

The Many Faces of Strategic Litigation: Some Implications of Legal Mobilization Analysis

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Lecture by Michael McCann (University of Washington)
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The term “strategic litigation” is invoked for a wide variety of endeavors. In theory and practice, most purported manifestations of strategic litigation make lawyers, lawsuits, and judges the starting point and focus of action. By contrast, “legal mobilization” politics, in theory and in practice, often involves litigation but decenters lawyers, courts, and official legal processes in larger political struggles. The latter often focus on the strategic but often messy, dynamic, ongoing, protracted, episodic interaction of multiple political actors and tactics in diverse institutional sites, including especially the grassroots mobilization of and by non-professional rights claimants and their roles in catalyzing, leveraging, and implementing social and institutional change. Lawyers are frequently involved, but often in roles that transcend and even transgress their professional skills and roles in technical legal advocacy; tensions between lawyers and those they aim to represent and who are struggling in multiple terrains are often underlined as routine. While too simplistic, there is some truth to the claim that strategic litigation tends to be a “top down” approach to (human or constitutional) rights expansion or enforcement while legal mobilization tends to be more “bottom up” or, more accurately a mix of both. My talk will develop the implications of these different paradigms for exploring multiple forms of strategic legal action, using copious examples from different national and transnational political contexts. I will underline that, while some general lessons can be gleaned from experience and abundant case studies of legal mobilization, the character and efficacy of strategic legal rights advocacy varies widely with a host of contingent contextual factors.

Michael McCann is Gordon Hirabayashi Professor for the Advancement of Citizenship at the University of Washington. McCann is author of over sixty article-length publications and author, co-author, editor, or co-editor of eight books, including authoring the multi-award winning monographs *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago, 1994) and (with William Haltom) *Distorting the Law: Politics, Media, and the Litigation Crisis* (Chicago, 2004). His newest book, with George Lovell, is *Union by Law: Filipino American Labor Activists, Rights Radicalism, and Racial Capitalism* (Chicago 2020). McCann was the founder and, for a decade, director of the Law, Societies, & Justice Program as well as the Comparative Law and Society Studies (CLASS) Center at UW; he was also one of the faculty founders for the UW Center for Human Rights. He has served as chair of the Political Science Department three times, once for a five-year term and twice for interim one-year terms. Michael also just completed serving two terms as the Director of the Harry Bridges Center for Labor Studies, where he continues his nearly thirty years of committed engagement. He has spent much of the last decade as an advocate with and for low wage workers, including the \$15 Now minimum wage campaign at Sea-Tac Airport in Washington state, which has been memorialized in a digital web archive that he co-directed. McCann is winner of a university Distinguished Teaching Award and a Marsha Landolt Distinguished Graduate Mentor Award; he also won the Stanton Wheeler Mentoring Award from the Law and Society Association. Michael also was, in one of his former lives, a President of the U.S. based international Law and Society Association (2011-13).
