

11.166 (HASS)/11.496 (Graduate)
**Law, Social Movements and Public Policy: Comparative and
International Experience**

Spring 2012 3-0-9
Tuesdays & Thursdays, 11 AM-12:30 PM
Room 9-450A

Professor Balakrishnan Rajagopal
Department of Urban Studies and Planning
Room #9-432
Office hours: Tuesdays 4-6 PM
Phone: 617-258-7721
Email: braj@mit.edu
Assistant: Phil Sunde
Email: psunde@mit.edu

Course Description

2011 has been a year of protests, from the Arab spring to Occupy Wall Street. Indeed, the past three decades have witnessed a proliferation of social movements, organized around a range of interests, identities and issues, within several countries as well as across state boundaries, globally. This intensification of mass action has thrown received paradigms of public policy into crisis, partly because these paradigms were mostly intended to operate in controlled or elite-driven policy environments. Many of these social movements have increasingly, if not always consistently, resorted to law and legal institutions, in their attempt to influence public policy at the local, national and global levels, while many other movements have confronted the State and law and tried to force change outside or against law. Why do some movements resort to the law, and what impact does it have on movements' goals, strategies and effectiveness? Why do some movements avoid law or even confront them and even when they do so, are they ever free of the shadow of law? Why do some movements resort to the law more and why do some succeed using the law while others don't? This course will explore the relationship between law, social movements and public policy by asking several questions including: how is public policy generally believed to be made? What is the role of law and legal institutions such as courts and government agencies in that process? Does the formal existence of legal rights matter? How is public policy made and what is the role of social movements in that process? Is social change generated and sustained by law primarily or by social movements? How important is the role of social movements for the generation and implementation of public policy? By asking these and other questions, this course attempts to provide a contextual perspective on how laws and legal institutions can be more effectively used by social movements to influence public policy and thereby address issues of social justice, and how law and legal institutions need to be reworked sometimes to achieve movements' goals.

After an introduction to theoretical frameworks on social movements, law and public policy, the first half of the course will be devoted to an in-depth examination of the

experience of law and legal institutions in two large democracies with active judiciaries and a history of social movement culture: the US and India. We will look at how social movements organized around issues such as the labor, environment, human rights, gender and poverty/welfare/social justice tried to influence public policy through the law. Do these movements function mostly in a domestic legal terrain? The second half of the course will examine emerging global public policy in several areas including human rights, trade, development and environment and the increasing contestation between social movements and global economic institutions such as the World Trade Organization, the World Bank and the International Monetary Fund, and the role of law in this process. Do these movements engage mostly with international law?

The purpose of this course is to examine the ‘ground’ conditions under which law and legal institutions contribute to social change through their impact on public policy. Through this approach, the course aims to provide students a critical understanding of the range of legal tools and methods used in a variety of public policy settings, and the circumstances under which they sometimes fail or succeed.

Course requirements and grading

This course will meet twice a week and will be structured around lectures/presentations by the instructor and a few visitors. There will be a field-based class project, focusing on Occupy Wall Street and its relationship to law and legal institutions. This course requires active student participation in discussions and therefore the students are expected to read all the assigned readings carefully and prepare to be called upon in class. Late submissions will not be graded.

Undergraduate students may take this course as a HASS course and their grading will be as follows:

Two short papers (one on the US or India and another on a global movement and their relationship to law and legal institutions) (15 double-spaced pages each) - 50%
Field based class project – 30%
Class participation - 20%

Graduate students who take this course need to write a final paper (40 pages max, double spaced) on a research topic that they identify in consultation with the instructor. This topic should relate to a social movement and its relationship to law and legal institutions in a country (India and US can be chosen but need to focus on a movement not covered in class), or at the global level, and must be based on independent research. Late submissions will result in a fail grade.

Graduate grading will be as follows:

Final paper - 50%;
Field based class project – 30%
Class participation - 20%

Attendance is required in all classes and absences without prior notification to the instructor will affect grading since class participation is a critical component of grading. 3 such absences without prior notification will result in an automatic 'fail' grade.

Required readings:

1. Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (1991).
2. Robert O'Brien et al, *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements* (2000).
3. In addition, required materials are posted on the course stellar site.
4. All the other assigned readings are available for free on the web or through VERA or Lexis-Nexis, both available through MIT libraries website (certificate required).

The above books will also be on reserve at the Rotch library.

Part I: Theoretical framework

Class 1: Introduction – 7 February

A general introduction to the course, the main substantive themes and the requirements

Class 2: Social Movements, NGOs and civil society: How are they different? – 9 February

1. Giugni, Marco. 1999. How Social Movements Matter: Past Research, Present Problems, Future Developments. Pp. xiii-xxxiii in Marco Giugni, Doug McAdam, and Charles Tilly (eds.). *How Social Movements Matter*. Minneapolis: University of Minnesota Press.
2. Michael Walzer, The civil society argument in *Dimensions of Radical Democracy* (Chantal Mouffe ed., 1992), pp.89-107.
3. William Fisher, Doing Good? The politics and antipolitics of NGO practices, 26 *Annual Review of Anthropology* 451 (1997) available through VERA.
4. Ronnie D. Lipschutz, Reconstructing World Politics: The Emergence of Global Civil Society, 21 *MILLENNIUM: J. INT'L STUD.* 389 (1992) available through VERA.

Class 3: Social movements and the state: How do they interact? – 14 February

1. Aradhana Sharma and Akhil Gupta, Introduction: Rethinking Theories of the State in an Age of Globalization, in *The Anthropology of the State: A Reader* (Blackwell, 2006), pp.1-42.
2. Rajni Kothari, Masses, Classes and the State in *New Social Movements in the South: Empowering the People* (P.Wignaraja ed., 1993), pp.59-75.
3. Sidney Tarrow, States and Opportunities: The Political Structuring of Social Movements in *Comparative Perspectives on Social Movements* (Doug McAdam et al eds., 1996), pp. 41-61.
4. Doug McAdam, John McCarthy and Mayer Zald, Introduction, in *Comparative Perspectives on Social Movements* (Doug McAdam et al eds., 1996), pp. 1-22.

Class 4: Law, social movements and public policy: changing domestic contexts – 16 February

1. Stella Z. Theodoulou, The Contemporary Language of Public Policy: A Starting Point in *Public Policy: The Essential Readings* (Stella Z. Theodoulou & Mathew A. Cahn eds., 1995), pp.1-9.
2. Burstein, Paul. 1996. Social Movements and Public Policy. Pp. 3-21 in Marco Giugni, Doug McAdam, and Charles Tilly (eds.). *How Social Movements Matter*. Minneapolis: University of Minnesota Press.
3. Archon Fung, Democratizing the policy process in *The Oxford Handbook of Public Policy* (Michael Moran, Martin Rein and Robert E. Goodin eds., 2006)

4. Michael McCann and Helena Silverstein, Rethinking Law's "Allurements": A Relational Analysis of Social movement lawyers in the United States in *Cause Lawyering* (Austin Sarat & Stuart Scheingold eds., 1998), pp. 261-292.
5. Stephe Ellmann, Cause Lawyering in the Third World in *Cause Lawyering* (Austin Sarat & Stuart Scheingold eds., 1998), pp. 349-430.

Recommended:

6. Barclay, Scott and Thomas Birkland 1998. Law, Policymaking, and the Policy Process: Closing the Gaps. *Policy Studies Journal*, 26, 2: 227-243 available through VERA.
7. Thomas R. Rochon and Daniel A. Mazmanian, Social Movements and the Policy Process, *Annals of the American Academy of Political and Social Sciences*, 528 (July 1993), pp.75-87 available through VERA.

NO CLASS ON FEBRUARY 21ST – MONDAY SCHEDULE OF CLASSES

Class 5: Law, social movements and public policy: changing global contexts – 23 February

1. *Transnational Social Movements and Global Politics: Solidarity Beyond the State* (Jackie Smith, Charles Chatfield and Ron Pugnucco eds., 1997), chapters 1-4.
2. Richard Falk, The Making of Global Citizenship in *Global Visions: Beyond the New World Order* (Jeremy Brecher et al eds., 1993), pp. 39-50.
3. Colin Hay, Globalization and Public Policy in *The Oxford Handbook of Public Policy* (Michael Moran, Martin Rein and Robert E. Goodin eds., 2006)

Recommended:

4. Margaret Keck and Kathryn Sikkink, *Activists beyond Borders* (1998), chapters 1 and 6.
5. Henry Shue, The Ethical Dimensions of Public Policy in *The Oxford Handbook of Public Policy* (Michael Moran, Martin Rein and Robert E. Goodin eds., 2006)

Part II: Domestic and Comparative experience

Class 6: Legal and social change in the US: contesting perspectives – 28 February

1. Rosenberg, pp. 9-36 and 336-343.
2. Michael McCann, "How Does Law Matter for Social Movements", in Bryant G. Garth and Austin Sarat (eds.) *How Does Law Matter* (1998).
3. Charles Epp, *The Rights Revolution: Lawyers, Activists and Supreme Courts in Comparative Perspective* (1998), chapters 3 and 4, pp.26-70.

Recommended:

4. Burstein, Paul and April Linton. 2002. The Impact of Political Parties, Interest Groups, and Social Movement Organizations on Public Policy: Some Recent Evidence and Theoretical Concerns. *Social Forces*. 81: 380-408 available through VERA.
5. Anna-Maria Marshall, Judicial Policy-Making and Sexual Harassment: A Response to Rosenberg's *The Hollow Hope* (Unpublished).
6. Edward L. Rubin, Passing through the door: Social movement literature and legal scholarship, 150 *U.Penn.L.Rev.* 1 (2001). available through Lexis-Nexis.

Class 7: Environment as an arena of struggle – 1 March

1. Rosenberg, pp. 271-292.
2. William Shutkin, *The Land That Could Be: Environmentalism and Democracy in the Twenty-first Century* (2000), chapter 3.
3. Cary Coglianese, Social movements, law and society: The institutionalization of the environmental movement, 150 *U.Penn.L.Rev.* 85 (2001) available through Lexis-Nexis.

Recommended:

5. Alexander v. Sandoval, 532 U.S. 275, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001), available through Lexis-Nexis.

Class 8: Law and American Labor Movement – 6 March

1. William Forbath, *Law and the Shaping of the American Labor Movement* (Harvard, 1991), chapters 1 and 5.
2. Kim Voss, The collapse of a social movement: The interplay of mobilizing structures, framing and political opportunities in the Knights of Labor in *Comparative Perspectives on Social Movements* (Doug McAdam et al eds., 1996), pp. 227-260.
3. Fran Ansley, Local contact points, global divides: labor rights and immigrant rights as sites for cosmopolitan legality, in Boaventura de Sousa Santos and Cesar Rodriguez-Garavito eds., *Law and Globalization from Below: Towards a Cosmopolitan Legality* (2005).
4. Jennifer Gordon, Law, Lawyers and Labor: The United Farmworkers Legal Strategy in the 1960s and 70s and the Role of Law in Union Organizing Today, 8 *Penn. J. Lab. & Emp.* 1 (Feb. 2006).

Recommended:

5. Hoyt Wheeler, *The Future of the American Labor Movement* (Cambridge, 2002), chapters 1, 3 and 9.
6. Dan Clawson, *The Next Upsurge: Labor and the New Social Movements* (2003), chapter 1.
7. Karl E. Klare, "Critical Theory and Labor Relations Law," in *The Politics of Law* (D. Kairys, ed., third edition, Basic Books, Inc., 1998).

Class 9: Feminism and women's movements – 8 March

1. Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (1991), Part II, chapters 7, 8 and 9.
2. Anna-Maria Marshall, "A Spectrum in Oppositional Consciousness" in Jane Mansbridge and Aldon Morris (eds.), *Oppositional Consciousness: The Subjective Roots of Social Protest* (2001).
3. Sally E. Merry et al, *Law from Below: Women's Human Rights and Social Movements in New York City*, *Law and Society Review* 44 (1): 101- 128 (2010).

Recommended:

4. Michael W. McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (1994), chapters 2, 7 and 8.

Class 10: Race, poverty and the struggle for social justice – 13 March

1. Rosenberg, chapters 2, 3, 4 and 5.
2. Frances Fox-Piven and Richard Cloward, *Poor Peoples' Movements*, chapter 1 (pp.1-40) and chapter 3 (pp.96-180).
3. Mack, Kenneth. "Rethinking Civil Rights Lawyering and Politics in the Era Before Brown," 115 *Yale Law Journal* 256 (2005) available through Lexis-Nexis or at http://www.law.harvard.edu/news/2006/01/mack_rethink.pdf
4. Andrews, Kenneth T. 2001. Social movements and policy implementations: The Mississippi Civil Rights Movement and the War on Poverty, 1965 to 1971. *American Sociological Review*. 66: 71-95 available through VERA.

Class 11: The conservative movement, policy change and law – 15 March

1. Steven Teles, *The Rise of the Conservative Legal Movement* (2008), chapter 1 (chapters 5, 6, 7 recommended).
2. Reva Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The case of the de facto ERA*, 94 *Cal.L.Rev.* 1323 (2006), available through Lexis-Nexis or at <http://www.law.yale.edu/faculty/siegelpublications.htm>
3. Donald Critchlow, *Phyllis Schlafly and Grassroots Conservatism: A Woman's Crusade* (2005), Introduction, chapter 1.

Class 12: Preparation for field-component on Occupy Wall Street – 20 March

Readings TBA

Class 13: Field work report back: 22 March

MARCH 26-30 – SPRING VACATION

NO CLASS ON APRIL 3rd AND 5TH – RESCHEDULED

Class 14: Legal and social change in India: the role of mobilization and activism – 9 April (new day/time)

1. Ganshyam Shaw, *Social Movements in India* (2004), p.15-34.
2. The Rise of Alternative Politics in Gail Omvedt, *Reinventing Revolution: New Social Movements and the Socialist Traditions in India* (1993), pp. 257-297.
3. Charles Epp, *The Rights Revolution: Lawyers, Activists and Supreme Courts in Comparative Perspective* (1998), chapters 5 and 6, pp.71-110.

Class 15: Women's rights v. Gender Justice – 10 April

1. "Womens' Movements", in Ganshyam Shaw, *Social Movements in India* (2004), p.146-179.
2. Ratna Kapur & Brenda Cossman, On Women, Equality and the Constitution: Through the Looking Glass of Feminism, *National Law Journal* 1:1 (1993).
3. Radha Kumar, "From Chipko to Sati: The Contemporary Indian Women's Movement" in Amrita Basu (ed.) *The Challenge of Local Feminisms: Women's Movements in Global Perspective* (1995) at 58-86.
4. Gail Omvedt, *Reinventing Revolution: New Social Movements and the Socialist Traditions in India* (1993), chapters 4(pp. 76-99) and 9 (pp. 199-231).

Class 16: Caste and the struggle with/through law – 12 April

1. "Dalit Movements" and "Backward Caste/Class Movements" in Ganshyam Shaw, *Social Movements in India* (2004), p.118-145
2. Anupama Rao, *The Caste Question: Dalits and the Politics of Modern India* (2009), chapter 4 (Legislating Caste Atrocity).
3. Gopal Guru and A. Chakravarty, "Who are Country's Poor? Social Movement Politics and Dalit Politics" in Raka Ray and Mary Katzenstein (eds.) *Social Movements in India: Poverty, Power and Politics* (2005).
4. Christophe Jaffrelot, "Caste and the Rise of Marginalized Groups" in Sumit Ganguly (ed.) *The State of India's Democracy* (2007).

Recommended:

5. Nicholas Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (2001)
6. Myron Weiner, "The Struggle for Equality: Caste in Indian Politics" in Atul Kohli (ed) *The Success of India's Democracy* (2001).
7. Oliver Mendelsohn and Marika Vicziany, *The Untouchables: Subordination, Poverty and the State in Modern India* (1998).

NO CLASS ON 17TH APRIL – PATRIOT'S DAY VACATION

Class 17: Contesting development: Law and struggle in the Narmada valley – 19 April

1. Balakrishnan Rajagopal, "Limits of Law in counter-hegemonic globalization: The Indian Supreme Court and the Narmada Valley Struggle" in Boaventura de Sousa Santos and Cesar Rodriguez-Garavito eds., *Law and Globalization from Below: Towards a Cosmopolitan Legality* (2005).
2. William Fisher, "Development and Resistance in the Narmada Valley" in Fisher, ed., *Toward Sustainable Development? Struggling over India's Narmada River* (1995) at 3-46.

Class 18: Human rights, Social Movements and Public Interest Litigation – 24 April

1. Balakrishnan Rajagopal, "Judicial Governance and the Ideology of Human Rights: Reflections from a Social Movement Perspective" in C.Rajkumar and K. Chockalingam eds., *Human Rights, Criminal Justice and Constitutional Empowerment: Essays in Honor of Justice V.R.Krishna Iyer* (2005)
2. Shylashri Shankar and Pratap Bhanu Mehta, "Courts and Socioeconomic rights in India" in Varun Gauri and Daniel Brinks (eds.) *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (2008).
3. Carl Baar, Social Action Litigation in India: The Operation and Limits of the World's Most Active Judiciary, in *Comparative Judicial Review and Public Policy* (Donald W. Jackson & C. Neal Tate eds., 1992).

Part III: Law and Global Public Policy from below

Class 19: Beyond the State? Changing contexts for law-making and application at the global level – 26 April

1. Balakrishnan Rajagopal, International Law and Social Movements: Challenges of theorizing resistance, 41 *Colum.J.Transnational L.* 397 (2003).
2. Boaventura de Sousa Santos and Cesar Rodriguez-Garavito, "Law, politics and the subaltern in counter-hegemonic globalization" in Boaventura de Sousa Santos and Cesar Rodriguez-Garavito eds., *Law and Globalization from Below: Towards a Cosmopolitan Legality* (2005).
3. O'Brien et al, chapter 1.
4. Wolfgang Reinicke, *Global Public Policy: Governing without Government?* (1998), chapter 2.

Class 20: The World Commission on dams and the struggle over development – 01 May

1. Report of the World Commission on Dams, released in November 2000, available at <http://www.unep.org/dams/WCD/report.asp>, especially chapters 1-4, 6-8.
2. "A Watershed in Global Governance? An Independent Assessment of the World Commission on Dams", World Resources Institute, 2001, chapters 1-2, 7-9, available at <http://www.wri.org/publication/a-watershed-in-global-governance>
3. Official World Bank position on the Report of the World Commission on Dams, available at

- https://docs.google.com/viewer?a=v&q=cache:l66axOI6jcgJ:siteresources.worldbank.org/INTWRD/903857-1112344791813/20424179/TheWBPositionontheReportoftheWCD.pdf+Official+World+Bank+position+on+the+Report+of+the+World+Commission+on+Dams&hl=en&gl=us&pid=bl&srcid=ADGEESiFlxR8wEelfjnRE3VGCAXDEkkP-3pr9isdBzD11yktvYiP6_b2DqEJqeXXrS3NL5Uh308feS_LPr3QmFEoXIKc1FI GFtRV4dy6WtyoOBm_LJzg5LY_DeYMjEm-yQs_U1QiE9JH&sig=AHIEtbQkwczbEn-UcDaflcK1MIqZdThOXg
4. Daniel Bradlow, The World Commission on Dams's contribution to the broader debate on development decision-making, 16 *Am. U. Int'l L. Rev.* 1531 (2001) available through Lexis-Nexis.

Class 21: Setting global environmental and health policy: The case of nuclear weapons – 03 May

1. Legality Of The Threat Or Use Of Nuclear Weapons, Advisory Opinion of 8 July 1996, International Court of Justice (read on line at www.icj-cij.org, go to Decisions, then look at Advisory Opinions) (in particular, the majority judgment and the dissent by Justice Weeramantry).
2. Richard Falk, The Nuclear Weapons Advisory Opinion and the New Jurisprudence of Global Civil Society, in Richard Falk, *Law in an Emerging Global Village* (1998) at 165-188.
3. Robert Norris and Hans Kristensen, U.S. Nuclear Threats: Then and Now, vol.62(5), pp.69-71 *Bulletin of the Atomic Scientists* (September/October 2006) available at http://www.thebulletin.org/article_nn.php?art_ofn=so06norris.
4. David Cortright and Ron Pagnucco, Limits to transnationalism: The 1980s Freeze Campaign in *Transnational Social Movements and Global Politics: Solidarity Beyond the State* (Jackie Smith, Charles Chatfield and Ron Pagnucco eds., 1997).
5. Paula Garb & Galena Komarova, *A History of Environmental Activism in Chelyabinsk* in *Critical Masses: Citizens, Nuclear Weapons Production and Environmental Destruction in the United States and Russia* (Russell J. Dalton et al eds., 1999) at 165-192.

Class 22: Global economic institutions and resistance from the margins – 8 May

1. Boaventura de Sousa Santos, 'Beyond neoliberal governance: The World Social Forum as subaltern cosmopolitan politics and legality' in Boaventura de Sousa Santos and Cesar Rodriguez-Garavito eds., *Law and Globalization from Below: Towards a Cosmopolitan Legality* (2005).
2. O'Brien et al, chapters 2, 4 and 5.
3. B. Rajagopal, From Resistance to Renewal: The Third World, Social Movements And The Expansion Of International Institutions, 41(2) *Harvard INT'L L.J.* 529 (2000) available through Lexis-Nexis.
4. Kay, Tamara. 2005. "Labor Transnationalism and Global Governance: The Impact of NAFTA on Transnational Labor Relationships in North America." *American Journal of Sociology.* 111(3): 715-756.

Class 23: The World Trade Organization as a policy machine – 10 May

1. David Schneiderman, *Constitutionalizing Economic Globalization* (2008), chapter 1.
2. Heinz Klug, *Campaigning for life: building a new transnational solidarity in the face of HIV/AIDS and TRIPS*, in Boaventura de Sousa Santos and Cesar Rodriguez-Garavito eds., *Law and Globalization from Below: Towards a Cosmopolitan Legality* (2005).
3. O'Brien et al, chapter 3.
4. Balakrishnan Rajagopal, "Taking Seattle Resistance Seriously", Op-Ed, *The Hindu* (hinduonline.com), December 11, 1999.
5. Balakrishnan Rajagopal, "A new opportunity in Cancun's failure" and "A Floundering WTO", available at <http://yaleglobal.yale.edu/index.jsp>
6. Alice Amsden, *Ending Isolationism, Dissent*, Spring 2000, pp.13-16.

Class 25: Human rights law as global public policy - 15 May

1. Margaret Keck and Kathryn Sikkink, *Activists beyond Borders* (1998), chapters 3 and 5.
2. Beth Stephens, *Mobilizing for Human Rights: International Law in Domestic Politics* (2009), chapters 1 and 4.
3. E/CN.4/Sub.2/2001/10, *Globalization and its impact on the full enjoyment of human rights - Progress report submitted by J. Oloka-Onyango and Deepika Udagama*; E/CN.4/Sub.2/2000/13, *Globalization and its full impact on the full enjoyment of human rights*, UN Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2001/10, 2 August 2001 (both available at <http://www.unhchr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset>).
4. Ronen Shamir, *Corporate Social Responsibility: A Case of Hegemony and Counter-Hegemony* in Boaventura de Sousa Santos and Cesar Rodriguez-Garavito eds., *Law and Globalization from Below: Towards a Cosmopolitan Legality* (2005).

Class 26: Conclusion and Review class – 17 May

Final Paper Due on 20 May 2012 (12 pm) – to be submitted through stellar