

Institutional Scarring and Local Government Action: The Role of Relational Legal Consciousness in Litigation Against Opioid Manufacturers

Abstract

Between 2017 and 2020, U.S. County attorneys' offices filed an unprecedented wave of lawsuits against opioid manufacturers and distributors. These "affirmative litigation" suits departed drastically from these offices' usual role, which typically involves representing the jurisdiction in transactions and defending it against litigation. To understand what motivated local jurisdictions, he adopts a full-cycle research approach that includes interviews with local government attorneys as well as event-history analyses of opioid lawsuits filed by U.S. counties. His analyses point to the important role of a mechanism he calls institutional scarring, defined as a lingering sense of having been wronged in the past by another organizational actor. Counties' experiences with allowing states to take the lead decades earlier in lawsuits against Big Tobacco—and therefore to distribute the resultant settlement funds—left many jurisdictions feeling scarred. When the prospect of legal action against opioid manufacturers emerged, this institutional scar was activated, shaping local attorneys' legal consciousness and making them reluctant to leave litigation in state officials' hands. Interviews and event-history analyses alike provide support for this explanation. These findings inform the literatures on how past experiences can affect organizations and how relational legal consciousness underpins legal action by local governments.