

Book Review

Ann Southworth, *Lawyers of the Right: Professionalizing the Conservative Coalition*. Chicago: The University of Chicago Press, 2008. pp. xii + 272pp, \$50.00 (cloth), \$19.00 (paper).

Reviewed by Laura Beth Nielsen and Jill D. Weinberg

Introduction

Scholars of law and society long have recognized that law and politics are intertwined in ways that the liberal legal model does not acknowledge.¹ But law's legitimacy relies on its appearance as independent from politics and procedural fairness.² Indeed, the charges of judicial activism or "legislating through the courts" routinely made as part of the culture wars in the United States are politically effective because those claims strike at the heart of what the law is supposed to be. At the same time, because of the perceived (or actual) success of *Brown v. Board of Education*³ and increasing emphasis on judicial strategies by the political left over the past fifty years, the political right increasingly has turned to the courts as a site of political contest.

Despite the increasing use of law by lawyers working for conservative causes, much scholarship about lawyers using the courts for social change (and the study of social movements more generally) focuses on progressive, left-leaning actors largely to the exclusion of studying conservative actors and agendas.⁴ Further, the literature that examines the role of the conservative movement

Laura Beth Nielsen is an Associate Professor of Sociology at Northwestern University and a Research Professor at the American Bar Foundation.

Jill D. Weinberg is a graduate student in sociology at Northwestern University.

1. David Kairys, *The Politics of Law: A Progressive Critique* (3d ed. Basic Books 1998).
2. Tom R. Tyler, *Why People Obey the Law* (Princeton Univ. Press 1988).
3. *Brown vs. Bd. of Educ.*, 347 U.S. 483 (1954).
4. *E.g.*, Catherine R. Albiston & Laura Beth Nielsen, *The Procedural Attack on Civil Rights: The Empirical Reality of Buckhannon for Public Interest Litigation*, 54 *UCLA L. Rev.* 1087-1134 (2007); John P. Heinz, Ann Southworth & Anthony Paik, *Lawyers for Conservative Causes: Clients, Ideology, and Social Distance*, 37 *Law & Soc'y Rev.* 5 (2003); Jean Stefancic & Richard Delgado, *No Mercy: How Conservative Think Tanks and Foundations Changed America's Social Agenda* (Temple Univ. Press 1996).

in shaping legal and social policy⁵ largely has focused on inter-movement fighting between progressive and conservative causes⁶ and the emergence of the conservative movement to counter the success of the left in achieving its policy goals.⁷

Ann Southworth's *Lawyers of the Right: Professionalizing the Conservative Coalition* changes all of that. This groundbreaking contribution details the emergence of the conservative legal movement, the professionals who implement it, and the strategic decisions they make about how to use the courts as they advance their causes. Southworth succeeds in highlighting how "conservative lawyers have tried to 'right the profession and professionalize the right'" (5). By way of seventy-two interviews with conservative advocates; detailed analysis of newspaper articles; organizational data about conservative public interest firms; analysis of Congressional testimony; and court documents, Southworth engages in a rigorous analytical examination of the internal and external obstacles to achieving conservative policy goals. Southworth's data are complemented by an extensive quantitative network analysis of lawyers for conservative causes.

What follows is a discussion of the major themes that emerge in *Lawyers of the Right*, a description of its major findings, and our analysis of the important contributions Southworth has made. The book's contributions are many, but here we focus on two major themes: the construction of professional identities of conservative lawyers and how understanding both sides of the political spectrum aides our understanding of the role of law in social movements.

Professional Identities and Movement Mobilization

The central task of Southworth's project is to provide a detailed portrait of the lawyers in the conservative movement (3). *Lawyers of the Right* provides an accurate and rich description of the causes that comprise the movement, at the same time demystifying the image of these lawyers as uniformly ideologically aligned with each other and with the causes they represent.

Drawing on previous research of 1,300 lawyers in eighty-one conservative organizations in the late 1990s,⁸ Southworth argues that conservative lawyers fall within two broad constituencies. One constituency is made up of the lawyers who are themselves religious conservatives and who represent religious causes. They are largely non-elite lawyers whose platform is to preserve personal virtue

5. See, e.g., Kim Phillips-Fein, *Invisible Hands: The Making of the Conservative Movement from the New Deal to Reagan* (W. W. Norton & Co. 2009); Steven Teles, *The Rise of the Conservative Law Movement: The Battle for the Control of the Law* (Princeton Univ. Press 2008).
6. E.g., Tina Fetner, *How the Religious Right Shaped Gay and Lesbian Activism* (Univ. of Minn. Press 2008); David S. Meyer & Suzanne Staggenborg, *Movements, Countermovements, and the Structure of Political Opportunity*, 101 *Amer. J. of Soc.* 1628 (1996).
7. Sidney Blumenthal, *The Rise of the Counter-Establishment: From Conservative Ideology to Political Power* (HarperCollins 1986).
8. Heinz et al., *supra* note 4, at 5.

and morality. The other constituency of right-wing lawyers includes business elites whose agenda is to preserve “free markets” by opposing regulation, tax increases, and economic reform. Within the two broad categories, Southworth identifies six different kinds of lawyers: religious conservatives; libertarians and business organizations; abortion opponents; affirmative-action opponents; advocates of “order-maintenance” (those concerned with preserving the established social and cultural order); and “mediators” (those concerned with bridging the various conservative causes) (43).

Southworth’s description of the lawyers within these constituencies is her entrée into the analysis of conservative lawyers and their points of agreement and contention. Her in-depth interviews asked lawyers in various organizations about their career trajectories and how they perceive their roles and actions within the conservative movement. These interviews quickly call into question the idea of a monolithic conservative legal right-wing. Lawyers of the right vary in their political ideology, religious identity, and social background. Compare the business lawyer who explained his religious views saying, “I play golf on Sunday,” (55) with the social conservative who complained that right wing economic libertarians “need moral ballast to [their] worldview” (58).

In addition to differences across politics and religion, Southworth demonstrates important variation in the professional identity among lawyers on the right. For example, Southworth argues that right-wing lawyers for business interests are more likely than their religiously-motivated counterparts to view their roles in conventional professional terms. Lawyers for social conservative and libertarian causes generally were focused on the goals of the constituencies they served more than on the fate of the conservative alliance. Lawyers who worked in large firms and trade associations on behalf of business interests appeared to agree with the proposition that they advocated on behalf of clients, but did not view their work as an expression of personal political commitment. Lawyers for social conservative and religious causes, by contrast, were more personally committed to the causes and constituencies they served. “I really think there is a distinction between the groups like [business lawyers] that fall within the conservative camp because of the interests of the clients we serve and those who are pushing an ideological agenda” (70).

Given the various causes Southworth identifies as part of the conservative coalition, much of the analysis focuses on competing interests within the movement. Foundation support for the organizations illuminates some of these divisions, and the lawyers themselves recognize that they are not a united professional network. One lawyer acknowledged that although various interest groups will come together for a similar cause, ultimately “there is no real established interconnectivity that means we’re all functioning as part of a whole or anything” (65).

Nonetheless, the various interest groups that make up “the right” recognize the need to come together and recruit future lawyers into the movement, with law schools as one of the places they look to accomplish this. Conservative coalitions have established law school clinical programs that focus on

conservative issues (171) and see sympathetic faculty members as a conduit for recruitment because they believe professors can play a role in “selling conservative perspectives to law students early in the process of professional socialization” (172).

Underlying Southworth’s analysis is the question of whether lawyering on the right constitutes a unified movement capable of significant social change using the courts. Ultimately *Lawyers of the Right* demonstrates that the differences among lawyers on the right—professional and ideological stratification along with different political ideologies—results in tension and fracture in their social movement. Although the final chapter details successes in reshaping law and policy, the conflicts among movement elites and grassroots organizers may yet prove irreconcilable. Disagreements over healthcare, education, and the war in Iraq during George W. Bush’s administration revealed a “deep fissure” in the coalition, according to Southworth (175). Such differences not only highlight the various, often conflicting, policy goals within the movement, but also suggest that disagreements about goals and priorities may ultimately retard the movement.

Lawyers of the Right definitively puts to rest the idea of a homogenous, right-wing conspiracy by demonstrating important variation along several meaningful axes. In so doing, Southworth opens a new field of research for scholars of professional identity, mobilization, and career interests. Indeed, left/right comparisons of “engaged lawyers” or “cause lawyers” may offer new and important insights into scholarship on the legal profession and the use of law for social change, the topic we take up next.

Lawyers of the Right, Law, and Social Movements

Southworth’s project highlights the multiple dimensions of legal mobilization among conservative lawyers and interest groups, and the various strategies deployed to reshape American policy. In so doing, she sheds new light on the efficacy of promoting a political agenda through the litigation process. These issues have been widely debated both theoretically⁹ and by using empirical analysis of school desegregation,¹⁰ same-sex marriage,¹¹ and the environmental movement,¹² to name just a few issues. Though hotly contested, this literature suggests that litigation strategies may unnecessarily divert resources from more fruitful arenas for policy transformation.¹³

9. Gerald Rosenberg, *The Hollow Hope: Can Courts Bring about Social Change?* (2d ed. Univ. of Chicago Press 2008); Michael W. McCann, *Reform Litigation on Trial*, 17 *Law & Soc. Inquiry* 715-743 (1993).

10. *Id.*

11. Kathleen E. Hull, *Same-Sex Marriage: The Cultural Politics of Love and Law* (Cambridge Univ. Press 2006); Laura Beth Nielsen, *License to Harass: Law, Hierarchy, and Offensive Public Speech* (Princeton Univ. Press 2006); Jon Goldberg-Hiller, *The Limits to Union: Same-Sex Marriage and the Politics of Civil Rights* (Univ. of Michigan Press 2002).

12. Lettie M. Wenner, *The Environmental Decade in Court* (Indiana Univ. Press 1982).

13. *Id.*

The lawyers Southworth interviewed used extrajudicial methods to advance their policy agendas. Aside from the prototypical methods such as ballot initiatives, introducing legislation, and challenging or promoting particular judicial appointments, the lawyers advocated their causes through the court of public opinion. Conservative lawyers and organizations use the media to introduce their agenda to current constituents and to rally new supporters with tactical rhetoric and framing¹⁴ (typically with equality or rights-based language).

Although sixty-five of the seventy-two lawyers Southworth interviewed reported that they engage in the litigation process (154), the interviews revealed the lawyers' awareness of the limitations of using litigation to effect social change. Many lawyers, particularly social conservatives, sought to move away from the litigation model given the political and logistical limitations of the courts. One lawyer made the prescient comment that "litigation by its very nature, is a prolonged battle—not only individual cases but the whole crusade over time" (157). Conservative lawyers are aware that while they may win in court, uncertainty remains about whether they ultimately will prevail with law makers, particularly in the face of ongoing resistance to court decisions.¹⁵

At the same time, the lawyers were not pessimistic about the possibility of using the courts for social change. Many expressed "startling optimism," according to Southworth, about the power of litigation to achieve their policy goals (154). Southworth features several discussions mainly by libertarian lawyers who recognized the power of court decisions: "You can't get people to buy books, but you definitely can force them to respond to legal pleadings" (154). In other words, it is not just litigation, but also *winning* that matters in the minds of these lawyers.

In addition to court victories, this new cadre of conservative public interest lawyers recognizes the value in contributing to the legal academic discourse as a way to influence judges, lawyers, and other scholars. Southworth reports that the lawyers she interviewed have written over ninety books and countless journal articles, focusing on agenda setting and policy transformation (158). One lawyer she interviewed said that he wrote law review articles to overcome the paucity of conservative scholarship, and more importantly, to establish a discursive debate on particular issues.

Although there is a considerable body of literature that examines the efficacy of the courts and the implementation of their rulings, this research has rarely looked at these important theoretical and empirical developments through the prism of the conservative movement. Southworth's research shows that conservative advocacy organizations and their lawyers clearly understand the limitations of focusing exclusively on a litigation strategy to achieve their

14. David A. Snow & Robert D. Benford, *Ideology, Frame Resonance, and Participant Mobilization*, 1 *Int'l Soc. Movement Res.* 197 (1988).

15. See generally Rosenberg, *supra* note 9. He argued that without the support from other government branches, courts lack the power to implement their decisions, and by extension, cannot single-handedly reform American policy.

policy goals. Instead, groups diversify their efforts in various political and apolitical venues, not only to garner change, but also to mobilize current and prospective constituents through the court of public opinion.

Although Southworth documents fissures and fractures in the movement, her analysis of the “mediator” lawyers and organizations provides compelling evidence of a wealthy and functioning infrastructure that left-leaning advocacy groups cannot match. Just how permanent and influential these institutions will prove to be is a subject for further empirical work in this area.

Conclusion

Lawyers of the Right is a terrific contribution to future analysis of the legal profession and law and social change. It is a must-read for scholars for its rare insight into an arena of practice which is difficult for us to access. Because Southworth treats the book as a descriptive project, there are a number of significant theoretical themes that merit further analytic attention. On one hand, her decision to simply “portray lawyers...rather than to evaluate their causes” provides an unbiased account of the professionalization of the conservative movement (4), which has sometimes proven unpopular because of its opposition to desegregation and affirmative-action. At the same time, she reveals that conservative lawyers fall along a broad continuum of ideology, principles, and interests, and are not necessarily the social conservatives. Given the rigor of her multi-method research design, critical engagement with the key theoretical debates is not only possible but important.

Aside from the portraits of individual lawyers, *Lawyers of the Right* provides a detailed analysis of mobilization tactics, infighting, and recruiting as well as the role lawyers play in promoting conservative causes. Her discussion not only fills a void in law and social movement research, but also provides entrée for sociolegal scholars to better understand lawyers, legal processes, and the law’s capacity for social change.