The Study of Interest Group Litigation: A Time for Reappraisal and Consolidation*

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Since publication of Caucasians Only (Vose, 1959), scholars have produced more than 70 books, articles, and papers on the general subject of group litigation. Although most of these studies attempt to build on previous research, many of those working in this area have bemoaned the lack of any large-scale theoretical framework in which to operate (see generally, Vose, 1981). Recently Jack Walker and Kim Scheppele recognized this problem, comparing political scientists working in this area to blind men feeling an elephant-- each feels "a different part of the great beast and mistakes the part for the whole" (1986, p.1; see also, Wasby, 1986). Others simply have given up pursuit of a generalized explanation for group litigation decisions, claiming the whole area to be a hodgepodge of ideas and stories with little chance of development into more coherent knowledge.

Why have we been unable to develop cogent generalized explanations for group litigation? If we consider this area of political science as a giant jigsaw "puzzle" (Rosenau, 1971), then we can easily detect the problems that face us: not only are we missing some of the puzzle's pieces, but we have no idea of what the picture should look like once we actually complete it. That is, previous research has told us a good deal about the array of groups that have been involved in litigation, the contexts in which they made their judicial journeys, the goals they pursued, and the strategies and tactics they used to achieve them. Unfortunately, however, most of this information remains isolated.

To put these pieces in place and to understand what additional pieces we need to find, we must develop a more generalized or theoretical understanding of group litigation. This understanding must take into consideration both longitudinal and latitudinal concerns-- it must treat litigation over time and across groups-- and it must come to grips with the configuration of forces that

condition group choice to litigate so that we can uncover generalizable patterns. Only when such a framework is constructed will we be able to explain group litigation as a component of the judicial process and place it coherently in the larger context of group politics.

The "project" outlined above is immense, but the purpose of this paper is considerably more modest: after reviewing the general direction of the field, we suggest an initial overview of the puzzle itself -- the factors and processes that condition interactions between groups and political institutions. This overview identifies and isolates those factors most relevant in the choice of groups to use the judiciary as a path of political activity.

The Picture: What are our Goals?

Arthur Bentley (1908) and David Truman (1951) attempted to place the study of group litigation and other techniques of influence within a larger theoretical context. Bentley explicated the important role groups play in the formation of public policy in all governmental arenas, while Truman developed the all-encompassing "equilibrium" theory, which in part depicts the institutions of government as mediators of competing group interests. Later scholars, who specifically examined group litigation, grounded their work in Bentley's and Truman's *assumptions* about the politicized nature of governmental institutions, but their work veered away from the theoretical focus of these pioneers. Instead of developing paradigms to explain the litigation of groups as one component of their political behavior, this new generation studied litigation *per se.* Their preferred methodology -- relating "war" stories of the various battles groups fought in court.

These case studies created a wealth of information. In fact, the study of groups and the courts probably would not exist today had Clement Vose chosen to write his dissertation on groups in Congress or had Richard Cortner followed a conventional public law approach to examine the Wagner Act cases (1964). These and other scholars kept the study of litigation as a component of group behavior alive: the stories of legal victories in important Supreme Court cases continually highlighted the links between groups and the courts. Yet, by using descriptive case study approaches, they took us far afield from the more systemic and theoretical concerns of Bentley and Truman. As a result, we too often become so enmeshed in minutia (e.g., a specific group's campaign in a specific issue area) that we lose sight of the theoretical objectives that moved Bentley and Truman.

To construct an explanation of the role that groups play in the judicial process, we need to intermesh the theoretical and descriptive objectives that have existed, to this point, in relative isolation. As students of the judicial process and public law, we are not solely interested in viewing the political system from a policy perspective, seeing litigation as but one tool used by groups and probably a minor one at that (see Walker and Scheppele, 1986; Schlozman and Tierney, 1986). But as political scientists, and not historians, we must move beyond the description of group involvement in "interesting" cases or issue areas. We need to combine an emphasis on litigation with the explicit recognition that it fits within a broader theoretical perspective: the way groups operate in the political system as a whole. In this way, the study of group litigation can eventually be placed firmly in the context of a larger group theory.

Recognizing that an explanation of group litigation rests within a broader explanation of group behavior, we started with this preliminary view of the group system, illustrated in Figure 1.

(Figure 1 about here)

The three arenas of government comprise the constants of this configuration; the movement of groups in and out of these arenas the variables. The extant literature tells us that groups do not necessarily move along the same paths: Group A may go to court, then to Congress, then back to court; Group B may start with litigation, then move to the Executive branch; Group C may move to the courts only after first turning to other institutions. The question is what factors condition the observed variations between groups A, B and C? The policy area in which they litigate? The outcome of their cases? The time frame of their litigation? Their mode of organization? In short, what similarities and differences can we find to explain better the general phenomena of group litigation decisions?

Before we address this question, however, we must revise our initial view in accordance with existing literature on interest group politics. That is, using the group as the unit of analysis, Figure 1 simply put it at the left side of the model and placed the government on the right. This is too general. Groups do not exist in relationship to government simply, rather they do so perceptually: they see a particular environment in a particular way. As illustrated in Figure 2, this perception is shaped by a

(Figure 2 about here)

number of factors. A group's internal characteristics-- mode of organization, resources, maintenance, and focus-- orient it to the context in which it exists and condition the goals it pursues. This context is an important influence on a group's actions: It forms a window through which it views the world-- a perceptual filter-- and identifies threats, advantages, and possibilities. This filter, then, serves an intermediary link between groups as entities and the government. It conditions the choice they make to enter or stay out of politics, and, if the former is chosen, the mode of that activity. This choice is influenced, at least for those groups entering the judiciary, by institutional factors-- appropriateness of arena, disadvantage in other arenas-- and organizational factors-- availability of legal assistance, publicity needs, and group maintenance.

In short, government is not a monolyth. Groups must make strategic choices as to the appropriate institutional paths of their activities. This paper focuses on the factors that influence the decision of the group to go to the judiciary. It articulates factors relevant to the three segments of the group process noted in Figure 2: those internal to the group, those that influence its perception of its external environment, and those that condition the choice to enter the political and public realm in a particular way-- through the courts.

The Decision-Making Environment

Internal Factors

Psychologists, psychiatrists, and other observers of human development often discuss the factors composing individual "character" or "complexion."

Sigmund Freud, for example, hypothesized that three basic components meshed to form individual psyches: the id, ego, and superego. All individuals possess these three personality characteristics. The crucial issue, of course, is the degree to which any given component influences behavior at any given time. If the ego overpowers the superego, for example, then an individual is more likely to permit selfishness to override conscientiousness. Such a changing balance among these components explains why an individual can act selfishly, selflessly, or instinctually all during the same lifetime or even during the same day.

Groups, too, are composed of components that also change over time, informing decisions and perceptions. Literature on the behavior of groups identifies four such characterstics that help to define a group's essence at different points in time and, as such, affect future behavior by expanding and constraining choices: organizational mode, resources, maintenance, and focus.

Organizational mode takes one of three forms: mass-, sector-, or elite-based. Mass-based organizations are those that "are open to all citizens regardless of their qualifications" (Walker, 1983, p.392). This encompasses groups such as the American Civil Liberties Union, the National Association for the Advancement of Colored People, and Citizens for Decency through Law, all of which maintain open door membership policies. Sector-based organizations "require members to possess certain professional or occupational credentials" (Walker, 1983, p.392). Such groups include trade and professional associations, and unions. A final organizational mode is elite-based: non-membership organizations formed by like-minded individuals, usually attorneys, such as public interest law firms and national support centers of the Legal Serivce Corporation (Weisbrod, 1978).

Organizational mode is perhaps the most stable of the four internal characteristics. Once formed as an mass-, sector-, or elite-based group, leadership will unlikely change mode. Yet, consider the ACLU, which started as a small elite-based committee designed to defend conscientious objectors, but quickly transformed itself into a mass membership organization. Hence, organizational modes can change throughout a group's life cycle.

Even if it remains stable, as is typically the case, organizational mode is a factor for which any framework of interest group politics must account because it will affect many subsequent behavioral choices, thereby influencing the decision-making environment in toto. Consider just one comparison: the decisional processes of the NAACP, a mass-based organization, versus the LDF, an elite-run group. As Stephen L. Wasby indicates, the NAACP's current participation in litigation, particularly in the area of criminal justice, has been largely "reactive" to outside events, membership demands, and especially affiliated branches: "If branches [of the NAACP], particularly the larger and more politically active ones, want litigation on a particular topic, they 'can get it done'...Requests from NAACP branches also help set the organization's agenda" (Wasby, 1986, p.150). As a non-membership firm, the LDF does not face similar public pressures. Yet, as one attorney told Wasby: the "LDF doesn't feel client demand directly..., but feels it through cooperating attorneys" (1986, p.156). Hence, although the LDF and NAACP share similar objectives, their decision-making environments vary because of their differing organizational modes: the leadership of elite-based groups tends to be more autonomous than that of their mass- or sector-based counterparts.

Organizational resources-- money, time, staff, contacts-- comprise a second trait. The relative amounts of each certainly affect the decision-making environment under which groups operate by constraining or expanding their

array of choices. Funding levels, of course, guide internal organizational operations: Groups with small coffers may concentrate heavily on fund-raising enterprises before they undertake political activity. During its early years, the NAACP continually sent out requests for contributions, recognizing that it could not properly undertake complex and costly litigation without sufficient funding. In some instances, it even used its past litigation victories as publicity tools by which to attract contributors (Kluger, 1976). Similarly, after the ACLU's membership dwindled as a result of its legal defense of the National Socialist Party (Nazis) in 1977-78, it was forced to opt out of certain legal areas until it could rebuild its financial base (Neier, 1979).

The available pool of time also is a critical commodity for all organizations. Simply stated, all groups have just so much time they can devote to any one issue; if another comes to their attention, then they must ignore it or deemphasize another. This is particularly a problem for groups concerned with a broad range of issues (Kobylka, 1984,1987). Often, of course, time and money interact to affect the decision-making environment. The LDF no longer places a great deal of emphasis on welfare litigation because of funding considerations and other issue priorities (Wasby, 1986). Yet, even when groups have sufficient monies, time will play an independent role. During the early 1970s, for example, the ACLU reached all-time membership and budgetary highs. But, as the issue of abortion moved to the forefront of its agenda-- because of the judicial and legislative efforts of pro-life groups to counter Roe v. Wade (1973)-- it gave other issues less attention. Hence, even organizations possessing substantial resources must prioritize issues because of time constraints.

Staff can affect the strategic political decisions of groups by helping to orient their foci and interests. As Kay Lehman Schlozman and John T. Tierney claim, "Money may be the preeminent political resource, but it is surely not

the only one. In a technological age, several types of political, technical, and organizational skills are critical for effective political action" (1986, p.95). The staff of the National Consumer's League's provides one of the best illustrations of this observation. That organization, as Karen O'Connor notes, put together a diverse group of researchers with "expertise in the areas of medicine, health, and labor" to gather information later used in the "Brandeis Brief" (1980, p.76). Without the assistance of these experienced individuals and of the NCL's staff, the decision-making environment under which its attorney, Louis Brandeis, operated would have looked dramatically different.

Contacts within government comprise a fourth resource upon which organizations can draw. If a group has connections to a particular agency of government-- perhaps the President has appointed a member or supporter to a Commission-- then it may move to the forefront of the group's institutional strategy. This is precisely the reason why the Nader groups turned their attention to administrative lobbying during the mid-1970s: President Jimmy Carter had appointed several "Nader's Raiders" to important positions within the bureaucracy (O'Connor and Epstein, 1984). Contacts within the other governmental institutions will likewise shape their strategic choices.

Maintenance, an ongoing process for most groups, constitutes a third internal factor relevant to groups' decision-making environments. Before groups can do anything they must survive; few organizations have amassed sufficient resources to ignore this consideration. Mass- and sector- based groups, in the words of Clark and Wilson (1961), can offer "incentives" to maintain and attract members. And, according to Walker (1983), all three modal groups try to attract patrons, foundations or wealthy individuals to help defray costs. The need for maintenance is both a guide for and constraint on the choices, political and other, made by group leaders.

Naturally, like the components of the human psyche, these internal charateristics play independent roles in shaping group behavior. But again, as Freud hypothesized, it is the interplay among these elements that becomes the crucial factor in the overall framework of decision making. Examples of this are as numerous as the permutations existing for the values of each internal characteristic. Consider just one: The members of mass-based Group A attempt to push their leaders into taking political action on a particular policy. The leaders, however, recognize that such activity in any governmental arena will be too expensive for the organization to pursue. The alternatives among which Group A must choose (i.e. to take political action without sufficient funding, to ignore member demands, to pursue new funding sources) would be very different if it was a sector- or elite- based group or if it had sufficient resources and so on. Hence, these three internal characteristics of groups, which can vary over time, are important as they help to explain the constraints under which groups operate. But rarely do they do so in isolation: it is the interplay among these factors at any given point that inform the decision-making environment.

A final internal factor orienting groups toward their external environment is focus. By focus we mean the nature of the interests, either purposive or material, that moves groups to pursue their goals through the political system. Traditionally, scholars examining group litigation have looked at groups whose very existence depends upon political motives and goals. Organizations such as the NAACP/LDF, the ACLU, and the American Jewish Congress use policy positions to enhance and maintain their membership rolls and act in the political realm to further this end and create "good" public policy. They are best described by James Q. Wilson as purposive groups, those that

> ...work explicitly for the benefit of some larger public or society as a whole and not...chiefly for the benefit of members, except insofar as members derive a sense of fulfilled commitment or enhanced personal worth from the effort (1973, p.46).

Groups possessing purposive interests, however, are not the only types of organizations active in litigation. Material groups (Olson, 1965), which owe their existence to selective and tangible benefits (and not to the political positions they may adopt or pursue), also use the courts to advance positions of interest to their leaders. Their goals are political in the sense that they may be achieved through the institutions of government, but they are not the conceptual equivalent of those pursued by purposive organizations because of differences in motivation and interest. Purposive groups try to influence public policy to promote a public, inclusive good. They premise their actions on what they perceive to be in the best interests of society and not just those of their members. The political actions of a material group, though they may affect a broader population than that included in the group, are undertaken to advance the exclusive interests of leaders and or members.

Group focus, then, is important for two reasons. First, along with the other internal characteristics, the focus of groups-- the concerns with which they interest themselves and the motives behind their political activity-- is an internal organizational factor relevant in shaping their orientation toward the political system and in defining the range of issues from which they will select. The interplay among organizational mode, resources, maintenance, and focus defines the decision-making environment under which groups operate. Second, we suggest that organizational focus helps to define the goals of groups. These goals can be conceptualized either as political/public and material/private.

Political/Public Goals

There is a voluminous literature recounting instances of interest groups litigating in pursuit of political/public goals. Foremost among these goals, according to the literature, is equality or fundamental fairness. Groups concerned with racial discrimination (NAACP, LDF, Alabama Christian Movement for Human Rights, Lawyers Committee for Civil Rights Under Law, Citizens' Committee to Test the Constitutionality of the Separate Car Law, Lawyers' Constitutional Defense Committee) (see Stewart and Heck, 1982), with gender discrimination (Women's Rights Project of the ACLU) (see Cowan, 1976; O'Connor, 1980), with discrimination of the basis of national origin (Mexican-American Legal Defense and Educational Fund) (see O'Connor and Epstein, 1984), and with discrimination on the basis of handicapped status (Disabled Rights Movement) (see Olson, 1981,1984) have frequently gone to court to pursue or defend equal protection of the law.

Related to equality and fundamental fairness are the goals of political rights and liberties. Examples of group pursuit of such goals are abundant. The American Jewish Congress, Americans United for the Separation of Church and State, and the ACLU have each gone to court to bolster the First Amendment's wall of separation between church and state (Sorauf, 1976; Pfeffer, 1981). The ACLU, in fact, has gained fame as "the" organization willing to defend even the most unpopular group's right to express political ideas (Neier, 1979). The Tennessee Committee for Constitutional Reapportionment's attack on apportionment in that state led to the imposition of the one person, one vote standard nationwide (Cortner, 1968). Additionally, groups on both sides of the obscenity issue have fought in courtrooms over

the protections afforded by the free speech and press clauses of the First Amendment (Kobylka, 1984).

Finally, there are two policy goals that deal with the operations of government: good government and federalism. A variety of examples fall into these categories. Common Cause has gone to court as part of a coordinated strategy to structure debate over campaign finance reform (Greenwald, 1975, p.3) and over a variety of other "good government" issues (McFarland, 1984). Groups supported or inspired by Ralph Nader have used litigation to provide a voice on issues for common citizens and to serve as watchdogs to assure that governmental agencies pursue the public interest (Handler, 1978). True to Truman's (1951) contention that organization begets counterorganization, conservative public interest law firms have launched massive legal challenges to the policies advocated by the Nader groups (see Epstein, 1985). And, the National Institute of Municipal Law Officers has been litigating since 1939 to assist cities in a variety of areas of municipal law (Vose, 1966). In short, a wide range of groups, moved to political action by general purposive concerns and representing a wide variety of views, have seen the courts as a productive avenue for pursuing or defending their political/public goals.

Material/Private Goals

Groups have two broad types of material/private goals: commercial and professional. These foci lead groups otherwise disinclined to use public action into the political system. That is, groups possessing commericial or professional goals will enter only certain kinds of narrow issue debates-- those that relate directly to the material interests they were established to oversee.<1>

Organizations with commercial goals are those that seek to protect or enhance the economic status of their specific occupational strata. They enter the political arena not to make conditions better for all citizens, but to improve or maintain them for the economic prosperity of their members. Their interests are narrow and private; they are political only in the sense that they can be furthered or protected in the public arena. Their political actions are a function of commercial, not public, concerns-- an extension of vocational interests.

Trade associations, groups existing primarily to provide economic assistance to member businesses, most consistently typify organizations with commercial orientations. Although their primary mode of operation is private, these groups occasionally use the judiciary to promote or protect their economic interests. For example, trade associations entered the political debate over obscenity (and, in fact, became one of the more visible sets of "libertarian" group litigators) because their members stood to suffer economically from Supreme Court decisions allowing considerable latitude in the enforcement of obscenity laws (Kobylka, 1984,1987).<2> Other commercial groups that have litigated to advance the economic interests of their members include: the Southern Cotton Manufacturers, which went to court on behalf of member textile mill owners to challenge laws regulating child labor (Wood, 1968); the Chamber of Commerce, which created a Center to oppose governmental regulation of business practices (Epstein, 1985); and, the U.S. Brewers' Association, which launched lawsuits to challenge prohibition (Vose, 1972).

Unlike their commercial counterparts, professional associations do not exist primarily to promote the profitability of their members. Instead, the primary concern of these groups is to maintain the vocational integrity of a particular occupational strata. Groups of this type, including the American Bar Associ-

ation and the American Medical Association, often enter the political arena to gain authority as "certifiers" of those who aspire to a particular vocation or activity. Other professional groups engage in politics when it becomes necessary to protect a perceived dimension of organizational concern. Consider the involvement of the American Association of Publishers, the American Library Association, and the Authors League of America in obscenity litigation. The most immediate concern of these groups is to protect the material interests of their members, concerns that often involve the "political" issue of free expression. On the one hand, then, they work to protect the material interests of their members (e.g., defending librarians charged with disseminating obscenity); on the other, they argue on principled, political grounds for broad tolerance in the area of expression (Kobylka, 1984,1987). Hence, they became politically active in this area of law in an effort to protect members of their professions from a perceived debasement by public policy. This motivation, although clearly material, is not strictly speaking "commercial."

The Perceptual Filter

Thus far our discussion has focused exclusively on factors associated with internal group politics-- group traits and goals. At some point, however, groups enter a zone in which their internal concerns confront the external environment. It is within this zone, which we call the "perceptual filter," where groups begin to consider linkages between their internal configurations and the external variables. More succinctly, it is within this perceptual filter that groups, based on their internal makeups and objectives, formulate perceptions of the social/political context: the institutions of government and organizations

with related concerns. These perceptions, in turn, lead them to determine whether or not to enter the governmental arena.

Both contexts, the political/social situation and the array of organized interests, can take on one of three values: favorable, unfavorable, or maleable. An unfavorable/favorable context implies that groups perceive any or all of the institutions of government or public opinion as inhospitable or conducive to their claims. Groups possessing certain traits or goals, for example, will view the Rehnquist Court or the "Reaganized" lower courts as more favorable political environments than others. Maleable contexts exist when groups are uncertain about the political climate. This occurs when the institutions of government have yet to proclaim definitive policy or when the group's goals have not been placed on the political agenda.

Within this filter, groups also will pass judgment on another external presence-- the array of other organized pressures. They must assess whether "enemies" (unfavorable) or "allies" (favorable) populate the existing external environment. If an issue has yet to reach institutional agendas, the group might find a maleable array-- a void existing within group representation.

Such perceptions about the existing context and array of pluralistic elements certainly affect groups' decisions, but not necessarily in any independent, generalizable way. Consider two examples: the litigation activities of Americans for Effective Law Enforcement (AELE) in the late 1960s and those of the ACLU in the 1940s. AELE was formed in 1966 for two reasons: to bring a "law and order" perspective to the Supreme Court and to counterbalance the claims of organizations such as the ACLU and NAACP. The leaders of the AELE, then, clearly perceived both the institutional context (the Warren Court) and the array of other groups (high, organized opposition) as unfavorable, yet this did not dissuade them from pursuing their objectives through litigation

(Epstein, 1985). In contrast, the ACLU, which had been defending members of the Communist Party since the early 1920s, ceased radical speech litigation because of the increasingly negative political climate and opposition (see Lamont, 1968).

What explains the varying behavior of these two groups? Certainly, one important factor is the difference between their internal make ups. During the early 1940s the ACLU was short on funds and members, while the AELE, in the 1960s and through today, is an elite-based group, possessing no members to appease. If anything, the perceived crisis of the Warren Court's liberalization of criminal rights (a negative context) actually aided the AELE in generating monetary support for its cause. Hence, even though these groups were faced with similar unfavorable situations, it is no wonder why they reacted very differently.

The perceptual filter, then, comprises a critical part of our decision-making model because it is here where internal configurations and external perceptions mesh. And, as such, it is within this zone where groups consider whether or not to enter the political realm.

Institutional and Organizational Reasons for Going Into Politics: The Judicial Option

Based on their internal characteristics and perceptions of the external environment, groups decide whether to pursue their objectives through political channels. But why do they select one institution over another at any given point in time? After reviewing the existing literature on interest group liti-

gation, we determined that two sets of factors motivate groups to go to court: institutional and organizational.

Institutional Reasons

Ask political scientists why groups use litigation, and the vast majority will respond that they do so because they cannot influence either the legislative or executive branches. This conventional wisdom is so commonplace that it is truly the textbook response. This disadvanaged thesis holds that when groups are thwarted in other policy-making arenas (Barker, 1967; Cortner, 1968), they turn to the courts where majority building is secondary to appealing effectively to statutory or constitutional principles. Yet, the picture is not so simple.

Whatever amount of truth the disadvantaged thesis holds, it is complemented by the fact that the judiciary, as a coequal branch of government, is often an appropriate arena for group activity. Judicial action may be necessary to enforce, to implement, to reinforce, or to promote compliance with victories won either in the other branches of government or in the judiciary itself. The National Consumers' League found it advantageous to go to court to defend the validity of protective labor legislation, which it had helped to pass (Vose, 1958). Common Cause has used litigation to ensure compliance with the Federal Election Campaign Act (Greenwald, 1975). In short, groups sometimes use legal activitiy to force courts into quasi-executive roles.

Litigation may also be used when groups serve as back ups to other interests. The Lawyers Committee for Civil Rights Under Law provided basic legal assistance to blacks and civil rights workers in Mississippi to supplement the other political tactics they were using to achieve their goals (Heck and Stewart, 1982; Stewart and Heck, 1983). Similarly, the National Institute of

Municipal Law Officers has gone to court in support of city attorneys, while the State and Local Legal Center now regularly provides assistance to states attorney general (Baker and Asperger, 1982). Thus, in some areas, litigating groups have been auxiliary to other groups or actors who have taken the lead in pursuing policy goals. Still, litigating groups have been important. For instance, some credit the early litigating interest groups in the area of civil rights in Mississippi with being the progenitors of public interest law practice in that state.

In addition, group-backed litigation may help fill a void or serve as a counterbalance to other organized interests when issues are on the public or governmental agenda. Particularly when issues are being argued in court, as students of the U.S. judicial process have noted, the adversarial system offers no guarantees and perhaps mitigates against the consideration of a range of alternatives. So it should not be surprising that the Southern Cotton Manufacturers went into the courts during the early 1900s to counter the child labor movement or that the Anti-Boycott Association used litigation between 1902 and 1919 to fight union activity. More recently the Chamber Litigation Center, a creation of the U.S. Chamber of Commerce, has gone to court to do battle with what it considers to be liberal forces; the Equal Employment Advisory Council has sought to counter the Bakke decision and the Carter administration; Americans for Effective Law Enforcement has joined battle with the ACLU; and, conservative public interest law firms have tried to counterbalance the claims of their liberal counterparts (Vose, 1972; Epstein, 1985).

Finally, groups have at times found courts excellent vehicles for developing law and achieving policy change. The NAACP LDF elicited from the courts new constitutional protections for blacks (Vose, 1958) and, in the 1970s, new bail law. The Tennessee Committee of Constitutional Reapportionment in-

stigated a major structural change in government through litigation (Cortner, 1968). The National Right to Work LDF has sought to develop law through its activities, as have the Citizens for Decency through Law.

In sum, the long-standing disadvantaged thesis provides just one institutional reason explaining group litigation. As this survey of the literature reveals, several other institutional-based factors motivate groups to seek redress through the courts.

Organizational Reasons

Despite the difficulty of defining their precise relationship to motivations tied to institutional concerns, organizational factors also affect group decisions to enter the political arena. Simply speaking, groups do two things: they provide goods to members and they work to maintain themselves. Statements and actions on political positions are the primary goods provided by some groups, while others rely more heavily on selective material goods to maintain themselves (Wilson, 1973; Moe, 1980, 1981). For the latter, the political actions they take are not crucial to their continued existence, but merely a by-product of organizational wealth (Olson, 1965). This does not mean, however, that political activities, even for material groups, have no organizational pay off. While their leaders may be more free of membership constraints on the political choices they make for the group than those of more purposive organizations, the political actions of these groups are not necessarily irrelevant to their maintenance. In fact, organizational activity to promote the material goals of a group may be an added benefit that can hold marginal members and draw new ones. This suggests that organizational needs combine with institutional concerns to condition the decision of a group not only to go into the political

system, but to enter a particular arena as well. We have identified three organizational factors that affect group choice to litigate: availability of legal talent, publicity, and group maintenance.

The availability of legal talent conditions a group's decision to become politically active, and especially its choice to litigate. If a group has ready access to legal talent, the decision to go to court is not nearly so imposing as it would be if it had to procure independent legal assistance. One of the great advantages held by the NAACP/LDF as it entered its litigation to eliminate restrictive covenants (Vose, 1959) and school segregation (Kluger, 1975) was its base of experienced attorneys. Institutional constraints did work against the use of other forums, but the presence of Thurgood Marshall and his capable team of advisors made the judicial choice easier. Citizens for Decency through Law (CDL)-- a group opposed to the availability of obscene material-- also benefitted from the presence of several attorneys on its staff (Kobylka, 1984; Epstein, 1985). Over time the group exploited this advantage by becoming increasingly active in the judicial arena, and it continues to supplement its legal staff to further the gains it has secured. The availability of legal talent has also facilitated the litigation choices of a many other groups discussed in the literature: the American Liberty League (Wolfskill, 1962), the Nader groups (Handler, 1978), the Voluntary Committee of Lawyers (Vose, 1972), Americans for Effective Law Enforcement (Epstein, 1985), the Women's Rights Project (Cowan, 1976), the ACLU (Sorauf, 1976; Kobylka 1984, 1987), the American Jewish Congress (Sorauf, 1976), the Authors League of America (Kobylka, 1984), the First Amendment Lawyers Association (Kobylka, 1984), and the Lawyers' Committee for Civil Rights Under Law (Stewart and Heck, 1982).

A second factor, the publicity a group gains from its litigation efforts, is important for two reasons. First, it helps the group get its message heard,

enabling it to foist its concerns onto the public agenda. Consider the NAACP/LDF's litigation campaigns in the areas of voting rights, housing access, school desegregation, and employment discrimination: they not only resulted in favorable policy decisions, but they moved the question of black civil rights permanently to the forefront of the policy agenda. The ACLU's litigation in the areas of church-state relations (Sorauf, 1976) and obscenity (Kobylka, 1984, 1987) had similar agenda-setting value. In both instances the ACLU was able to foster a great deal of public attention and disseminated its message to the public in a way that would have been impossible without litigation victories. Other groups, especially those responding to perceived victories by their opponents, can gain the same end through litigation. Environmental groups and the Nader organizations (Handler, 1978) also have used litigation to spur public awareness of issues of concern to them.

Ideological posturing is a second reason why groups seeking publicity take issues to the courts. Attacking groups or institutions that an organization finds ideologically or politically odious, rather than only seeking policy objectives, becomes core desideratum. This attack may not change policy or alter the policy agenda, but it does publicly question and criticize the object of the suit. The litigation of Americans United for a Separation of Church and State (AU) (Sorauf, 1976), a group composed largely of southern protestants, provides an example. A primary motive of this group's litigation was to attack and criticize the Catholic Church. Naturally AU wanted the issues resolved in its favor, but "success" was not the central motivation for its litigation. The obscenity litigation of the American Library Association (ALA) provides another example. It not only furthered the ALA's political goals, but it was used by the group in conferences, press releases, and other public forums to publicize

the threat posed by those groups, both right and left, that supported the censorship and sanitizing of texts and library holdings (Kobylka, 1984, 1987).

Organizational maintenance constitutes a third internal factor conditioning a group's choice to go public. Taking and pursuing political positions provides a membership incentive that is potentially useful in attracting and holding members, money, or other resources of importance to a group. In this sense, the political positions taken by organizations become bargaining tools to draw attention, and perhaps allegiance, to the group. Many group theorists have noted the utility of political action for organizational maintence. (see Truman, 1951; Olson, 1965; Salisbury, 1969; Wilson, 1973; and Moe, 1980, 1981). This is clearly manifest in organizational attitudes toward litigation. Americans United hoped to generate more financial resources by opposing govermental aid to religion, especially that intended to support parochial schools (Sorauf, 1976). One of the attractions of pursuing women's rights for the ACLU was the satisfaction of a constituency within the group and the potential attraction of latent members and their financial support (Cowan, 1976). The litigation of the NAACP/LDF helped that group to sustain itself as its political agenda unfurled (Vose, 1959; Kluger, 1975).

The groups noted above are all purposive, but material groups also occasionally use their political positions as a maintenance strategy. This is implicit, if undeveloped, even in Olson's (1965) work: political positions, especially if tied to the material concerns of the group, can be useful in attracting and holding members. In 1977 the Chamber of Commerce, for example, created a Litigation Center to provide a "voice" for its member businesses. The Chamber recognized that it was generally providing excellent representation for its constituents in the executive and congressional fronts, but that its judicial lobbying was rather weak. The Center now provides a vehicle for such

activity, filing amicus curiae briefs on the demand of members and representing them in court. The fact that businesses completely fund the Center's activities is just one indication of the viability of litigation as a maintenance strategy for material groups such as the Chamber.

Media Coalition (MC), formed by commercial groups after the Supreme Court decision in Miller v. California (1973), also demonstrates the utility of political incentives for material groups. Its goal was to protect the commercial interests of its member trade associations. MC's legislative and litigious activities were narrowly tailored to protect the specific vocational pursuits of its members. Its considerable success in early litigation produced two results. First, one charter member, the Motion Picture Association of America (MPAA), left the group in early 1977. MPAA joined MC because of the political benefit it could provide-- protection of the commercial interests of major motion picture producers. It is important to note that the MPAA was interested only in the protection of major film releases and not those of lesser studios or anything narrowly concerning printed media. Its decision to leave the group was based on its own resource constraints-- money was needed in other areas of organizational interest-- and the success of MC. The latter made the legal climate favorably disposed toward MPAA members' releases, and removed the incentive for MPAA's membership-- its specific commercial interests protected, it lost interest in obscenity politics. MC's success, however, enabled it to attract other groups-- e.g., the National Association of College Bookstores-- to membership because the law as it affected the distribution of printed materials remained ambiguous. Thus, group leaders used MC's litigation success as a membership incentive. This suggests that the political actions of even material groups can be a relevant organizational maintenance tool.

Groups that enter the political realm have needs that extend beyond securing specific policy outcomes. These organizational needs and capabilities, three of the most significant of which are discussed briefly above, are a second set of factors that work to condition the political and, more narrowly, litigation decisions of groups. Taken together, organizational pressures and institutional appropriateness help to define the political choices and strategies of groups that decide to go public with their claims.

Conclusion

Like many scholars who have examined the ways that interest groups use the judiciary to advance their policy goals, we bemoan the lack of cumulative and comprehensive knowledge of group litigation. What we have, at present, is a collection of interesting, but largely unlinked, studies of specific actions by specific groups in specific areas of law. We need more. We need a framework into which to fit these studies, a framework that will develop generalizations in an area of study that has too long remained essentially descriptive. This paper was an initial stab at the construction of such a rationalizing framework.

We sorely need a theoretical framework encompassing group litigation for two reasons. First, previous studies have shown us that the judiciary is an important and viable institutional path through which groups can attain their policy goals. A framework that consciously tries to impose an order on these disparate studies will help to identify, clarify, and explain the factors that condition the decision of groups to go to court. Such a framework would allow us to describe and explain, in a general way, the reasons that groups go to

court. In short, it would lend coherence and power to our understanding of group litigation.

Second, a generalized explanation of the factors that condition group litigation would allow us to fit this phenomenon into the perspective in which it belongs, that of group theory. Previous studies, for lack of any other focus, have examined group-court interactions to the exclusion of other institutions. But we know that this is not how groups operate. Their concerns are grounded in specific areas of policy, not in specific institutions of government. Litigation is but one strategy in a quiver; it is seldom a be-all or end-all of group activity. Development of an overarching perspective on group litigation that makes use of the concepts of group theorists promises to place the study of litigation where it belongs-- in the web of group theory. Ultimately, then, our interest is to address the question of how groups operate in the political system generally. However, before we can run we must first walk. This is why we have chosen to approach this question initially from the perspective of litigation.

The model we have developed in this paper is consistent with these ambitions. It postulates three distinct areas of the process of group politics: those internal to the group, those external to it, and that zone in which the internal concerns of the group interact with its environment. We argue that a finite set of internal factors orients any given group to its external environment. These factors are widely used in the group theory literature and include mode of organization, resources, maintenance concerns, and focus. The latter-- the nature of the interests that prompted group organization, be they purposive or material-- conditions the goals a group will seek to promote in the political process.

Together, these internal factors form a window through which a group sees its external environment. This perceptual filter gives meaning to the socio-political environment and the configuration of organized actors within it that the group confronts. Given this understanding of the political environment, a group makes its political choices-- whether or not to go public, and, if the public route is chosen, which institution or institutions are to be the focus of group activity. This choice is influenced by the group's perception of the relative condusiveness of the various institutions to its goals and the group's understanding of its requirements for its own maintenance.

The bulk of this paper has focused on the choice groups make to go to court. The factors described in the model as influencing this choice, however, also condition the choice to go to other institutions. The values these factors take on (and the importance ascribed to them) may vary over institutions, issue areas, and time. Future research will address the relationship between these factors and group choices to enter the political realm-- via litigation and more "traditional" avenues-- and will strive to further develop and clarify the components of the model.

Notes

<1>Although these categories are not mutually exclusive, they are sufficiently distinct to allow for coherent groupings and analysis of the political behavior of different types of groups.

<2>Between 1957 and 1982, nine groups (ranging from the Adult Film Association of America and the Motion Picture Association of America to the Council for Periodical Distributors Association and the American Booksellers Association) went to court out of the fear that restrictive rulings on obscenity issues would cause their members' wares to come under prosecution and thus threaten economic losses both generally (circulation and distribution limitations) and specifically (individual legal actions to fight suppression attempts).

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Figure 1
Preliminary View of the Group Process

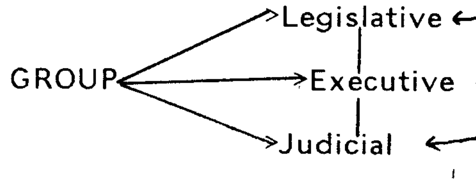

Figure 2
The Process of Group Interaction with Government