25

Law and Social Movements
Old Debates and New Directions

Sandra R. Levitsky

Introduction

In 1954, in a historic case called *Brown vs. Board of Education*, the Supreme Court of the United States declared segregation in public schools to be unconstitutional. *Brown* not only seemed to transform the social and political landscape of the time, but brought into focus for the first time the power of the courts to trigger those social and political transformations.

> For over twenty years *Brown* defined what people thought about law. It was a compelling narrative about powerless people banding together to vindicate their rights. Lawyers and judges were the human heroes, but the ultimate hero, if we can use that term for an abstraction, was rights. Rights were seen as the key to social change. The dispossessed, silenced and oppressed could get justice by going to court. … Like all myths, the story became, for a brief but crucial moment, one that was accepted as conventional wisdom. (Milner 1991: 255)

Even as desegregation efforts foundered in the face of staunch legal, political, and social resistance to the Supreme Court's decision in *Brown*, other social movements – the women's movement, the consumer rights movement, the prisoners' rights movement, the environmental movement, among many others – adapted the NAACP's litigation strategies to their own ends. In the face of this widespread embrace of legal tactics, a series of debates emerged in the legal academy and social sciences about the efficacy of relying on rights, litigation, lawyers, and the ideology of liberal legalism to achieve social change. In this chapter, I classify these debates into three historical "moments" as a way of tracing the evolution and future direction of scholarship on law and social

The Handbook of Law and Society, First Edition. Edited by Austin Sarat and Patricia Ewick.

movements. The first moment briefly captures the ideological and institutional debate over *whether law matters for social movements*. The second embraces the skepticism of the previous debates, but shifts to a more nuanced investigation of *how law matters for social movements*. And the third, still nascent, moment deepens the criticism of civil and political rights strategies and shifts to the question of *how social movements can help define new understandings of law.*

Defining Law and Social Movements

A *social movement* is commonly defined as a collectivity acting with some degree of organization and continuity partly outside of institutional channels for the purpose of promoting or resisting change in the group, society, or world order of which it is a part (Snow and Soule 2010). Social movements vary widely, from "Not in My Backyard" mobilizations against an incinerator moving into a neighborhood to mass demonstrations that topple governments. They involve street protests, petitions, strikes, art and theater, marches, sit-ins, mass meetings, hacktivism, consumer boycotts, lobbying, and lawyering. Despite the tremendous variation in what social movements do and what they hope to achieve, social movements aren't hard to define. In contrast, law is.

As others have observed (McCann 2004), much of the debate about the relationship between law and social movements comes from the divergent ways of understanding and studying law itself. Most commonly, when scholars refer to "the law," they mean official legal institutions, such as courts, legislatures, the criminal justice system, or administrative agencies. Or they are referring to legal actors, such as judges, lawyers, legislators, and police, or to the formal rules embedded in constitutions, statutes, and court decisions. But other researchers have conceptualized law more broadly, "as a system of cultural and symbolic meanings [more] than as a set of operative controls. It affects us primarily through communication of symbols – by providing threats, promises, models, persuasion, legitimacy, stigma, and so on" (Galanter 1983a: 127). Law can be understood as a language for legitimating grievances, constituting identities, and for communicating meaning both within a movement and to elites and the broader public. As the following discussion shows, the tensions between these different views of law have important implications for how researchers view the relationship between law and social movements.

Does Law Matter For Social Movements?

The ideological debate

The most influential critique of the growing number of movements relying on the discourse of rights and litigation strategies came from the critical legal studies (CLS) movement beginning in the late 1970s. CLS scholars maintained that while in the short run the extension of legal rights by courts and legislatures may mobilize

political struggles and produce apparent victories, engaging in the ideology of liberal legalism ultimately legitimates the very inequality and oppression that the extension of legal rights claims to redress. This happens, first, because rights are inherently unstable, contingent, and manipulable (Tushnet 2004). Because legal thought can generate equally plausible rights justifications for almost any result, there are no determinate consequences derived from the implication of rights (ibid.). To the extent that people believe legal decisions are obtained through the pseudo-scientific, consistent, ineluctable logic of legal thought, CLS scholars argue, they are duped; rights are whatever people in power say they are. By acting as if the idealized version of law were real, people actually re-create and reinforce the conditions oppressing them (Gabel and Kennedy 1984; Tushnet 1984).

The use of legal rights also impedes advances by progressive social forces by allowing the state to define a movement's goals (Tushnet 1984). When social movements go to court seeking rights, it is the state that gets to decide whether constituents are worthy of legal rights and what kind of rights they can have and when those rights may be invoked. But the state, CLS scholars argue, is never going to extend rights that radically disrupt American society or that bring radical change to this country.

The CLS agenda generated a forceful and compelling response from critical race and feminist legal scholars (Minow 1987; Williams 1987). They argued that demystification of liberal rights ideology – which lies at the core of the CLS project – is often not necessary for subordinated people (Delgado 1987; Matsuda 1987). Much of what CLS scholars criticize as "false consciousness" demonstrates only the CLS distrust of liberal legalism and the elusive promises of court victories. But, as Richard Delgado (1987: 311) notes, most minorities have already acquired this distrust: "society has provided us with more than adequate tutelage." Minorities often know from experience that the mere announcement of a legal right means little, and that rights are whatever people in power say they are (Delgado 1987; Matsuda 1987).

But critical race and feminist legal scholars also observe that coexisting with this consciousness of the limitations of rights is a deep-seated belief in the liberating potential of law (Matsuda 1987). Part of the reason for this seemingly incongruous duality is that, historically, legal rights have in many ways helped minorities. The minority experience prior to civil rights reform in the United States was one of formal subordination by the state. The elimination of formal barriers – for all their limitations in achieving substantive equality – was nevertheless meaningful to people of color. People can point to real changes that accompanied the advent of equal opportunity. Thus, to say that civil rights reforms are "merely symbolic," observes Kimberlé Crenshaw (1988), is to say a great deal. For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of humanity. To the historically disempowered, rights are, for all their limitations, a marker of citizenship, of participation, the "magic wand of visibility and invisibility, of inclusion and exclusion, of power and no power" (Williams 1987: 431). The assertion of rights in this view is not a co-opted act, as CLS scholars suggest, but a radical movement-building act – a demand "not just for a place in the front of a bus, but for inclusion in the American political imagination" (Crenshaw 1988: 1365).

The institutional debate

While legal scholars were embroiled in this ideological debate over the value of law and rights for disadvantaged groups, social scientists began weighing empirical evidence about the institutional trade-offs that accompany social reform litigation. The early debate among social scientists about the effectiveness of relying on law and litigation as a social movement strategy – beautifully captured in an illuminating set of exchanges between Gerald Rosenberg (1993, 1996) and Michael McCann (1996, 1993) – proved to be as much a debate about how to understand and study law's effects as it was about the utility of law.

The harshest critics of the legal strategies used by social movements emerged from scholars who adopted a court-centered, positivist perspective of law, understanding law in formal terms as a set of legal institutions and rules. From this perspective, law matters to social movements only to the extent that judicial commands cause direct, immediate, measurable effects on targeted behaviors (Rosenberg 1991). The findings from studies in this tradition are deeply pessimistic about law's utility. They note, as the experience following *Brown* illustrated, that the court system is largely impotent when it comes to getting large numbers of people to conform to norms they oppose (Handler 1978; Rosenberg 1991). A court order is legally binding only on the parties to the original lawsuit. Beyond the original parties, there is always ambiguity with regard to the scope and meaning of a court decision, and, as a consequence, always room for legal evasion (Dolbeare and Hammond 1971). Gerald Rosenberg, one of the most strident critics of social reform litigation, closes *The Hollow Hope* (1991: 343) with the following judgment: "American courts are not all-powerful institutions. They were designed with severe limitations and placed in a political system of divided powers. To ask them to produce significant social reform is to forget their history and ignore their constraints. It is to cloud our vision with a naïve and romantic belief in the triumph of rights over politics."

A competing perspective on the utility of legal strategies for social movements views law more expansively, as a set of meanings more than of regulatory controls. From this view, judicial decisions can't be reduced to discrete, determinate rules, but instead express a range of norms, logics, and messages that are received, interpreted, and used by potential actors (McCann 1994). This expansive view of law focuses not so much on behavior, but on the power of law to construct meaning – its role in constituting identities (Engel and Munger 2003), our understanding of everyday life (Ewick and Silbey 1998), even our imagination about what is politically possible (Levitsky 2008). When this interpretive view of law – often referred to as the "legal mobilization" perspective (McCann 1991) – took root in socio-legal studies, it shifted the foundation of the debate: scholars became less interested in taking normative positions on the instrumental value of legal tactics and instead focused on the more complex and contingent dimensions of how law matters for social movements.

How Does Law Matter for Social Movements?

The legal mobilization perspective, most famously elaborated by Michael McCann (1994, 1991), offers as its starting point Frances Zemans's (1983: 700) definition: "Law is … mobilized when a desire or want is translated into a demand or assertion of rights." Law in this view can be mobilized not just in formal court settings, but in organizing, protesting, and negotiating. Rather than viewing law as inherently empowering, legal mobilization scholars view law as they do other social movement resources, like money or status, whose utility depends on the circumstances and the manner in which they are employed (Scheingold 1974: 6–7). The key contribution of this literature is that it seeks to identify how, when, and to what degree legal mobilization can offer powerful resources for social movements, even as existing legal ideologies and institutions constrain movement activity (McCann 1991).

Several distinct theoretical and empirical shifts characterize this second "moment" in scholarship on law and social movements. First, the literature on law and social movements has long been criticized for its striking disjuncture between the socio-legal and social movement traditions (Barclay, Jones, and Marshall 2011). Until the 1990s, socio-legal scholars had long studied the role that law plays in legitimating social inequality, generating injustice claims, and building movements intended to challenge social inequality, but rarely did their work draw on social movement theory. Social movement scholars meanwhile had long studied the role that organized protest activity plays in challenging unjust laws, but they rarely acknowledged socio-legal theory. As a result, both the socio-legal and social movement literatures maintained somewhat anemic – and highly simplistic – accounts of social movements and the law respectively (but see Olson 1984). The shift to considering how law matters for social movements involved a growing dialogue between these two intellectual traditions, as theorists on both sides began considering the central tension at the heart of the relationship between law and social movements: "[S]ocial movements use the law in their emancipatory struggles to challenge oppressive conditions that are, in turn, so often sustained by legal rules and institutions" (Barclay et al. 2011: 2).

The second notable characteristic of research on law and social movements during this time is the move away from studying the "direct" effects of litigation on social movements toward the study of the indirect or "radiating" (Galanter 1983b) effects of official legal action. Researchers documented the ways that legal decisions can raise expectations, spark indignation and hope, stimulate rights consciousness, and help legitimize a social movement's values and goals (McCann 1994; O'Connor 1980; Schneider 1986). There is, as others have argued before (Scheingold 1974), a critical qualitative difference between *asking for help* and *demanding one's rights*. The extent to which social movements draw on rights discourse to frame their demands can have profound consequences for the movement (Leachman 2013; Hull 2001; Pedriana 2006).

A third characteristic of this shift toward studying how law affects social movements is an increased recognition that litigation and other legal tactics are often just

one piece of a movement's multidimensional campaign for social change (Levitsky 2007). Social movements are typically made up of a diverse field of organizations, each with its own goals, constituents, values, and tactical expertise. Researchers are increasingly giving attention to the interaction and interdependence of these diverse actors and strategies (Coleman, Nee, and Rubinowitz 2005; McCann 1994; Paris 2001; Silverstein 1996) – in particular, the role played by "cause lawyers" in social movements (Scheingold and Sarat 2004; Sarat and Scheingold 2006). In representing social movements in court, cause lawyers have the responsibility of translating social movement grievances and demands into legally recognizable claims. Because of their professional obligations and identities, these lawyers are often characterized as "double agents" (Bernstein, Marshall, and Barclay 2009: 10), hijacking the agenda of a movement by subverting movement goals and values for the sake of winning narrowly defined legal cases (Handler 1978; Rosenberg 1991). But a wealth of evidence now shows that lawyers serve movements in a wide range of capacities *outside* the courtroom and they can be every bit as committed to a movement's goals as other activists (Levitsky 2006; Coutin 2001; Scheingold 1998; A.-M. Marshall 2006; McCann and Silverstein 1998).

A fourth characteristic of contemporary scholarship on law and social movements is its attention to the context-specificity of legal tactics. Michael McCann's (1994) highly influential work on the pay equity movement introduced the idea that legal mobilization offers varying contributions to social movements at different stages in collective mobilization: during the movement-building process (Scheingold 1974), during policy negotiation between movement activists and the state or other elites (Silverstein 1996; Stone 2009), during policy implementation (Epp 2009; Chiarello 2013), and extending into the legacy of legal reform action, or the long-term consequences of legal mobilization for future collective action (Anderson 2006).

Finally, the shift in scholarly attention to questions of how law matters to social movements has also entailed a move away from studying state action alone toward the mobilization of law in organizations and other institutions (Albiston 2005; A.-M. Marshall 2003; Edelman, Leachman, and McAdam 2010). This shift tracks a more general move in the social movements literature toward embracing a multi-institutional approach to the study of movement action (Armstrong and Bernstein 2008), one that blurs the line between state and non-state actors and the relationship between institutional and extra-institutional tactics.

While the legal mobilization literature has flourished over the past two decades, it has recently been critiqued for both its heavy emphasis on American law and social movements and its focus on campaigns for civil and political rights at the expense of socioeconomic rights. In many ways this criticism has been fruitful: scholars are increasingly extending the legal mobilization framework to other Western countries (Cichowski 2007; Kawar 2011) as well as to authoritarian states (Chua 2012). And more and more researchers are considering the relationship between law, transnational social movements, and governing bodies (Kay 2011; Rowen 2012).

But it is the critique of the literature's disproportionate focus on civil and political rights that has arguably sparked a new set of questions about the relationship between law and social movements. "Civil rights," to borrow T. H. Marshall's well-known formulation (1992 [1950]) refers to those rights that are necessary to individual freedom: liberty of the person, freedom of thought, speech, and faith, the right to own property and to enter into contracts, and the right to due process and legal justice. "Political rights" refers to the right to vote and the right to participate in the exercise of political power. "Social rights" – or more commonly "socio-economic rights" – include assurances of an adequate standard of living and security: rights to food, water, housing, social security, education, just working conditions, sanitation, and basic health care. The pursuit and protection of socio-economic rights has been one of the central goals of international and domestic human rights movements and lies at the heart of the next "moment" in the study of law and social movements.

How do Social Movements Matter for New Understandings of Law?

New directions

Some observers have recently taken the radical position that the real battles over civil and political rights have been won, and we are now on the brink of a new era of rights (Gearty and Mantouvalou 2011). There are still disputes about violations of civil and political rights, and there are still debates over the scope of such rights, but the question of their universal importance and the need to protect them has now largely been settled. The "new frontier," these commenters have argued, is focused on socioeconomic rights. Human rights movements in a wide range of contexts are not only successfully seeking and enforcing government commitments to safeguard socioeconomic rights, but they are eliciting new questions among academics about what such rights mean in the contemporary era, as economic austerity and neoliberalism together shrink welfare state commitments around the world. Such questions include:

- In what ways are civil, political, and socioeconomic rights interdependent? One of the great challenges of activists and academics studying international human rights movements is to demonstrate the ways in which people cannot fully enjoy rights to liberty without the material conditions necessary to exercise that right (Somers 2008; Young 2012; Waldron 2000).
- What does a commitment to socioeconomic rights mean when states are too poor to deliver the goods and services that would satisfy those rights?
- What role can the judiciary play in specifying, enforcing, and implementing social and economic commitments that involve distributional dilemmas

typically relegated to the legislatures (Gauri and Brinks 2008a; Langford 2008; Yamin and Gloppen 2011)?

- In cultural contexts such as the United States where there is a rigid divide between civil and political rights on the one hand, and socioeconomic rights on the other, how do social movements persuade constituents, policy makers, and the public that socioeconomic rights are "real" rights? How are processes of legal mobilization different when the claim for rights involves the creation of an economic entitlement, or a "right" that is conditional upon finite resources?
- What unique challenges do human rights campaigns confront and what unique resources do such campaigns provide social movements (Merry, Rosen, Levitt, and Yoon 2010)? On the one hand, mobilizing human rights in a country like the United States – where the judiciary has largely refused to recognize human rights – involves a much more limited range of strategic choices than those faced by organizations mobilizing civil rights. On the other hand, mobilizing human rights can provide activists with new allies, networks, and grievance forums not available to campaigns for civil or political rights.

The international human rights movement

The foundational text and source of inspiration for international efforts to promote and protect human rights is the 1948 Universal Declaration of Human Rights (UDHR), drafted in the aftermath of the Holocaust and World War II. The UDHR opens with the declaration that "all human beings are born free and equal in dignity and rights," and then goes on to delineate these rights in eighteen articles, proclaiming not only fundamental rights to be free from discrimination, but also rights to adequate housing, education, food, work, health, and social security.

There are, as Kiyoteru Tsutsui and his colleagues (2012) recently observed, at least two paradoxes associated with the global proliferation of international legal agreements codifying human rights principles. First, international human rights agreements by definition undermine state sovereign rights and yet an increasing number of states have committed to these laws. Second, most of these international human rights laws lack enforcement mechanisms and yet human rights principles have continued to gain ground in international and local politics and practices. Social movements, Tsutsui and his colleagues argue, are the key to understanding both paradoxes: social movements have played critical roles in lobbying state actors for international human rights instruments, and these legal agreements in turn create political opportunities, generate material and human resources, provide new vocabularies for framing movement goals, and forge new identities – all of which facilitate mobilization for better human rights practices. Such mobilization has been central to holding states accountable to their human rights commitments in the absence of other enforcement mechanisms.

One of the many strategies social movements have used to realize commitments to socioeconomic rights has been litigation. In the 1980s and 1990s, a wave of democratic revolutions in Latin America, Africa, Asia, and Eastern Europe produced new constitutions that explicitly recognized not only civil and political rights, but also socioeconomic rights. These constitutions also newly invested many courts with the power to defend these constitutional commitments (Couso 2006), prompting what many have called the "judicialization" or "legalization" of economic policy: questions about the allocation of resources are increasingly being debated in courts rather than legislatures (Gargarella, Domingo, and Roux 2006a; Gauri and Brinks 2008b; Yamin and Gloppen 2011). For example, in countries with constitutional rights to health care, litigants have turned to the courts for access to antiretroviral treatments for HIV/AIDS, access to affordable generic drugs, reproductive rights, and efforts to secure underlying preconditions to health, such as water, food, and the right to live in a healthy environment (Gloppen and Roseman 2011).

The growing body of empirical scholarship on social movements mobilizing for the realization of socioeconomic rights is challenging a number of assumptions socio-legal and social movement researchers hold about socioeconomic rights more generally. First, most scholars have long assumed that socioeconomic rights involve a dyadic relationship between citizens and the state – that citizens have the right to certain social and economic goods and the state has the responsibility to provide them (Gauri and Brinks 2008b; Hershkoff 2008). Missing from these accounts, recent observers have argued, is the role of third party providers, those parties that actually render essential social goods and services to beneficiaries: doctors, nurses, pharmaceutical companies, insurers, landlords, builders, etc. (Gauri and Brinks 2008b; Hershkoff 2008). These private actors often control resources that directly affect the production and distribution of socioeconomic goods and services, and their importance has only been magnified in this era of social welfare privatization. Evidence from Brazil, India, Indonesia, Nigeria, and South Africa suggests that in practice courts routinely seek to enforce formal socioeconomic rights against a much broader set of actors than the state alone – improving health conditions by reducing air pollution caused by taxis, for example, or amending patent protections that impede access to basic foods or essential medicines (Hershkoff 2008). Indeed legal claims requesting direct state provision constitute the minority of socioeconomic rights in these countries. As social welfare policy is increasingly administered through a complex mix of public and private actors, theorists are not only conceptualizing more nuanced models of the classes of duties and responsibilities associated with formal socioeconomic rights, but they are theorizing how constitutional rights to socioeconomic goods affect the shape and content of private market transactions (see Gauri and Brinks 2008a).

A second assumption challenged by recent scholarship on law and social movements focuses explicitly on the role of the judiciary: because it involves the allocation of scarce resources, enforcement of socioeconomic rights by judges would

seem to violate the doctrine of separation of powers (Gargarella, Domingo, and Roux 2006b). Can unelected courts mandate goods and services that are not provided by the democratically elected branches of government? Here, too, evidence from the past twenty or so years provides some surprising answers. Consider, for example, the "judicialization of health" (Ferraz 2011) in Latin America, which has seen a sharp increase in health care litigation since its most recent wave of democratization. Studies of these litigation campaigns provide growing evidence that courts can enforce social or economic rights in ways that neither threaten democratic legitimacy nor strain their institutional capacity. Judiciaries have learned, for example, how to draw on existing legal principles to make decisions about social rights without seeming to violate limits on their judicial authority. Malcolm Langford (2008) finds that one of the clearest trends across countries and jurisdictions in the area of socioeconomic rights is the judiciary's attempt to use familiar judicial tools such as reasonableness tests, duties, and defenses to adjudicate disputes over issues like health care. Langford argues that these courts are very aware of the constraints inherent to their role navigating the new waters of socioeconomic rights, and rather than risk the legitimacy of the judiciary or the health policy reforms they order, they have constructed a judicial role for themselves that emphasizes accountability, rather than administration: courts review whether public officials and other responsible parties are taking action consistent with their legal obligations.

In sum, the growing evidence from campaigns to enforce socioeconomic rights around the world is providing important theoretical and empirical grist for rethinking what we know and assume about the capacity of legislatures, courts, bureaucracies, markets, and social movements to realize and enforce socioeconomic rights. Nowhere has this task of rethinking socioeconomic rights been more challenging than in the context of the United States.

Domestication of human rights: Socioeconomic rights in the United States

While the United States played an instrumental role in both creating the modern human rights regime after World War II and championing (if inconsistently) human rights as a foreign policy priority over the next six decades, American civil servants, politicians, judges, and the general public have long maintained that the norms of international human rights do not apply to domestic laws and public policy (Anderson 2003; Ignatieff 2005; Soohoo, Albisa, and Davis 2008a). The United States has ratified relatively few human rights treaties, and the US Supreme Court has been reluctant to recognize any international laws as legally binding on the United States. While there have been striking attempts by American social movements in the past to recognize socioeconomic rights as "real" rights (Amenta, Carruthers, and Zylan 1992; Goluboff 2007; Kornbluh 2007; Wright 2007), few of these have been successful. To this day, the Supreme

Court recognizes no explicit economic and social rights, with the exception of a guarantee against interference with property rights and a limited right to education (Albisa 2011).

The emergence of domestic human rights discourse and collective action in recent years reflects a growing awareness of the limitations of relying exclusively on a civil and political rights framework for pursuing social movement goals (Soohoo, Albisa, and Davis 2008b). American jurisprudence and politics, for example, have been unable to move beyond the elimination of simple prejudice to consider such things as institutionalized racism or sexism or the striking dimensions of class-based inequality. This was perhaps most vividly illustrated in the context of Hurricane Katrina in 2005, when Gulf Coast survivors were initially unable to articulate the injustice of their treatment in the aftermath of the hurricane under existing US law. The government's abandonment of thousands of people too poor to flee the city, and the subsequent hunger, thirst, and chaos those New Orleans residents endured in the days and weeks after the storm, shocked people around the world, and served as a key motivation for regional activists to embrace human rights as an organizing framework (Somers 2008; Soohoo, Albisa, and Davis 2008d).

There are now volumes of research documenting activism in the United States around notions of socioeconomic rights (Soohoo, Albisa, and Davis 2008b, 2008c; Davis 2007; Hertel and Libal 2011). Much of this research focuses on the particular challenges and/or advantages of linking domestic issues such as capital punishment, housing, health care, reproductive health, environmental justice, and domestic violence to the human rights framework. The most obvious challenge for domestic human rights movements is the American judiciary's refusal to recognize human rights under American law. There are also resource challenges: as Merry (2006) found in her study of women's human rights, social movement organizations (or NGOs) that have more experience in and knowledge of the human rights system are better at using it. But, just as legal mobilization scholars have documented the wide range of "secondary" or "radiating" effects of relying on legal strategies, researchers have documented distinctive benefits from mobilizing human rights, including their capacity to unify groups with different constituencies and agendas (Luna 2010), to connect groups with similar struggles who live in different countries (Compa 2008), to provide a new framework for organizing and empowering communities that have proven impervious to traditional organizing methods (Asbed 2008), and to introduce to movements new allies, networks, and international bodies for hearing grievances (Huang 2008).

Conclusion

The most recent work on law and social movements in many ways brings us back to the CLS debates with which we began. In debating whether law matters for social movements, the CLS critique warned of the dangers of engaging in a legal

system that privileges property rights over socioeconomic well-being, and that protects citizens from government intrusions but does not mandate government protections. Students of legal mobilization have made great strides in delineating why, despite these limitations, activists, lawyers, and ordinary citizens believe so deeply in the emancipatory power of legal discourse and action. The law is one tool to be wielded in the battle for social transformation. It is not the only tool, and it is not an inherently powerful tool. How law matters for social movements depends on when and under what conditions it is wielded. But what has become clear as this literature has matured over the years, is that even the well-documented benefits of mobilizing for civil and political rights are insufficient for addressing the kinds of deep inequalities that lie at the foundation of contemporary social and economic systems. Social movements that have embraced human rights, with their particular emphasis on socioeconomic justice, face a whole new set of challenges. But in a world of growing inequality and shrinking welfare state commitments, organized demands for socioeconomic rights challenge socio-legal theorists to rethink what they assume about rights, to question what they know about the limitations of liberal legalism, and to imagine how social movements may yet realize the emancipatory potential of such rights even under a system of such powerful constraints.

References

Albisa, C. (2011). Drawing lines in the sand: Building economic and social rights norms in the united states. In S. Hertel and K. Libal, (eds.), *Human Rights in the United States: Beyond Exceptionalism*. New York: Cambridge University Press, pp. 68–88.

Albiston, C. R. (2005). Bargaining in the shadow of social institutions: Competing discourses and social change in workplace mobilization of civil rights. *Law & Society Review* 39: 11–48.

Amenta, E., Carruthers, B. G. and Zylan, Y. (1992). A hero for the aged? The Townsend movement, the political mediation model, and U.S. old-age policy, 1934–1950. *American Journal of Sociology* 98: 308–339.

Anderson, C. (2003). *Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944–1955*. New York: Cambridge University Press.

Anderson, E. A. (2006). *Out of the Closets and into the Courts: Legal Opportunity Structure and Gay Rights Litigation*. Ann Arbor, MI: University of Michigan Press.

Armstrong, E. A. and Bernstein, M. (2008). Culture, power, and institutions: A multi-institutional politics approach to social movements. *Sociological Theory* 26: 74–99.

Asbed, G. (2008). Coalition of Immokalee workers: "Golpear a uno es golpear a todos!" To beat one of us is to beat us all! In C. Soohoo, C. Albisa, and M. F. Davis (eds.), *Bringing Human Rights Home: Portraits of the Movement*. Westport, CT: Praeger, pp. 1–23.

Barclay, S., Jones, L. and Marshall, A.-M. (2011). Two spinning wheels: Studying law and social movements. *Studies in Law, Politics and Society* 54: 1–16.

Bernstein, M., Marshall, A.-M. and Barclay, S. (2009). The challenge of law: Sexual orientation, gender identity, and social movements. In S. Barclay, M. Bernstein, and A.-M.

Marshall (eds.), *Queer Mobilizations: LGBT Activists Confront the Law*. New York: New York University Press, pp. 1–17.

Chiarello, E. (2013). Contextualizing consequences: A socio-legal approach to social movement outcomes in professional fields. *Mobilization* 18: 429–451.

Chua, L. J. (2012). Pragmatic resistance, law, and social movements in authoritarian states: The case of gay collective action in Singapore. *Law & Society Review* 46: 713–748.

Cichowski, R. A. (2007). *The European Court and Civil Society: Litigation, Mobilization, and Governance*. New York: Cambridge University Press.

Coleman, C., Nee, L. D. and Rubinowitz, L. S. (2005). Social movements and social-change litigation: Synergy in the Montgomery bus protest. *Law & Social Inquiry* 30: 663–737.

Compa, L. (2008). Trade unions and human rights. In C. Soohoo, C. Albisa, and M. F. Davis, (eds.), *Bringing Human Rights Home: From Civil Rights to Human Rights*. Westport, CT: Praeger, pp. 209–253.

Couso, J. A. (2006). The changing role of law and courts in Latin America: From an obstacle to social change to a tool of social equity. In R. Gargarella, P. Domingo, and T. Roux (eds.), *Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor?* Burlington, VT: Ashgate, pp. 61–79.

Coutin, S. B. (2001). Cause lawyering in the shadow of the state: A U.S. immigration example. In A. Sarat and S. A. Scheingold (eds.), *Cause Lawyering and the State in a Global Era*. New York: Oxford University Press, pp. 117–140.

Crenshaw, K. W. (1988). Race, reform, and retrenchment: Transformation and legitimation in antidiscrimination law. *Harvard Law Review* 101: 1331–1387.

Davis, M. F. (2007). Human rights in the trenches: Using international human rights law in "everyday" legal aid cases. *Clearinghouse Review: Journal of Poverty, Law and Policy* 41: 414–426.

Delgado, R. (1987). The ethereal scholar: Does critical legal studies have what minorities want? *Harvard Civil Rights-Civil Liberties Law Review* 22: 301–322.

Dolbeare, K. M. and Hammond, P. E. (1971). *The School Prayer Decisions: From Court Policy to Local Practice*. Chicago, IL: University of Chicago Press.

Edelman, L. B., Leachman, G. M., and McAdam, D. (2010). On law, organizations, and social movements. *Annual Review of Law and Social Science* 6: 653–685.

Engel, D. M. and Munger, F. W. (2003). *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities*. Chicago, IL: University of Chicago Press.

Epp, C. R. (2009). *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*. Chicago, IL: University of Chicago Press.

Ewick, P. and Silbey, S. S. (1998). *The Common Place of law*. Chicago, IL: University of Chicago Press.

Ferraz, O. (2011). Health inequalies, rights, and courts: The social impact of the judicialization of health. In A. Yamin and S. Gloppen (eds.), *Litigating Health Rights: Can Courts Bring More Justice to Health?* Cambridge, MA: Harvard University Press, pp. 76–102.

Gabel, P. and Kennedy, D. (1984). Roll over Beethoven. *Stanford Law Review* 36: 1–55.

Galanter, M. (1983a). The radiating effects of courts. In K. O. Boyum and L. Mather (eds.), *Empirical Theories about Courts*. New York: Longman, pp. 117–142.

Galanter, M. (1983b.) Reading the landscape of disputes: What we know and don't know (and think we know) about our allegedly contentious and litigious society. *UCLA Law Review* 31: 4–71.

Gargarella, R., Domingo, P., and Roux, T. (eds.). (2006a). *Courts and Social Transformations in New Democracies: An Institutional Voice for the Poor?* Burlington, VT: Ashgate.

Gargarella, R., Domingo, P. and Roux, T. (2006b). Courts, rights and social transformation: Concluding reflections. In R. Gargarella, P. Domingo, and T. Roux (eds.), *Courts and Social Transformations in New Democracies*. Burlington, VT: Ashgate, pp. 255–281.

Gauri, V. and Brinks, D. M. (eds.) (2008a). *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*. New York: Cambridge University Press.

Gauri, V. and Brinks, D. M. (2008b). Introduction: The elements of legalization and the triangular shape of social and economic rights. In V. Gauri and D. M. Brinks (eds.), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*. New York: Cambridge University Press, pp. 1–37.

Gearty, C. and Mantouvalou, V. (2011). *Debating Social Rights*. Portland, OR: Hart.

Gloppen, S. and Roseman, M. J. (2011). Introduction: Can litigation bring justice to health? In A. E. Yamin and S. Gloppen (eds.), *Litigating Health Rights: Can Courts Bring More Justice to Health?* Cambridge, MA: Harvard University Press, pp. 1–16.

Goluboff, R. L. (2007). *The Lost Promise of Civil Rights*. Cambridge, MA: Harvard University Press.

Handler, J. F. (1978). *Social Movements and the Legal System*. New York: Academic Press.

Hershkoff, H. (2008). Transforming legal theory in the light of practice: The judicial application of social and economic rights to private orderings. In V. Gauri and D. M. Brinks (eds.), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*. New York: Cambridge University Press, pp. 268–302.

Hertel, S. and Libal, K. (eds.) (2011). *Human Rights in the United States*. New York: Cambridge University Press.

Huang, M. (2008). "Going global": Appeals to international and regional human rights bodies. In C. Soohoo, C. Albisa, and M. F. Davis (eds.), *Bringing Human Rights Home: From Civil Rights to Human Rights*. Westport, CT: Praeger, pp. 105–125.

Hull, K. E. (2001). The political limits of the rights frame: The case of same-sex marriage in Hawaii. *Sociological Perspectives* 44: 207–232.

Ignatieff, M. (2005). *American Exceptionalism and Human Rights*. Princeton, NJ: Princeton University Press.

Kawar, L. (2011). Legal mobilization on the terrain of the state: Creating a field of immigrant rights lawyering in France and the United States. *Law & Social Inquiry* 36: 354–387.

Kay, T. (2011). Legal transnationalism: The relationship between transnational social movement building and international law. *Law & Social Inquiry* 36: 419–454.

Kornbluh, F. (2007). *The Battle for Welfare Rights: Politics and Poverty in Modern America*. Philadelphia, PA: University of Pennsylvania Press.

Langford, M. (2008). The justiciability of social rights: From practice to theory. In M. Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*. New York: Cambridge University Press, pp. 3–45.

Leachman, G. M. (2013). Legal framing. *Studies in Law, Politics and Society* 61: 25–59.

Levitsky, S. R. (2006). To lead with law: Reassessing the influence of legal advocacy organizations in social movements. In A. Sarat and S. A. Scheingold (eds.), *Cause Lawyers and Social Movements*. Palo Alto, CA: Stanford University Press, pp. 145–163.

Levitsky, S. R. (2007). Niche activism: Constructing a unified movement identity in a heterogeneous organizational field. *Mobilization: An International Journal* 12: 271–286.

Levitsky, S. R. (2008). "What rights?" The construction of political claims to American health care entitlements. *Law & Society Review* 42: 551–590.

Luna, Z. (2010). Marching toward reproductive justice: Coalitional (re) framing of the march for women's lives. *Sociological Inquiry* 80: 554–578.

Marshall, A.-M. (2003). Injustice frames, legality, and the everyday construction of sexual harassment. *Law and Social Inquiry* 28: 659–689.

Marshall, A.-M. (2006). Social movement strategies and the participatory potential of litigation. In A. Sarat and S. A. Scheingold (eds.), *Cause Lawyers and Social Movements*. Palo Alto, CA: Stanford University Press.

Marshall, T. H. (1992 [1950]). *Citizenship and Social Class*. London: Pluto Press.

Matsuda, M. J. (1987). Looking to the bottom: Critical Legal Studies and reparations. *Harvard Civil Rights-Civil Liberties Law Review* 22: 323–399.

McCann, M. W. (1991). Legal mobilization and social reform movements: Notes on theory and its applications. In A. Sarat and S. Silbey (eds.), *Studies in Law, Politics and Society*. Greenwich, CT: JAI Press, pp. 225–254.

McCann, M. W. (1993). Reform litigation on trial. *Law & Social Inquiry* 17: 715–743.

McCann, M. (1994). *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago, IL: University of Chicago Press.

McCann, M. (1996). Causal versus constitutive explanations (or, on the difficulty of being so positive). *Law & Social Inquiry* 21: 457–482.

McCann, M. (2004). Law and social movements. In A. Sarat (ed.), *The Blackwell Companion to Law and Society*. Oxford: Blackwell, pp. 506–522.

McCann, M. and Silverstein, H. (1998). Rethinking law's "allurements": A relational analysis of social movement lawyers in the United States. In A. Sarat and S. Scheingold (eds.), *Cause Lawyering: Political Commitments and Professional Responsibilities*. New York: Oxford University Press, pp. 261–292.

Merry, S. E. (2006). *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago, IL: University of Chicago Press.

Merry, S. E., Rosen, M. S., Levitt, P., and Yoon, D. H. (2010). Law from below: Women's human rights and social movements in New York City. *Law & Society Review* 44: 101–128.

Milner, N. (1991). Rights, politics, faith, and judgment: Limits of interpretive legal scholarship. *Studies in Law, Politics, and Society* 11: 255–283.

Minow, M. (1987). Interpreting rights: An essay for Robert Cover. *Yale Law Journal* 96: 1860–1915.

O'Connor, K. (1980). *Women's Organizations' Use of the Courts*. Lexington, MA: Lexington Books.

Olson, S. M. (1984). *Clients and Lawyers: Securing the Rights of Disabled Persons*. Westport, CT: Greenwood Press.

Paris, M. (2001). Legal mobilization and the politics of reform: Lessons from school finance litigation in Kentucky, 1984–1995. *Law & Social Inquiry* 26: 631–684.

Pedriana, N. (2006). From protective to equal treatment: Legal framing processes and transformation of the women's movement in the 1960s. *American Journal of Sociology* 111: 1718–1761.

Rosenberg, G. N. (1991). *The Hollow Hope: Can Courts Bring about Social Change?* Chicago, IL: University of Chicago Press.

Rosenberg, G. N. (1993). Hollow hopes and other aspirations: A reply to Feeley and McCann. *Law and Social Inquiry* 17: 761–778.

Rosenberg, G. N. (1996). Positivism, interpretivism, and the study of law. *Law and Social Inquiry* 21: 435–455.

Rowen, J. (2012). Mobilizing truth: Agenda setting in a transnational social movement. *Law & Social Inquiry* 37: 686–718.

Sarat, A. and Scheingold, S. A. (eds.) (2006). *Cause Lawyers and Social Movements*. Stanford, CA: Stanford University Press.

Scheingold, S. A. (1974). *The Politics of Rights: Lawyers, Public Policy, and Political Change*. New Haven, CT: Yale University Press.

Scheingold, S. A. (1998). The struggle to politicize legal practice: A case study of left-activist lawyering in Seattle. In A. Sarat and S. A. Scheingold (eds.), *Cause Lawyering: Political Commitments and Professional Responsibilities*. New York: Oxford University Press, pp. 118–148.

Scheingold, S. A. and Sarat, A. (2004). *Something to Believe in: Politics, Professionalism, and Cause Lawyering*. Stanford, CA: Stanford University Press.

Schneider, E. M. (1986). The dialectic of rights and politics: Perspectives from the women's movement. *New York University Law Review* 61: 589–652.

Silverstein, H. (1996). *Unleashing Rights: Law, Meaning, and the Animal Rights Movement*. Ann Arbor, MI: University of Michigan Press.

Snow, D. A. and Soule, S. A. (2010). *A Primer on Social Movements*. New York: W.W. Norton.

Somers, M. R. (2008). *Genealogies of Citizenship: Markets, Statelessness, and the Right to Have Rights*. New York: Cambridge University Press.

Soohoo, C., Albisa, C., and Davis, M. F. (eds.) (2008a). *Bringing Human Rights Home: A History of Human Rights in the United States*. Westport, CT: Praeger.

Soohoo, C., Albisa, C., and Davis, M. F. (eds.) (2008b). *Bringing Human Rights Home: From Civil Rights to Human Rights*. Westport, CT: Praeger.

Soohoo, C., Albisa, C., and Davis, M. F. (eds.) (2008c). *Bringing Human Rights Home: Portraits of the Movement*. Westport, CT: Praeger.

Soohoo, C., Albisa, C., and Davis, M. F. (2008d). Preface. In C. Soohoo, C. Albisa, and M. F. Davis (eds.), *Bringing Human Rights Home: From Civil Rights yo Human Rights*. Westport, CT: Praeger, pp. ix–xii.

Stone, A. L. (2009). Like sexual orientation? Like gender? Transgender inclusion in nondiscrimination ordinances. In S. Barclay, M. Bernstein, and A.-M. Marshall (eds.), *Queer Mobilizations: LGBT Activists Confront the Law*. New York: New York University Press, pp. 142–157.

Tsutsui, K., Whitlinger, C., and Lim, A. (2012). International human rights law and social movements: States' resistance and civil society's insistence. *Annual Review of Law and Social Science* 8: 367–396.

Tushnet, M. (1984). An essay on rights. *Texas Law Review* 62: 1363–1403.

Tushnet, M. (2004). Social welfare rights and the forms of judicial review. *Texas Law Review* 82: 1895–1919.

Waldron, J. (2000). The role of rights in practical reasoning: "Rights" versus "needs." *Journal of Ethics* 4: 115–135.

Williams, P. (1987). Alchemical notes: Reconstructing ideals from deconstructed rights. *Harvard Civil Rights-Civil Liberties Law Review* 22: 401–433.

Wright, A. N. (2007). *Civil rights "unfinished business": Poverty, race, and the 1968 Poor People's Campaign*. PhD dissertation, University of Texas, Austin.

Yamin, A. E. and Gloppen, S. (eds.) (2011). *Litigating Health Rights: Can Courts Bring More Justice to Health?* Cambridge, MA: Harvard University Press.

Young, K. (2012). *Constituting Economic and Social Rights*. New York: Oxford University Press.

Zemans, F. K. (1983). Legal mobilization: The neglected role of the law in the political system. *American Political Science Review* 77: 690–703.