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## **Christian Conservatives Go to Court: Religion and Legal Mobilization in the United States and Canada**

DENNIS R. HOOVER AND KEVIN R. DEN DULK

**ABSTRACT.** The American exceptionalism thesis holds that American political culture produces an unusually litigious society. The US Christian right has participated in litigation, especially in constitutional rights cases dealing with issues such as religious schools and abortion. However, since 1982 Canada has had a constitutional Charter of Rights and an increasingly active Christian right of its own. We compare data on Christian right involvement in education, abortion, and “right to die” (euthanasia, assisted suicide or mercy killing) cases at the Supreme Court level in both countries. Among North America’s Christian conservatives, exceptionalism has eroded, but not disappeared. We employ interviews and data on religious interest groups to analyze the sources of legal mobilization, and find that it is a matter not just of political culture, but also resource mobilization, political opportunity structures, and religious worldviews.

*Keywords:* • American exceptionalism • Christian right • Legal mobilization

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In the USA, advocacy groups that speak for socially conservative Christians have been pressing claims in the public square for more than two decades, re-establishing themselves as important players in interest group pluralism. The most prominent component of this mobilization is the Christian right (Bruce, 1988; Smidt and Penning, 1997; Wald, 1997; Wilcox, 2000), a network of partially overlapping associations, interest groups, and social movement organizations. While it is composed largely of evangelical Protestants, like-minded Roman Catholics have been active on a number of issues of common concern to their evangelical brethren (see Welch and Legee, 1991). These developments have lent support to theories of religious polarization and “culture wars” in US society and

politics (Hunter, 1991), where new cleavages pit religious and moral conservatives against their liberal counterparts in ways that cut across traditional denominational divisions. To be sure, important political issues (for example, welfare policy) continue to divide Roman Catholics (who tend to be more liberal) from evangelical Protestants (Bendyna et al., 2001) and to limit prospects for any wholesale “orthodox alliance” in politics (Barnes, 1995). Still, these religious traditions increasingly recognize each other as allies in certain aspects of the social conservative agenda, such as opposition to abortion and support for private Christian schools. Likewise, they recognize some common threats such as, principally, moral relativism and secularization (Colson and Neuhaus, 1995).

Christian conservatives view these threatening forces as having many elite allies in public institutions and have therefore engaged these institutions with public activism. Among these institutions are the federal courts in general and the Supreme Court in particular. Indeed, the early waves of Christian right mobilization were in part provoked by Supreme Court decisions regarding constitutional rights (school prayer, abortion, and so on) that are anathema to many theologically orthodox and socially conservative believers. It is perhaps unsurprising, therefore, that recent scholarship documents a dramatic increase in the level of legal activism by conservative Christian organizations in the USA (Brown, 2002; Den Dulk and Krishnan, 2001; Ivers, 1998).

These organizations have molded their activism to a classically American pattern, one focused on the politics of rights. In contrast to most parliamentary systems, in which courts do not have the power to declare constitutional rights and invalidate legislation, the American courts are an important site for group politics of all kinds. This development might be seen as simultaneously lending support to two aspects of the “American exceptionalism” thesis (Lipset, 1996): that American political culture is exceptionally *litigious* and exceptionally *religious*. According to most versions of American exceptionalism, the USA has defied expectations of secularization theory, maintaining from initial settlement to the present day uniquely vibrant, organizationally resourceful, and politically active Christian traditions. At the same time, American national identity and values have always been individualistic and grounded in constitutional rights, such that political litigation related to rights has been profoundly important to the political development of the nation. On this view, the phenomenon of Christian conservatives in court is simply the confluence of two peculiarly American tendencies.

However intuitively appealing this argument may be, apart from careful cross-national analysis, it should be regarded not as conventional wisdom, but as a hypothesis to be tested. Is the choice to engage in legal activism a self-evident one for Christian conservatives? Are the factors that condition this choice unique to the USA? We investigate these questions via a comparative analysis of conservative Christian legal activism in the USA and Canada. Canada is an appropriate case for this cross-national inquiry, in part because its evangelical Christian community experienced a social and political revitalization in the 1980s (Stackhouse, 1993, 2000), a resurgence that in some respects echoed developments in American evangelicalism a decade earlier. More importantly, as part of its constitutional repatriation in 1982, Canada adopted a constitutional bill of rights, the Charter of Rights and Freedoms. With the advent of the charter, the institutional opportunity structure for legal mobilization in Canada took a significant step toward the American model. In this article, we ask: are exceptional cultural or organizational

resources necessary to turn *opportunities* for legal mobilization into *actual* legal mobilization?

### **Political Litigation: Rights Claiming and Rights Denying**

That groups use legal advocacy for political purposes is beyond scholarly dispute. Arthur Bentley (1908) was among the first to draw the analogy between legal advocacy and other forms of political participation, and David Truman (1951) later revived the idea as a topic worthy of systematic empirical treatment. Clement Vose's (1959) classic study of the legal challenge by the National Association for the Advancement of Colored People (NAACP) to restrictive covenant laws provided such a treatment, fostering a stream of scholarship on the interaction of pressure groups with courts. Justice Robert Jackson (1951: 287) provided first-hand corroboration of these early studies, declaring litigation sponsored by interest groups "government by lawsuit" and the "stuff of power politics in America." As we shall see, organized groups associated with Catholicism and evangelicalism have increasingly turned to the full range of legal tactics not simply, or even primarily, to settle ordinary individual disputes, but rather to pursue social and political causes.

Although the existence of group pressure on the courts is well established (McCann, 1994; Epstein, 1985; Epstein and Koblyka, 1992; Wasby, 1995; O'Connor, 1980), extant studies do not capture the full nature and extent of religious group mobilization. This is not to say that religious legal advocacy has been neglected altogether. Jehovah's Witnesses (Manwarring, 1962; Peters, 2000), liberal Jewish groups (Ivers, 1995), Native American religionists (Long, 2000), advocates for the strict separation of church and state (Sorauf, 1976), and creationists (MacIntosh, 1985), among others, have each received systematic examination in the US context. While in many ways instructive, the efforts of these groups fit into a category of "minoritarian politics" (Sorauf, 1976) that has not matched the experience of larger and more prominent religious traditions, including contemporary Catholicism and evangelicalism. Other studies (Ivers, 1990, 1992; Koshner, 1998) address religious groups and legal mobilization in general and do not undertake direct, in-depth, cross-national or inter-religious comparisons to explain the legal mobilization of Catholics and evangelicals.

Like many other groups, Catholics and evangelicals have been involved in two modes of legal mobilization. On the one hand, they mobilize the law when they seek state declarations of their rights as a way to vindicate their grievances, interests, or moral concerns. On the other hand, they counter-mobilize the law when they attempt to translate their demands into a publicly sanctioned rejection of the established legal rights of others. This study incorporates each mode by analyzing legal mobilization in two policy areas: (1) abortion and "right to die" (euthanasia, assisted suicide, and mercy killing) issues, and (2) issues of religion and education. The "right to life" movement involves religionists in an attempt to *restrict* rights established by force of judicial declaration, most often by arguing in favor of policies such as state limits on abortion and the outlawing of assisted suicide. Education cases most often pertain to rights that believers wish to expand or protect. Protection for religious speech (including prayer in public schools), access to public school facilities or other resources for religious students, support for religious schools in the form of public grants, tax relief, vouchers, accreditation, or released-time arrangements, and the inclusion of creationism in public school curricula are among the issues addressed in this study.

### Explaining Political Litigation: Mobilization Theories

The theory of American exceptionalism suggests that the explanation for why US Christian conservatives embrace political litigation, despite its resource costs (for example, money and expertise) and other limitations, is largely a matter of political culture. The American political culture of individualism and competition encourages what some scholars call “rights consciousness,” that is, a tendency to understand the social and political world in terms of one’s own legal rights (Engel, 1998; Ewick and Silbey, 1992, 1998; McCann, 1994; Merry, 1990; Sarat, 1990). At the same time, US evangelicalism has injected strongly moralistic, perfectionist impulses in American culture. While these religious values sometimes justify a sectarian withdrawal from politics and a preoccupation with revivalism and missionary work, many times they fuel political mobilization (Wilcox, 2000), especially when linked with the tradition of American “civil religion” that imagines the USA as a redeemer nation (Lienesch, 1993). In religious terms, there is a perpetual dialectic between extremes of sectarian separation and crusade-like evangelism; in foreign policy terms, the analogous extremes are moralistic isolationism and moralistic unilateralism (Lipset, 1990).

However, streams of social movement theory that emerged in the 1970s and 1980s suggest that culturalist explanations of mobilization may be incomplete. Instead of seeing political participation as primarily a function of motivation, these theories hold that the most important factors explaining any instance of mobilization are those of opportunity. Endogenous values are thought to be relatively constant and therefore theoretically marginal, while exogenous factors such as the availability of co-optable *resources* (Iannaccone and Finke, 1993; McCarthy, 1987) and the structure of *political opportunities* (McAdam, 1982) become the focus.

Variables of potential interest to resource mobilization theory are many, and may include monetary resources that can be devoted to political activity or the varying levels of experience and expertise that might be pressed into service for a political-legal agenda. Political opportunity structure theory differs in that it is particularly interested in features of a nation’s constitutional and regulatory structure (its rules of the political game) that channel political action. This “structural” level of analysis makes the theory especially useful in comparative studies (Kitschelt, 1986). More broadly, the concept of political opportunity structure extends beyond formal rules to encompass aspects of the political environment that are likely to affect the near-term tactical strategies of interest groups, such as shifting configurations of allies and opponents (McAdam, 1996). What resource mobilization and political opportunity theory share is the economics-based logic of rational choice. Sydney Tarrow (1996: 880) argues that the two approaches share an “underlying homology,” that is, “Both assume that actors mobilize not in response to raw grievances and discontents but as a result of the incentives and opportunities that surround them.”

In the 1990s, some scholars began to argue that the pendulum in mobilization theory had swung too far toward rational choice, and called for “bringing the culture back in” to the study of mobilization (see Hart, 1996). Our analytical framework derives principally from literature that synthesizes culturalist, resource mobilization, and political opportunity structure emphases. Such approaches acknowledge the contributions of each of these different strains, and assume that a full (if unparsimonious) theory of mobilization must account for each major class of explanatory factors (McAdam et al., 1996).

Accordingly, our analysis unpacks the forces at work in legal mobilization by sorting them along three distinct, yet interactive, dimensions, each of which can be examined cross-nationally: ideological and incentive factors, resources, and political opportunities (Wald, 1997). In other words, comprehensive and persuasive mobilization theories are not unlike successful courtroom prosecutions—they establish *motive, means, and opportunity*.

### Data

For both the USA and Canada, we collected data on Christian conservatives' involvement in court cases at the Supreme Court level addressing issues of religion and education and of abortion and the right to die. This approach excluded cases from lower-level courts (trial courts and intermediate-level appeals courts) in each nation's judicial system, where a considerable amount of interest group litigation takes place. However, the lower levels of each nation's system are not directly comparable in the way that the Supreme Courts are comparable. Focusing our analysis on the highest level of judicial review helps prevent the introduction of methodological biases on the findings that would undermine parallel cross-national analysis. In both countries, Supreme Court decisions apply to the nation as a whole and are generally regarded as carrying moral weight. Accordingly, in a parallel fashion, they generate widespread attention among interest groups. Moreover, because we have delimited case selection by subject areas known to be highly salient to Christian conservatives, our sample of interest group data at this judicial level is a valid indicator of the strategic priority Christian conservatives place on political litigation.

We measured organizational involvement in all Supreme Court cases dealing with these topic areas from the time that the Christian right first began taking organizational form (at the national level) through 2001. For the USA, data were compiled using *United States Supreme Court Reports*, the *Briefs and Records of the US Supreme Court*, and the Lexis database. We begin our US observations in 1975 because the US Christian right began mobilizing in the mid-1970s and because, more specifically, several Christian organizations involved in political litigation were formed in this time period. Some 27 cases addressing the issues of religion and education and 32 addressing abortion and the right to die were included in the US data. On the Canadian side, data were compiled using *Canada Supreme Court Reports* and the LexUM database from 1984 to 2001. The year 1984 was chosen as a starting point because the Canadian Christian right only began taking shape in the mid-1980s (Herman, 1994) and the first Supreme Court Charter decision was handed down in 1984. Some 11 cases addressing the issues of religion and education and 13 addressing abortion and the right to die were included in the Canadian data (see Appendix 1 for a full list of the US and Canadian cases).

In addition, using a combination of original research and information reported in Weber and Jones' (1994) encyclopedia of US religious interest groups, we collected data on the denominational affiliation, date of founding, budget, and staff of advocacy groups that have theologically and morally orthodox Christians (evangelical Protestant or Roman Catholic, or both) as their primary constituency. We identified 46 US organizations and 35 Canadian organizations in this category. (Local-level groups with no regional or national reputation were not included. See Appendix 1 for a full list.) For qualitative background on the ideas and motivations of Christian conservatives, we conducted original interviews

with interest group leaders and consulted existing studies of popular Christian literature.

### Levels of Legal Mobilization in Comparative Perspective

We begin our analysis with two key empirical questions. How frequently have Christian conservatives in the USA and Canada availed themselves of opportunities to participate in Supreme Court cases? And, are the Americans exceptionally litigious as compared to the Canadians?

Our data strongly support the conclusion that, in both countries, most Supreme Court cases in these issue domains have indeed featured participation by Christian conservatives. Moreover, this participation has increased over time. Table 1 presents comparative data on Christian conservatives' legal mobilization. The Canadian data encompass a total of 18 years, which we divide into two nine-year periods. Thus, the first nine-year stage of mobilization in Canada is 1984–92 and the second nine-year stage is 1993–2001. We also divide the US data into nine-year mobilization stages. However, because mobilization started earlier in the USA than in Canada, the initial US stage is 1975–83, with 1984–92 and 1993–2001 delineating the second and third stages. This creates a staggered effect in cross-border comparisons shown in Table 1.

In both countries, the most common form of interest group participation is submitting a nonparty brief (called an *amicus curiae* brief in the USA, and an intervenor's brief in Canada). However, merely tallying the number of briefs fails to account fully for trends in legal mobilization. In some cases, organizations supported by evangelical Protestants or Catholics are themselves the main party. Also, in an increasing number of cases, a single nonparty brief will have many organizational co-sponsors. Therefore, in Table 1 we define "filers" as any advocacy group (or an organization acting on behalf of itself and, in effect, a class of similarly situated organizations) named in court documents, whether as a main party to a case or as a signatory or co-signatory of a nonparty brief. In order to be able to make meaningful comparisons across time and borders, we divide the number of filers by the number of Supreme Court cases, thus yielding "filers per case" means for each period.

TABLE 1. *Levels of Legal Mobilization by Time Period and Country*

	1975–83	1984–92	1993–2001
United States			
Number of cases: abortion/right to die or education	27	15	17
Cases with any evangelical/Catholic filers (% of all cases)	13 (48%)	15 (100%)	17 (100%)
Average number of evangelical/Catholic filers per case	1.04	8.67	8.24
Canada			
Number of cases: abortion/right to die or education	x	10	14
Cases with any evangelical/Catholic filers (% of all cases)	x	5 (50%)	10 (71%)
Average number of evangelical/Catholic filers per case	x	1.40	2.14

Source: Authors' tabulation based on *US Supreme Court Reports, Briefs and Records of the US Supreme Court*, Lexis database, *Canada Supreme Court Reports*, LEXUM database.

The earliest stage in the US portion of the table shows that, taken together, evangelical Protestant and Catholic organizations participated at modest, though not insignificant, rates. About half (48 percent) of cases featured some form of involvement from these Christian groups. Viewed differently, the filers-per-case mean was 1.04. The earliest Canadian stage was remarkably similar. Half of the cases heard by the Canadian Supreme Court drew some participation from Christian conservatives and the filers-per-case average was 1.40.

For both countries, the second time period (1984–92 in the USA and 1993–2001 in Canada) saw increases in mobilization levels. However, the proportional rate of increase in the USA was significantly higher than in Canada. Indeed, US Christian conservatives participated in *all* of the cases from 1984–92, and achieved an average of more than eight filers per case. In Canada, the second time period saw the proportion of cases rise to 71 percent and filers per case rise to 2.14. Thus, during the early periods of legal mobilization Canadian participation rates were roughly parallel to US rates, but by the second time period the filers-per-case average was four times higher in the USA. Moreover, the pace of participation in the USA does not appear to have been aberrant, as it was maintained through the third stage as well.

These findings present a mixed picture for American exceptionalism theory vis-a-vis legal mobilization. The level of legal mobilization among Christian conservatives is presently higher in the USA. However, to characterize this distinctiveness as “exceptional” may be misleading. There are obvious similarities in the histories and trends of legal mobilization of these two nations. Yet Canada is no “mirror image” of the USA. Perhaps a better metaphor for the Canadian comparison is that of an “echo”—similar, but later and softer.

### **Sources of Legal Mobilization**

Why has legal mobilization increased across North America and why is this increase more robust in the USA? In the following sections, we examine in turn the opportunities, means, and motives of Christian conservatives’ legal mobilization. The decision to litigate or not to litigate is never made in a vacuum, and as such, it is important to explore exogenous as well as endogenous factors. While it is not our purpose in this article to explain increases in interest group litigation overall, it is worth noting that our data did reveal that the pace of non-Christian conservative participation in cases relating to religion and education and to abortion and the right to die also picked up over time. In Canada, the pace among Christian conservatives was exactly parallel to the overall pace. In both the 1984–92 period and the 1993–2001 period, Christian conservative filers were 33 percent of all filers. While in the USA Christian conservatives accounted for only 15 percent of the total filings, from 1984–2001 that percentage rose to nearly 33 percent—nearly identical to the Canadian case. In short, there is a complex range of factors influencing interest groups’ tactical decisions and they do not necessarily affect Christian conservatives in isolation. Our present purpose, however, is to investigate whether the specific balance of factors affecting Christian conservatives in each country plausibly explains the similarities and differences we have observed.

### **Political Opportunity Factors**

Broadly speaking, the theory of political opportunity structure suggests that mobilization will follow the path of least resistance or the path of greatest strategic incentive, or both. But this does not take us very far toward analytical clarity. Indeed, William Gamson and David Meyer (1996: 275) have cautioned that conceptual fuzziness may lead skeptics to dismiss political opportunity structure as an “all-encompassing fudge factor for all the conditions and circumstances that form the context for collective action.” Notwithstanding these risks, however, some attention to opportunity structures is vital. For instance, apart from the advent of the Charter of Rights and Freedoms, the kind of legal mobilization that has occurred in Canada would scarcely have been possible.

In comparative perspective, the institutional structure and norms of US government have presented relatively little resistance to pressure group politics. The underlying Madisonian theory of competition among diverse interests in an extended republic was originally meant to apply mainly to the legislature, but in the 20th century it has arguably come to encompass the judiciary as well. The Canadian governmental structure, by contrast, has historically concentrated power in the cabinet and bureaucracy (Pross, 1975). The relative paucity of access points has made Canada less fertile ground for interest group pluralism (see Tatalovich, 1997).

Moreover, the norms of Canadian politics in the pre-Charter era took a dim view of political litigation. Canadian historian Kenneth McNaught (1975: 138) observed, “Judges and lawyers, supported by the press and public opinion, reject any concept of the courts as positive instruments in the political process... Political action outside the party-parliament structure tends automatically to be suspect—not least because it smacks of Americanism.” In her comparative analysis of abortion politics, Mildred Schwartz (1981: 74) noted, “It is appropriate to associate the use of the courts as a more significant means of political influence in the United States compared to Canada.”

However, in the past two decades, Canada has experienced what has been described as a “legalization of politics” (Mandel, 1989) and a dramatic “rights revolution” (Epp, 1998). The process of drafting and then enacting the new constitution in 1982 was itself a powerful inducement for interest group involvement, as groups from all across Canada lobbied for their preferred phrases and formulations. Christian conservatives, for instance, lobbied successfully for a reference to the “sovereignty of God” in the preamble (Egerton, 2000). When this constitution also gave the judiciary new powers to interpret charter rights and invalidate legislation on charter grounds (subject only to the rarely invoked “notwithstanding clause”), religious and secular groups increasingly saw the courts as a forum for interest group activity (Morton, 1987). Indeed, as Epp (1998: 180–90) has detailed, the shift was propelled not simply by the charter itself, but also by wider changes in the “support structure for legal mobilization”: expansion and maturation of civil rights and liberties organizations; government funding of language and equality rights litigation through the Court Challenges Program (an ideological lightning rod for social conservative opposition) (see Knopf and Morton, 1996); demographic changes in the legal profession; and expansion of human rights legislation and enforcement agencies, and other factors.

In spite of the relatively non-litigious history of Canadian interest group politics, by the 1980s the opportunity structures for legal mobilization in the USA

and Canada were broadly similar.<sup>1</sup> At the Supreme Court level, the most straightforward indicators of this parity are the Supreme Courts themselves—specifically, their policies regarding the standing or briefs of advocacy groups. Under court rules in the USA, *amicus curiae* briefs may be filed with permission from both parties in the case, and permission is rarely denied. Moreover, in *Flast v. Cohen* (1968), the Supreme Court opened the door to suits by indirectly aggrieved parties when it allowed ordinary taxpayers (and, by extension, organized groups) to challenge public support of parochial education on First Amendment grounds. The Canadian Supreme Court has sent similar signals. In the early 1980s, interest groups were assisted in their practice of charter politics by liberalization of the rules of standing. In *Minister of Justice of Canada and Minister of Finance of Canada v. Borowski et al.* (1982), the Supreme Court set what Morton (1992: 102) described as “the broadest rule of standing in any common-law jurisdiction.” In this case, the court allowed a challenge to Canada’s abortion law to be brought by anti-abortion activist Joe Borowski, who was not himself immediately affected by the law. Likewise, since the 1980s the court has been fairly generous in granting intervener status to interest groups wishing to submit briefs. The number of applications for intervener status (Swan, 1987) and their rate of acceptance (Bindman, 1991) both increased.

The aspects of political opportunity structure discussed thus far provide only limited leverage in explaining our findings regarding the legal mobilization of Christian conservatives. They are certainly consistent with the observed increases in political litigation in both countries, while the fact that Canadian participation rates increased less sharply may, in part, be explained by a lingering restraining effect of Canada’s non-litigious political tradition. However, interviews with Canadian interest group leaders did not reveal evidence suggesting that this was a major factor.

There are other aspects of the concept of political opportunity structure that must also be considered. These deal not so much with systemic norms and rules of the game, but rather with the strategic reasoning of interest groups regarding their tactical alternatives. In the literature on legal mobilization, a classic approach in this vein is the so-called “political disadvantage” thesis, which suggests that groups become involved in litigation and other forms of legal advocacy because, as rational actors, they perceive themselves at a disadvantage in other political institutions. In the US context, the idea of political disadvantage seemed particularly important as the Supreme Court began to judge the rights claims of minority groups during the Civil Rights era (Cortner, 1968; Vose, 1959), though scholars have also invoked versions of the thesis to explain the use of courts by women’s groups and religious minorities (Manwarring, 1962; O’Connor, 1980; Sorauf, 1976; Tushnet, 1987).

As a general theory of organized legal advocacy, however, the theory has proven to be time-bound to the Civil Rights era and too narrowly focused to help explain the range of interest group participation in litigation (Epstein, 1985; Olson, 1990). As courts have become sites for greater organized conflict in recent decades, groups at all levels of political clout have turned to litigation to advance their policy goals. It is also an ill-fitting theory for the many instances in which the political litigation of evangelicals and Catholics is reactive and conservative, that is, it is oriented to *conserving* a law that already exists. For instance, prior to *Roe v. Wade* it was proponents of abortion rights, not the Catholic Church or evangelical Protestants, who were most intensely dissatisfied with the legislative status quo.

Furthermore, our interviews and the literature on conservative Christian activism show that legal tactics have been pursued alongside of, not instead of, other tactics such as lobbying and electioneering.

A different, but related hypothesis regarding the strategic choice to litigate turns on interest group perceptions of judicial attitudes and ideological trends in federal court appointments. In the US context, this argument posits that in the 1970s conservative Christian groups realized that a judiciary composed of relatively liberal Carter appointees left little possibility for effective influence on decision-making by the federal courts (Moen, 1989), but Reagan's appointment of like-minded judges throughout the federal system in the 1980s (Goldman, 1989, 1997) opened the door to conservative groups. At least at a rhetorical level, perceptions of these changes may indeed have been an impetus. At the announcement of the creation of his legal advocacy group, the American Center for Law and Justice (ACLJ) in 1990, Christian right paladin and televangelist, Pat Robertson, drew this connection directly: "With a conservative Supreme Court in place, we can change the laws significantly in the next few years" (*Christian Century*, 1992). But we should be wary of overstating the relationship between favorable judicial votes and legal mobilization. Most advocates interviewed for this study suggested that a group's perception of judicial ideology influenced *how* they wrote their briefs, not *whether* their group got involved.<sup>2</sup> This is not to say that judicial ideology has no indirect affect on a group's use of litigation: after all, groups cannot litigate if courts refuse to hear cases, and the decision to take a case is partly the result of judicial attitudes. But that is a matter of judicial agenda setting; it does not explain why groups are motivated to participate.

Furthermore, if legal mobilization depended on favorable court appointments there would never have been any legal mobilization of Canada's Christian conservatives. As Epp (1996) has noted, before the advent of the Charter of Rights and Freedoms, Canada did have a statutory Bill of Rights (enacted in 1960), but in terms of the politics of rights it was fairly innocuous because there was no majority of Supreme Court justices inclined to give the document a liberal interpretation. By the late 1980s such a majority was in place. Thus, it is the ascendancy of judicial liberals, not conservatives, that is strongly correlated with the rise of conservative Christian litigation in Canada.

The application of political opportunity structure theory that we find most useful in the case of Christian conservatives turns the "political disadvantage" thesis on its head. It argues that Christian conservative groups mobilized the law because they believed they were under-represented, and hence disadvantaged, in a policy arena (the courts) wherein highly salient issues were at stake, not because of their lack of success in other political arenas (see, generally, Epstein, 1985: 79; Epstein and Koblyka, 1992: 31). In other words, Christian conservatives became acutely aware not only that the judiciary was becoming a more important decision-making venue for issues around religion and education and around abortion and the right to die, but also that if left unopposed, their ideological nemeses were likely to score policy victories there. Indeed, denunciation of liberal groups' influence on the courts and of liberal judicial activism has become a staple of Christian conservative rhetoric, and emerged repeatedly in our qualitative research. Christian conservatives can cite a long list of court decisions they find objectionable, and often see their own legal mobilization in defensive terms, as David's attempt to hold the line against an overweening Goliath.

In the USA in the 1970s, "Goliath" usually won. Between 1971 and 1975 the us

Supreme Court struck down public funding of parochial schools, as well as counseling services, educational equipment, and remedial courses in parochial schools (*Lemon v. Kurtzman*, 1971; *Early v. DiCensio*, 1971; *PEARL v. Nyquist*, 1973; *Sloan v. Lemon*, 1973; *Meek v. Pittenger*, 1975; *Levitt v. PEARL*, 1973). The US Catholic bishops responded with particular frustration to *Lemon v. Kurtzman* (1971), which ruled certain forms of direct aid to New York's parochial schools unconstitutional. They argued that the logic of *Lemon* would lead to a "state educational monopoly" that would undermine parental rights (US Catholic Conference, 1984b). *Roe v. Wade*, of course, was also distressing to many Catholics and evangelicals alike. On an elite level, the message was very clear. The bishops declared the ruling "an unspeakable tragedy" and immediately formed a group to advance a constitutional amendment; editorialists at leading Catholic journals were "dismayed" and fearful of a political culture that "sanctions real death" (US Catholic Conference, 1984c; *America*, 1973; *Commonweal*, 1973). Writers at *Christianity Today*, the most prominent evangelical magazine at the time, suggested that the ruling was a victory for "paganism" and an indication that "the American state no longer supports... the laws of God" (*Christianity Today*, 1973).

In the 1980s and early 1990s, the Canadian judiciary rendered decisions that were similarly anathema. In *R. v. Morgantaler* (1988), the Supreme Court struck down Canada's restrictions on abortion—a political blow to Christian conservatives comparable to *Roe* in the USA. Canadian courts were also quick to make charter rulings separating church from state in ways that were unprecedented for the Canadian context. In *R. v. Big M Drug Mart* (1985), the court struck down Canada's Lord's Day Act, a law that had limited Sunday shopping on religious freedom grounds. Also, in 1988, the Ontario Court of Appeal (*Zylberberg v. Sudbury Board of Education*) used similar separationist reasoning to strike down public school prayer. Other provinces followed suit. At both the provincial and federal level (*Haig and Birch v. The Queen*, 1992; *Vriend v. Alberta*, 1998) Canada's courts ruled that in order to comply with the charter, sexual orientation must be "read in" to statutory codes of human rights.

In sum, the decision process leading Christian conservative organizations to choose political litigation is more complex than simply finding the path of least resistance. In fact, in terms of perceived likelihood of policy victories, in many cases Supreme Court litigation is seen as a path of great resistance. Yet Christian conservatives have made the decision to devote strategic resources to the courts because they are access points in the political systems of the USA and Canada that are both open and highly salient to them. Again, these factors provide only part of the explanation for increased legal mobilization across North America, and very little analytical leverage on the question of why US litigation spiked upward more sharply.

### **Resource Mobilization Factors**

Litigation is a tactic that requires a range of resources if it is to be carried out with any degree of consistency and success. Resource mobilization theory would argue, accordingly, that groups blessed with plentiful resources can be expected to make more frequent use of the courts. In this regard, one of the most basic issues confronted by advocacy organizations is the question of potential members, that is, the population sector(s) from which they can realistically expect to cultivate a constituency base. The larger this potential membership, the more likely it is that

advocacy organizations can become well resourced and capable of sophisticated forms of activism, such as political litigation. With respect to Christian politics, the conventional view is that the USA is awash with orthodox religionists. In percentage terms, Christian conservatives are in fact a minority of the US population, albeit a larger minority than in most other western nations, including Canada. One recent survey-based study (Hoover and Emrey, 2001) estimated that the proportion of the US population comprised of white Protestants or Catholics who hold evangelical doctrinal beliefs is approximately 32 percent, while in Canada less than half that proportion, about 13 percent, are doctrinally evangelicals. Translated into absolute terms, there are nearly 90 million doctrinally evangelical Christians in the USA and only about 4 million in Canada, a ratio of 22.5:1.

This contrast helps explain why US Christian conservatives have been able to pursue political litigation somewhat more aggressively than their Canadian counterparts. However, if resources alone determined the magnitude of legal mobilization, we should have observed stark cross-national differences in rates of participation in political litigation. Instead, we observed a ratio of only about 4:1 in the average filers-per-case statistics.

Another way of approaching the question of resources is to compare litigating groups to their non-litigating counterparts across a number of indicators of organizational strength. If plentiful resources are important to legal mobilization, we will expect to find that litigating groups are well endowed. As with all forms of political mobilization, money is an important factor, which can be measured by organizational budgets. However, experience and expertise are perhaps even more important as organizational resources. Much of this kind of resource is difficult to quantify, but two variables might be taken as rough indicators: number of full-time staff and years that the organization has been in existence. In Table 2, we employ our cross-national data on interest groups to compare litigating groups with non-litigating groups across each of these three indicators.

It is clear that, on average, US litigating groups do indeed have bigger budgets (median budget of US\$2.5 million) and a larger staff (median of 18) than do non-litigating group (medians of US\$516,500 and seven, respectively). Canadian organizations, whether litigating or non-litigating, are much less well financed and staffed than their counterparts south of the border. This difference is unsurprising in light of the small scale of Canadian conservative Christianity overall. In addition, all of the relationships predicted by resource mobilization theory are evident in the comparisons between litigating and non-litigating groups in Canada. Canadian litigating groups are more mature and have larger budgets and more staff than Canadian non-litigating groups.

While the data are generally consistent with the presumption that organizational longevity and resources may serve as enabling factors for legal mobilization, the anomaly in Table 2 occurs on the variable for date of founding for US organizations, where the median date for litigating groups (that is, 1982) is more recent than for non-litigating groups (that is, 1978). By way of a possible explanation, it is worth noting that some of the key US legal advocacy groups were formed in the 1990s with strong ties to pre-existing non-litigating groups. For example, the Office of the General Counsel at the US Catholic Conference was created with the extraordinary resources of the Catholic bishops. Similarly, many evangelical legal organizations (for example, the Center for Law and Religious Freedom and the American Family Association Center for Law and Policy) are associated with other organizations that provide money, staff, and expertise.

TABLE 2. *Date of Founding, Budget, and Staff of Conservative Christian Interest Groups: Litigating and Non-Litigating Groups by Country*

	US Litigating Group	US Non-Litigating Group	Canadian Litigating Group	Canadian Non-Litigating Group
Founding date	1982 (median)	1978 (median)	1978 (median)	1990 (median)
Before 1971	12.6%	19.9%	28.6%	0%
1971–80	31.3	40.0	28.6	14.3
1981–90	50.0	40.0	21.4	42.9
After 1990	6.3	0	21.4	42.9
Budget	(median) US\$2,500,000	(median) US\$516,500	(median) c\$150,000	(median) c\$13,000
< \$10,000	0%	0%	7.7%	42.9%
\$10k–\$100k	0	11.5	23.1	28.6
\$100k–\$1m	21.4	65.3	46.2	14.3
> \$1m	78.6	23.1	23.1	14.3
Full-time staff	18 (median)	7 (median)	2 (median)	0 (median)
< 5	18.2%	42.1%	66.6%	85.8%
5–19	45.5	36.9	8.3	0
>19	36.4	21.0	25.0	14.3

Source: Authors' calculations based on Weber and Jones (1994) and original research.

Indeed, some legal advocacy groups were part of larger conglomerates that covered various portions of the public square and whose constituent parts benefited from each other's unique resources. Pat Robertson created two such groups (the National Legal Foundation in 1985 and ACLJ in 1990) which complemented his media (Christian Broadcasting Network), political (Christian Coalition), and educational (Regent University, including Regent's College of Law) organizations.

Notwithstanding the anomalous finding created by litigation spin-offs from existing US groups, the data overall support the assumption that resources matter. Resources are related to higher levels of legal mobilization. However, care should be taken not to overstate the nature of this relationship. The data do not support the notion of a directly proportional relationship between resources and litigation frequency—it makes little sense to assume that groups litigate simply because they can. Indeed, resource mobilization factors significantly underdetermine cross-national differences. That is, if resources alone were determinative, the comparatively small scale of Christian conservatives' organizations would have nipped Canadian legal mobilization in the bud. Instead, we find solid growth in legal mobilization over time.

### Do Religious Ideas Matter?

While political opportunity theory and resource mobilization theory highlight important influences on Christian conservatives' litigation efforts, they may leave pieces of the puzzle missing. These arguments focus mainly on how groups respond to what they *have* (or do not have), not on what members of groups *believe*

(or do not believe) about the nature and legitimacy of law and politics. This becomes an important omission when we recognize that “worldviews” (sets of ideas that help groups explain, evaluate, and engage the social and political world) may either encourage or close off legal advocacy, regardless of a group’s political context or resources.

The recent “cultural turn” in social movement studies (Hart, 1996) suggests that ideas and worldview orientation are likely to be decisively important in understanding group behavior. Yet, while ideas have been empirically vindicated as an explanatory factor in some studies of religious lobbies (Hertzke, 1988; Hofrenning, 1995; Pagnucco, 1996), ideas about law and politics are largely absent from studies of rights advocacy. Even studies devoted to conservative litigation generally do not take into account the ideological commitments that define these groups, relying instead on opportunities and resource-centered explanations (see Epstein, 1985).

We use the term “ideas” to distinguish a particular set of beliefs that motivates action. But it should be noted that political or legal engagement is rarely the definitive element of religious systems of belief. Religions provide a set of meanings that address the range of human experience, often by directing the believer’s attention to matters of the eternal or divine. Moreover, the linkage of ideas to specific tactics of social action is not self-evident. Generally, religious worldviews do not recommend legal engagement per se—there is rarely a theological requirement to seek recourse through litigation or other tactics, and indeed, theological convictions might discourage such engagement. Nevertheless, these convictions can confer social and political obligations that are preconditions of legal claims. In this sense, worldviews are presuppositional. If a worldview forbids political interaction, then rights advocacy is unlikely (see Auerbach, 1983; Greenhouse, 1986); if it allows or encourages such interaction, then advocacy is a possibility.

Depending on the type of data available to the researcher, religious worldviews can be studied using different strategies of operationalization. Some special-purpose religion surveys allow for categorization by precise church denomination or by doctrinal and behavioral criteria (see Rawlyk, 1996). Far more common, however, is analysis by broad religious groupings, sometimes called “religious traditions” (for a skillful combination of approaches, see Green et al., 1996). Up to this point in our analysis of legal mobilization we have grouped two religious traditions (evangelical Protestantism and Roman Catholicism) under the single rubric of “Christian conservatives” because, broadly speaking, both traditions have staked out socially conservative positions on abortion and the right to die and on religion and education. However, there are, of course, stark differences in the theological and ecclesiastical histories of these two traditions, to say nothing of the not-very-distant history of hostility between them (see O’Neil, 1995).

Do different religious worldview orientations help explain the legal mobilization of Roman Catholics and evangelical Protestants? If ideas matter, we will expect to see evidence of it in group political behavior. Specifically, Christians with a worldview that is comparatively more open to political participation should be noticeably quicker to embrace political litigation.

In Table 3, we examine this question by taking the data in Table 1 and disaggregating along Catholic and evangelical Protestant lines. In the USA, during the earliest nine-year period (1975–83) it is clear that Catholics were significantly more likely to have participated in cases relating to abortion and the right to die

TABLE 3. *Legal Mobilization by Religious Tradition, Time Period, and Country*

	1975–83	1984–92	1993–2001
US evangelical Protestant organizations			
% of cases with any evangelical filers	22.2%	86.7%	100%
Average number of evangelical filers per case	0.3	5.7	6.4
US Roman Catholic organizations			
% of cases with any Catholic filers	40.7%	86.7%	64.7%
Average number of Catholic filers per case	0.7	3.4	1.9
Canadian evangelical Protestant organizations			
% of cases with any evangelical filers	x	20.0%	42.9%
Average number of evangelical filers per case	x	0.2	1.0
Canadian Roman Catholic organizations			
% of cases with any Catholic filers	x	50.0%	64.3%
Average number of Catholic filers per case	x	1.2	1.1

Source: Authors' tabulation based on *US Supreme Court Reports, Briefs and Records of the US Supreme Court*, Lexis database, *Canada Supreme Court Reports*, LexUM database.

or religion and education. The differences are even larger during the earliest nine-year period (1984–92) in Canada. During these initial periods in both countries, evangelicals participated in only about one out of every five Supreme Court cases, whereas the Catholic participation rate ranged between 40.7 percent (USA) and 50.0 percent (Canada). Average numbers of filers per case demonstrate even sharper proportional differences between Catholics and evangelicals.

However, by our second stage of US mobilization (1984–92), evangelical participation rates had drawn roughly even with Catholic participation rates. Participation rates increased significantly for both religious traditions, but evangelical rates increased disproportionately. Both traditions took advantage of nearly nine out of every 10 opportunities to participate in a case. In terms of filers per case, evangelicals even slightly outpaced Catholics. In our second mobilization stage in Canada (1993–2001), the general pattern was similar. Although evangelicals still lagged somewhat behind Catholics in terms of percentage of cases (42.9 percent versus 64.3 percent), the evangelical participation rate showed a disproportionate increase compared to the first period. Also, the average number of filers per case was almost identical (1.0 for evangelicals and 1.1 for Catholics).

For the most recent period in the USA, the data are somewhat mixed. Both religious traditions maintained a substantial rate of participation, but some indicators showed increases and others decreases. The percentage of cases and filers per case increased for evangelicals, but decreased for Catholics. Given the parallel cross-national patterns observed in the first two time periods, the third US time period may be a bellwether for a litigious Canadian future.

Overall, the data suggest that religion does indeed matter. Compared to evangelicals, Catholics were more likely to be legally mobilized early, and their rates of participation over time varied less dramatically. Evangelical participation rates, by contrast, started very low, but increased steeply and consistently over time. The rates for US evangelicals, in particular, exhibit an “all or nothing” quality: from almost nothing at the beginning to 100 percent of cases and an average of 6.4 filers per case by the most recent period.

We believe that these Catholic–evangelical differences are evidence of the impact that different religious worldviews have on political behavior. Specifically, there can be little doubt that by the mid-1970s Roman Catholicism had established a firmer foundation of political theology than had evangelical Protestantism. Indeed, in the modern context, the Roman Catholic Church has invested considerable effort in the development of its social teachings, and has asserted its right to issue moral critiques on socio-political matters. Thus Catholics were accustomed to the notion of politically active faith well before legal activism became a commonplace feature of North American politics. In the USA, for example, the US Catholic Conference was heavily involved in state-level abortion reform battles throughout the country in the 1960s, long before the Roe decision was rendered in 1973 (Byrnes, 1991; Nossiff, 2001; see also US Catholic Conference, 1984a). In Canada, when in 1967 a bill liberalizing access to abortion was introduced by then-Justice Minister Pierre Trudeau (who famously quipped that, “the state has no business in the bedrooms of the nation”), the opposition was caught off guard, but the Canadian Catholic Conference was, nevertheless, willing and able to register its voice of caution in the ensuing debate (Morton, 1992).

Furthermore, Catholic social thought from the 1960s forward was shaped profoundly by the Second Vatican Council, Pope John XXII’s church reform campaign which issued a “Declaration on Religious Liberty” acknowledging social pluralism and the legitimacy of the secular state. While the council took pains to affirm the “traditional Catholic teaching on the moral duty of individuals and societies toward the true religion and the one Church of Christ,” it declared a right of all individuals against governmental coercion in religious matters regardless of their commitment to the Catholic faith (Vatican II, 1988: 800).

It is no accident that the American bishops and the leading American Catholic theologian of the time, John Courtney Murray, were the strongest champions of the declaration. Their experience of religious pluralism and the constitutional protection of religious practice had taught them the “practical value” of making such a declaration, as Murray put it (1967: 668). Indeed, the “American document,” as the declaration came to be called, implied compatibility with American legal values, particularly First Amendment freedoms. But the impact would not be confined to US borders alone—Catholics have adjusted to liberal constitutionalism in many nations, including Canada. Coupled with the council’s exhortation of church leaders to take a more active political role in their respective countries, the declaration strengthened the theological foundation for Catholic political litigation in the following decades.

Evangelical Protestantism’s engagement in public life, by contrast, has a more checkered past. In the 19th century, evangelical Protestantism had a dynamic influence on the political life of both the USA and Canada, energizing movements for disestablishment, social reform, nativism, and more (see Hunter, 1983). In the early years of the 20th century, however, evangelical Protestantism lost its cultural hegemony in much of the USA and English Canada. Especially in the USA, bruising intra-denominational battles were fought and lost with liberals, and the most infamous legal case involving evangelicals in US history (the 1925 Scopes “Monkey Trial” concerning the teaching of evolutionary theory in public schools) resulted in a major loss in the court of public opinion. Confrontations with theological and social modernism led to the rise of the fundamentalist movement within evangelicalism and to what has been described as a “great reversal” (Moberg, 1972), a tide of social and political retreat into defensive separatism. To be sure,

not all conservative Protestants entirely abandoned political activism (for example, some became anti-communist agitators), but studies of US evangelical political behavior show that their relatively nonparticipatory tendencies did not abate until the late 1970s. In Canada, although the split between fundamentalists and modernists was not as severe, evangelical political activism was episodic at best. The Canadian sociologist, S.D. Clark, wrote that the effect of evangelical social thought was primarily to make Christians believe that political ignorance and disengagement was a virtue (1962: 141).

The fact that the tide began turning back toward political activism (during the 1970s in the USA and during the 1980s in Canada) can, in part, be explained by reference to institutional successes, such as evangelical publishing and broadcasting enterprises. But evangelicalism has always been adept at exploiting mass media. What changed was not just a matter of resources. Rather, a philosophical argument among evangelicalism's elites began to be won by those who wished to re-evaluate and criticize their tradition's sectarian inheritance. Ignoring opportunities to participate in the public arena (including the legal arena) was no longer seen as a virtue, but as an abdication of Christian duty. Consistent with other studies of legal mobilization that reveal the importance of elites in publicizing grievances and opportunities for redress (McCann, 1994), it was only after evangelical leaders began to nudge their fellow religionists out of apolitical isolation that a small group of evangelical attorneys began to see lawyering as a distinctively religious vocation.

By 1980, for example, editorialists at *Christianity Today* (1980: 10–11), admitted a “radical 180-degree reversal” of their earlier opposition to tax support for Christian colleges. The trigger was the magazine's belief that public universities were no longer neutral institutions, but rather homes for a “religion of secular humanism” that placed human beings rather than God at the center of the moral and legal universe. *Christianity Today* (hereafter *CT*) also saw the secular humanists hard at work in the abortion battles, “profaning” (1979: 13) religious convictions by claiming that human choice trumps the will of God. Leaders at *CT* began to view evangelicalism's lack of active resistance to abortion as an affront to the “sacredness” and “dignity” of human life. Evangelicals were “apathetic” and “self-absorbed,” raising some unappealing comparisons. “Christians no longer need to puzzle about the absent witness of the church in Nazi Germany,” a *CT* editorialist wrote in 1979. “Unless there is a Christian outcry against man's diminished dignity, history may once again repeat itself.” A systematic study of *CT* from 1956 to 1976 (Hollinger, 1983) found the magazine devoting increasing attention to politics.

Meanwhile, other evangelical opinion leaders and activists were raising the specter of abortion and issuing even more explicit calls for Christian cultural (and particularly legal) engagement. Francis Schaeffer, an American pastor and writer who operated the L'Abri Fellowship in Switzerland as a ministry to young evangelical intellectuals, provided a particularly strong bridge between ideas and action. He authored widely read books and produced, wrote, and narrated several popular film series that identified the Roe decision as a culmination of the steady movement of American constitutionalism away from its traditional bedrock in biblical principles and toward a foundation in the arbitrariness of secular humanism.

Where were the Christian lawyers during the crucial shift from forty years ago to just a few years ago? Surely the Christian lawyers should have seen the

change taking place and stood on the wall and blown the trumpets loud and clear. A nonlawyer like myself has a right to feel somewhat let down because the Christian lawyers did not blow the trumpets clearly between, let us say, 1940 and 1970. (Schaeffer, 1981: 47)

Protestant evangelicalism has always been transnational, and thus the American voices of change reverberated north of the US border. But by the early 1980s, home-grown Canadian leaders were making their own distinctive turn toward political engagement. While many leaders contributed, the most significant was Brian Stiller, head of the Evangelical Fellowship of Canada (EFC). Under Stiller's energetic leadership this association of evangelical denominations, para-church ministries, and individuals began to rally Canadian evangelicals to a common political witness (Stackhouse, 1993). Its magazine *Faith Today* (similar in format and prominence to *CT* in the USA) put a high editorial priority on coverage of political issues and analysis of historical and contemporary examples of political participation. A content analysis of *Faith Today* from 1986 to 1994 (Hoover, 1997) found that evangelical politics and participation were, in fact, the most frequent article topics (22 percent of all articles). The next two most frequent article subjects were "abortion/life" issues (19 percent) and education (13 percent). In legal mobilization, the EFC followed up its word with action: by the 1990s, it was one of the most frequent evangelical filers at the Canadian Supreme Court.

### Conclusion

Our research points up the need for revision of the conventional wisdom regarding North American religion and politics. Among conservative Christians, in both the USA and Canada, litigation has grown in importance as a political tactic. The findings thus recommend a qualification of strong versions of American legal and religious exceptionalism. Even if the mixture of religion and legal politics in the USA is potent, it is not completely without parallel among advanced industrial societies. Canadian politics barely registered the existence of conservative Christians in the early 1980s, but it is now unlikely that any major abortion, right to die, or religion and education case will go without their participation. The Canadian interest group system is developing in an American direction, with a Canadian-style complement of "culture warriors" whose tactical arsenal includes legal mobilization.

Since the advent of the Charter of Rights and Freedoms the political opportunity structures for legal mobilization in the USA and Canada have become broadly similar. But these factors are merely necessary, not sufficient, to account for the cross-national trends we have observed. Constitutional bills of rights do not somehow automatically call forth the politics of rights claiming and rights denying practiced by Christian conservatives. The choice to litigate is not always self-evident within the limited calculus of policy wins and losses. Rather, it is the result of a more complex dynamic involving cultural and institutional dimensions—motive, means, and opportunity.

As with social movement mobilization, legal mobilization has no fixed formula that will necessarily be applicable across borders. Indeed, as social movement scholar J. Craig Jenkins (1983: 532) has argued, "deficits on some dimensions... might be offset by surpluses on other dimensions." By adding a cross-national perspective to the study of legal advocacy among religious interest groups, this

article helps illumine the complex range of factors that determine similarities and differences in judicial politics among modern constitutional regimes.

In Canada, the balance of factors explaining legal mobilization underscores the significance of sheer motivational intensity. Christian conservatism is a small minority of the Canadian population, and most of the advocacy organizations that it is able to sustain are likewise small. Yet Catholic and evangelical Protestants have, nevertheless, prioritized legal mobilization, even while pursuing other avenues of influence at the same time. Notwithstanding their comparatively meager organizational resources, Canada's Christian conservatives have managed to will into existence a substantial, if less than spectacular, increase in legal mobilization.

In the USA, the balance of factors explaining legal mobilization underscores the point that American exceptionalism only needs to be revised, not abandoned. Two of the likely constraining effects on Canadian legal mobilization (low resources among Christian conservatives and a political tradition that historically delegitimized litigation for ideological causes) are largely absent in the USA. These differences help explain why the rate of legal mobilization increased much more sharply in the USA—indeed, the US pattern exhibited an “all or nothing” quality. We suspect that this contrast is also related to the ongoing power of American civil religion, especially among US evangelical Protestants. That is, the perfectionist impulses of a self-defined “redeemer nation” tend to support erratic extremes of separatism or crusading, not incrementalism. Thus, the more modest levels of legal mobilization among Canada's Christian conservatives, who rarely imagine their confederation as a chosen nation, may prove to be more sustainable in the long term.

## Appendix 1

### US Supreme Court Religion and Education Cases, 1975–2001

- |   |   |
|---|---|
| <i>Meek v. Pittenger</i> , 421 U.S. 349 (1975)                                  | <i>Edwards v. Aguillard</i> , 482 U.S. 578 (1987)   |
| <i>Roemer v. Maryland Public Works</i> , 426 U.S. 736 (1976)                    | <i>Board of Education v. Mergens</i> , 496 U.S. 226 (1990)  |
| <i>Wolman v. Walter</i> , 433 U.S. 229 (1977)                                   | <i>Lee v. Weisman</i> , 505 U.S. 577 (1992)   |
| <i>New York v. Cathedral Academy</i> , 434 U.S. 125 (1977)                      | <i>Zobrest v. Catalina Foothills School District</i> , 509 U.S. 1 (1993)                          |
| <i>NLRB v. Catholic Bishops</i> , 440 U.S. 490 (1979)                           | <i>Kiryas Joel School District v. Grumet</i> , 512 U.S. 687 (1994)                                |
| <i>PEARL v. Regan</i> , 444 U.S. 646 (1980)                                     | <i>Lamb's Chapel v. Center Moriches Union Free School District</i> , 508 U.S. 384 (1993)          |
| <i>Widmar v. Vincent</i> , 454 U.S. 263 (1981)                                  | <i>Rosenberger v. The Rector and Visitors of the University of Virginia</i> , 515 U.S. 819 (1995) |
| <i>Valley Forge Christian College v. Americans United</i> , 454 U.S. 464 (1982) | <i>Agostini v. Felton</i> , 521 U.S. 203 (1997)   |
| <i>Bob Jones University v. U.S.</i> , 461 U.S. 574 (1983)                       | <i>Southworth v. University of Wisconsin</i> (2000)   |
| <i>Goldsboro Christian Schools v. U.S.</i> , 461 U.S. 574 (1983)                | <i>Santa Fe Independent School District v. Doe</i> 530 U.S. 290 (2000)                            |
| <i>Mueller v. Allen</i> , 463 U.S. 388 (1983)                                   | <i>Mitchell v. Helms</i> , 528 U.S. 962 (2000)  |
| <i>Wallace v. Jaffree</i> , 472 U.S. 38 (1985)                                  | <i>Good News Club v. Milford Central School</i> (2001)  |
| <i>Grand Rapids v. Ball</i> , 473 U.S. 373 (1985)                               |   |
| <i>Aguilar v. Felton</i> , 473 U.S. 402 (1985)                                  |   |
| <i>Witters v. Washington Dept of Services</i> , 474 U.S. 481 (1986)             |   |

**US Supreme Court Right to Life Cases, 1975–2001**

- Bigelow v. Virginia*, 421 U.S. 809 (1975)  
*Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 552 (1976)  
*Singleton v. Wulff*, 428 U.S. 106 (1976)  
*Beal v. Doe*, 432 U.S. 438 (1977)  
*Maher v. Roe*, 432 U.S. 464 (1977)  
*Poelker v. Doe*, 432 U.S. 59 (1977)  
*Coalutti v. Franklin*, 439 U.S. 379 (1979)  
*Bellotti v. Baird*, 443 U.S. 622 (1979)  
*Hunewadel v. Baird*, 443 U.S. 622 (1979)\*  
*Harris v. McRae*, 448 U.S. 297 (1980)  
*Williams v. Zbaraz*, 448 U.S. 358 (1980)  
*U.S. v. Zbaraz*, 488 U.S. 358 (1980)\*\*  
*H.L. v. Matheson*, 450 U.S. 398 (1981)  
*Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983)  
*Planned Parenthood Association of Kansas City v. Ashcroft*, 462 U.S. 476 (1983)  
*Simopoulos v. Virginia*, 462 U.S. 506 (1983)  
*Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986)  
*Bowen v. Kendrick*, 487 U.S. 589 (1988)  
*Webster v. Reproductive Health Services*, 492 U.S. 490 (1989)  
*Cruzan by Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990)  
*Hodgson v. Minnesota*, 497 U.S. 417 (1990)  
*Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502 (1990)  
*Rust v. Sullivan*, 500 U.S. 377 (1991)  
*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 500 U.S. 833 (1992)  
*Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993)  
*National Organization of Women v. Scheidler*, 510 U.S. 249 (1994)  
*Madsen v. Women's Health Center*, 512 U.S. 753 (1994)  
*Washington v. Glucksberg*, 521 U.S. 702 (1997)  
*Vacco v. Quill*, 521 U.S. 793 (1997)  
*Schenck v. ProChoice Network of Western New York*, 519 U.S. 357, (1997)  
*Stenberg v. Carhart*, 530 U.S. 914 (2000)  
*Hill v. Colorado*, 530 U.S. 703 (2000)

\* *Hunewadel v. Baird* was decided with *Bellotti v. Baird*, but is listed separately because each case had separate *amicus* filings.

\*\* *U.S. v. Zbaraz* was decided with *Williams v. Zbaraz*, but is listed separately because each case had separate *amicus* filings.

**Canadian Supreme Court Religion and Education Cases, 1984–2001**

- A.G. Quebec v. Greater Hull School Board* (1984)  
*Caldwell et al. v. Stewart et al.* (1984)  
*R. v. Jones* (1986)  
*Reference Re Bill 30* (1987)  
*Great Montreal Protestant School Board v. Quebec (A.G.)* (1989)  
*Reference Re Education Act* (1993)  
*Ontario Home Builders Assoc. v. York Board of Education* (1996)  
*Adler v. Ontario* (1996)  
*Public School Board's Association of Alberta v. Alberta (A.G.)* (2000)  
*Trinity Western University v. British Columbia College of Teachers* (2001)  
*Ontario English Catholic Teachers' Association v. Ontario (A.G.)* (2001)

**Canadian Supreme Court Right to Life Cases, 1984–2001**

- R. v. Prince* (1986)  
*R. v. Morgentaler* (1988)  
*Borowski v. Canada* (1989)  
*Tremblay v. Daigle* (1989)  
*R. v. Sullivan* (1991)  
*R. v. Morgentaler* (1993)  
*Rodriguez v. British Columbia (A.G.)* (1993)  
*Augustus v. Gosset* (1996)  
*R. v. Latimer* (1997)  
*Arndt v. Smith* (1997)  
*Winnipeg Child and Family Services v. G. (D. F.)* (1997)  
*Dobson (Litigation Guardian of) v. Dobson* (1999)  
*R. v. Latimer* (2001)

**us Litigating Groups**

Focus on the Family  
 National Association of Evangelicals  
 Concerned Women of America  
 National Right to Life Committee  
 United States Catholic Conference  
 Home School Legal Defense Association  
 Center for Law and Religious Freedom, CLS  
 Catholic League for Religious and Civil Rights  
 Christian Law Association  
 Rutherford Institute  
 National Legal Foundation  
 Christian Advocates Serving Evangelism  
 American Family Association Center for Law and Policy (formerly the AFA Law Center)  
 American Center for Law and Justice  
 Liberty Counsel  
 Alliance Defense Fund  
 Americans United For Life

**Other us Groups**

Christian Coalition  
 Institute on Religion and Democracy  
 Family Research Council  
 Ethics and Public Policy Center  
 Center for Public Justice  
 World Vision  
 Mennonite Central Committee (United States)—public affairs  
 American Life League  
 March for Life  
 National Coalition for the Protection of Children and Families  
 Religious Alliance Against Pornography  
 American Association of Christian Schools  
 American Coalition of Unregistered Churches  
 American Freedom Coalition  
 Christian Action Council  
 Christian Action Network  
 Christian Life Commission, SBC  
 Christian Voice  
 Church of the Brethren—public affairs  
 Coalition for Christian Colleges and Universities  
 Eagle Forum  
 Evangelicals for Social Action  
 Lutheran Church Missouri Synod—public affairs  
 Operation Rescue  
 Religious Roundtable  
 Traditional Values Coalition  
 Morality in Media  
 Woman's Christian Temperance Union

**Canadian Litigating Groups**

Focus on the Family (Canada)  
 Evangelical Fellowship of Canada  
 REAL Women  
 Campaign Life Coalition  
 Canadian Conference of Catholic Bishops  
 Home School Legal Defense Association (Canada)  
 Christian Legal Fellowship  
 Catholic Civil Rights League of Canada  
 Seventh-Day Adventist Church—public affairs  
 Ontario Alliance of Christian Schools  
 Catholic Group for Health, Justice, and Life  
 Christian Medical and Dental Society

**Other Canadian Groups**

Canada Family Action Coalition  
 Centre for Renewal in Public Policy  
 National Foundation for Family Research & Education  
 Citizens Research Institute  
 Citizens for Public Justice  
 World Relief  
 Mennonite Central Committee (Canada)—public affairs  
 Alliance for Life  
 Action Life  
 Group Against Pornography  
 Canadians Addressing Sexual Exploitation  
 Christian Labour Association of Canada  
 Coalition for Religious Freedom in Education  
 Renaissance Canada  
 Pro-Life British Columbia  
 Citizens United for Responsible Education  
 Citizen Impact  
 Salvation Army—public affairs  
 Pentecostal Assemblies—public affairs  
 Christian Broadcasting Associates  
 Christian Coalition of British Columbia  
 Ontario Multi-Faith Coalition for Equity in Education  
 Family Action Coalition

### Notes

1. Because charter cases are included in Canada's use of the *reference* procedure (Morton, 1987), under which governments can refer legislation directly to the courts for a constitutional evaluation, it might even be possible to argue that the Canadian system is now *more* friendly to rights politics. A case in point vis-a-vis Christian concerns is Reference Re Bill 30 (1987), which found no charter conflict in Ontario's expanded funding for Catholic schools.
2. Interviews with McFarland, Whitehead, Farris, Weber, and Chopko.

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