawyers' roles in social movements.

What roles do lawyers play in policy advocacy on the political right, and who calls the shots? Our data about the positions that

[7] The Supreme Court's docket for the 1999–2000 term included cases presenting the following issues: Does public prayer before a high school football game violate the separation of church and state? (*Santa Fe Independent School District v. Doe*, No. 99–62); are Miranda warnings required before the police can interrogate a suspect in custody? (*Dickerson v. United States*, No. 99–5525); can states criminalize "partial-birth abortion"? (*Stenberg v. Carhart* No. 99–830); do the Boy Scouts of America have a constitutional right to exclude gay youths and men from leadership roles? (*Boy Scouts v. Dale*, No. 99–699); may Hawaii grant special voting privileges to their aboriginal people? (*Rice v. Cayetano*, No. 98–818); does a federal program that places computers and other "instructional equipment" in parochial school classrooms violate the constitutional separation between church and state? (*Mitchell v. Helms*, No. 98–1648); and does Congress have authority to make states, as employers, liable to suit under the federal Age Discrimination in Employment Act? (*Kimel v. Florida Board of Regents*, No. 98–791).

[8] Elsewhere, I have argued that it may not be (Southworth 1996).

lawyers fill and the work they perform for client organizations should allow us to say something about their roles in the support structure of the political right. I also plan to explore these issues in interviews with lawyers. I will ask lawyers how they would describe their roles in setting strategies. Lawyers' responses to these questions may not provide entirely reliable evidence of how they actually behave, but they should shed light on their views about what roles they *should* play.

Epp considers not only the numbers of organizations and their financial resources but also how relationships among organizations and advocates influence prospects for success in litigation campaigns. Similarly, our study will try to identify patterns of cooperation and conflict among organizations and lawyers engaged in conservative advocacy.

We are using network analysis to map relationships among organizations and lawyers. We have data about several different types of connections among the organizations and lawyers in this study, including (1) lawyers who work for more than one organization in the study; (2) overlapping boards of directors; (3) common sources of foundation funding; (4) web "links" among organizations; and (5) joint filings in litigation and legislative matters.

We expect to use these different measures of relationships among organizations and lawyers to generate pictures of the structure of advocacy for conservative causes. These measures may give us five maps of the relationships among organizations and/or lawyers, but they also may be combined in various ways. These relational data should enable us to assess whether the lawyers who serve libertarian, social conservative, and business interests form distinct cliques, or whether these interests overlap. Is there a "common core" of interests? Are there identifiable "brokers"—that is, organizations and lawyers who serve as intermediaries among constituencies? We will try, in other words, to map the structure of the "support structure" for legal mobilization by conservatives.

Our research assumes that support structures are important for understanding legal mobilization on the political right as well as the political left and for predicting success in advocacy in nonjudicial arenas as well as the courts. This project extends Epp's analysis to political causes not contemplated by his definition of rights revolutions and to advocacy realms beyond the courtroom. It also may help illuminate some of the broader implications of Epp's thesis.

Conclusion

If Epp is right, as I think he is, that support structures matter at least as much as receptive judges in predicting whether rights advocacy will succeed, one would expect the creation and fund-

ing of support structures for advocacy to become issues of controversy and public attention, just as the appointment of judges has become. Intense public controversy about funding for the Legal Services Corporation and contingency fee arrangements for products liability litigation suggest some public recognition of the important role that support structures play in advocacy on the political left. Perhaps less attention has been paid to the political right's development of an infrastructure for advocacy to reverse or modify the rights revolution. Epp's book offers sound reasons to expect that this support structure will give the American political right momentum for years to come.

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