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GLOBALIZING PUBLIC INTEREST LAW

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This essay examines the structural factors shaping the globalization of public interest law in the post-Cold War era and offers a preliminary appraisal of its emerging global role. Part I traces public interest law's shift from an insular American project toward a more globalized set of practices, suggesting two reasons for this change. First, the ascendance of the Rule of Law movement has promoted public interest law in developing and transitional countries as a crucial component of good governance. Second, the increasing power of international institutions has drawn public interest lawyers into global advocacy arenas to challenge the deregulation of global markets and leverage the human rights system to advance social justice movements. Part II explores the implications of public interest law's emergence as a global institution and a tool of global governance. It outlines the factors shaping public interest law's institutional design, which incorporates elements imported by global sponsors, while building upon unique national- and regional-level opportunities. This essay concludes by offering a provisional map of public interest law's evolving role in global governance, highlighting the global arenas in which it operates, the strategies it deploys, and the networks it helps to construct.

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† Clinical Professor of Law, University of Wisconsin Law School. We are indebted to the Law and Society Association for its generous support of our International Research Collaborative on public interest law, which brought together the participants in this symposium. We are, in addition, enormously grateful to the UCLA Journal of International Law and Foreign Affairs editors for their energetic and meticulous work organizing the symposium. Thanks also to the UCLA School of Law Epstein Program in Public Interest Law and Policy, the UCLA Campus Programs Committee of the Center for Student Programming, The Ann C. Rosenfield Symposium Fund, the UCLA Graduate Students Association, the American Constitutional Society, and UCLA School of Law Dean Michael Schill for their crucial support. Finally, we owe a special debt of gratitude to the symposium participants for their extraordinary commitment and wonderful engagement. This issue is a tribute to their work and vision.

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INTRODUCTION

Globalization carries both the power to build and disrupt. Open markets, human rights, rule of law: all require the creation of new institutions and methods of governance. Yet in the quest to build, old traditions are asked to cede to new ideas and, inevitably, there are winners and losers. Depending on who is keeping score, globalization may be welcomed as the antidote to corruption and abuse, or rejected as the imposition of victor's justice. Law—and therefore lawyers—play a central role in the contest over

the scope and meaning of globalization.¹ Global institutions are created, in part, through law: international treaties, multilateral trade agreements, and private commercial contracts form the legal foundation of the global order. Thus, lawyers act as architects of the global system, providing technical expertise and conferring an important source of institutional legitimacy.² As such, they are subject to praise or scorn, depending on one's point of view, either as the vanguard of change or the agents of imperialism. Within the global arena, law is not just a building block of global institutions but a tool of political struggle with distributional consequences. Whether it is investors suing to protect property rights or workers advocating to enforce labor rights, law is deployed in the global arena to assert the boundaries of what is legal—and claim the high ground of what is just. Though the global “haves” still may ultimately come out ahead,³ the “have-nots” nonetheless stage episodic interventions against the abuses of globalization, thereby mobilizing law in a transnational strategy of “politics by other means.”⁴

That public interest law has come to play an important role in simultaneously advancing and contesting globalization should in some ways come as no surprise. To the degree that globalization is built upon the legal architecture of American-style liberal capitalism, one would expect public interest law to occupy a similar position on the global stage as it does in the United States: lending credence to procedural claims of equal justice and providing a means of enforcing fundamental rights. The paradox of public interest law is that it both legitimates the institutional order while demanding accountability from it⁵—and this dual function seems applicable to developing and transitional countries, as well as international institutions.

Yet while it may be unsurprising that public interest law is, like other professional services, becoming more globalized, its occurrence raises two crucial questions. First, why and how is it happening? It is not the case that public interest law emerges organically around the world; rather, it is “con-

¹ See generally Paul Schiff Berman, *From International Law to Law and Globalization*, 43 COLUM. J. TRANSN'L L. 485 (2005).

² See Terence C. Halliday, *Lawyers as Institution Builders: Constructing Markets, States, Civil Society, and Community*, in CROSSING BOUNDARIES: TRADITIONS AND TRANSFORMATIONS IN LAW AND SOCIETY RESEARCH 242 (Austin Sarat et al. eds., 1998).

³ Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974).

⁴ RICHARD L. ABEL, *POLITICS BY OTHER MEANS: LAW IN THE STRUGGLE AGAINST APARTHEID, 1980-1994* (1995).

⁵ See STUART A. SCHEINGOLD & AUSTIN SARAT, *SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING* 23 (2004).

structed,”⁶ which means that there must be actors, both at the global and local levels, who have a stake in its development and are willing to make investments in public interest law and legal institutions. This process of construction implicates competing values and visions of legal change: the motivations of funding institutions or government officials may diverge from those of lawyers and activists on the ground. And it also implicates questions of national autonomy and identity: while some lawyers may embrace public interest law as a way to contest governmental and corporate abuse, others might view it as an unwanted American export, a tool of social control that dissipates political conflict through legalization or displaces more emancipatory forms of legal resistance.⁷ How public interest law is negotiated and mobilized in this context shapes its meaning and power across nations and within international venues.

This leads to the second question: What does public interest law look like in the global age? Are there consistent practices and themes that are evident across national domains or is public interest law too context-specific to be generalized? If so, does it even make sense to use the term “public interest law?” In the United States, the concept of public interest law originated as a way to demarcate court-based legal representation on behalf of underrepresented groups, such as the poor, blacks, women, and consumers.⁸ Other national legal systems are beginning to adopt the term, in some cases (like in Central and Eastern Europe) to assert the emergence of a new style of constitutionally oriented domestic advocacy distinct from old human rights traditions,⁹ and in others (like China) to emphasize the collective benefits of legal action to the mass public.¹⁰ But public interest law never takes root on a blank slate. Other countries may have strong indigenous traditions of legal activism, more expansive constitutional rights, or greater experience with the system of human rights—all of which influence the scope and objectives of legal advocacy. Outside of national legal systems,

⁶ Edwin Rekosh, *Constructing Public Interest Law: Transnational Collaboration and Exchange in Central and Eastern Europe*, 13 UCLA J. INT'L L. & FOREIGN AFF. 55 (2008).

⁷ Cf. Stephen Ellmann, *Cause Lawyering in the Third World*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 349, 356 (Austin Sarat & Stuart Scheingold eds., 1998) (noting that some lawyers from the developing world have viewed the promotion of international public interest law “as another instance of what might be called human rights imperialism”).

⁸ See JOEL F. HANDLER, ELLEN JANE HOLLINGSWORTH & HOWARD S. ERLANGER, LAWYERS AND THE PURSUIT OF LEGAL RIGHTS 24-44 (1978).

⁹ Rekosh, *supra* note 6, at 62-70.

¹⁰ Titi M. Liu, *Transmission of Public Interest Law: A Chinese Case Study*, 13 UCLA J. INT'L L. & FOREIGN AFF. 263, 284-93 (2008).

public interest lawyers involved in new institutional arenas, like the Inter-American Commission on Human Rights or the North American Free Trade Agreement side labor process, confront distinctive rules and must make different strategic calculations. Thus, as public interest law is inscribed in new institutional contexts, its already contested principles and practices are subject to further revision and challenge.

The participants in this symposium issue came together three years ago around a shared interest in exploring the impact of globalization on public interest law and its implications. We began with a commitment to building an analysis from the ground up, inviting scholars close to the action to engage in an open-textured discussion of how global change was interacting with the development of public interest law around the world. An initial exchange took place among roughly twenty scholars organized as an International Research Collaborative at the 2006 Annual Meeting of the Law and Society Association in Baltimore, Maryland. On the basis of this discussion, a core group of scholars from Brazil, Canada, Colombia, China, Ghana, Hungary, and the United States agreed to pursue a collective research project focused on two major themes: the construction of public interest law systems in developing and transitional countries, and the emergence of transnational legal mobilization campaigns. This smaller group met again in Berlin in the summer of 2007 to present our research and draw further connections. This symposium issue represents the culmination of our project, which has initiated a nascent dialogue on the role of public interest law in the global arena that we hope will continue to unfold and deepen. This introductory essay is an effort to distill tentative lessons from our collective project and raise questions for future research on the global dimensions of public interest law.

We begin, in Part I, by providing a historical framework for understanding contemporary global trends in public interest law. In particular, we trace the movement of public interest law from an insular American project borne of the unique domestic and international conditions of the Cold War period toward a more globalized set of practices and concepts that are now being embedded in national legal systems across the developing and transitional world, and integrated into multi-faceted transnational activist campaigns. To do this, we situate public interest law in relation to two other legal movements of the Cold War era: human rights and law and development. Our story highlights the shift from the relative separation of these movements, each of which operated in its own geopolitical sphere during the Cold War, toward greater convergence beginning in the 1980s and accelerating with the fall of the Berlin Wall.

We suggest two reasons for this shift. The first is the re-emergence and reorientation of law and development, initially around the goal of open markets and, more recently, embracing the Rule of Law, with its promise to marry open markets and respect for human rights. Within this new law and development framework,¹¹ public interest law has been pulled from its American roots, becoming a crucial element of building Rule of Law systems in developing and transitional countries—thus tying public interest law more closely to the concept of economic development and incorporating it into pre-existing activist networks organized around human rights. While Rule of Law initiatives have embedded public interest law at the nation-state level, the evolution of the institutional framework of global governance—the second globalizing factor we highlight—has drawn public interest law into the contest over the impact of open markets and the power of human rights at the supranational level. These developments are connected with major global institutions, like the World Bank and United Nations, deeply involved in funding Rule of Law reforms. Yet the focus on the operation and impact of global institutions highlights a distinct global role for public interest law, which is integrated into transnational campaigns that seek to hold international finance and trade institutions accountable for their distributional impacts, challenge the deregulation of global markets through multi-level advocacy efforts, and leverage the power of the human rights system to strengthen domestic social justice movements and build transnational solidarity.

Part II explores the implications of public interest law's emerging global role. We suggest that the interpenetration of public interest law, development, and human rights point toward two evolving conceptions of public interest law: as a *global institution* and a *technique of global governance*. To speak of public interest law as a global institution suggests a convergence of practice and ideology across sectors around particular models of advocacy and assumptions about the relation of law to society;¹² but it also leaves open the possibility of variation and local adaptation.¹³ Our analysis here thus sketches out the global and local factors that have influenced the institutional

¹¹ David M. Trubek & Alvaro Santos, *Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice*, in *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL* 1, 2-3 (David M. Trubek & Alvaro Santos eds., 2006).

¹² See Mark C. Suchman & Lauren B. Edelman, *Legal Rational Myths: The New Institutionalism and the Law and Society Tradition*, 21 *LAW & SOC. INQUIRY* 903 (1996).

¹³ See Robert Granfield, *The Meaning of Pro Bono: Institutional Variations in Professional Obligations Among Lawyers*, 41 *LAW & SOC'Y REV.* 113, 119 (2007).

form of public interest law across national boundaries.¹⁴ In terms of institutional design, we note that emerging public interest systems incorporate some elements imported by global sponsors, like clinical education and pro bono, while also building upon indigenous traditions, like the procuracy, and adapting to the opportunities afforded by national developments, such as the advent of second-generation constitutions with progressive rights provisions. Because these hybrid systems combine elements of the global and local, there are inevitable struggles over authorship and power, with resistance to the notion of outside intervention, even while it leaves a distinctive imprint. In terms of global governance, the linkage of public interest law to transnational legal campaigns mobilizing within (and sometimes against) global institutions reshapes the strategic approach of public interest law and alters its stakes. In the global arena, public interest law cannot be court-centered and litigation-based, as in the classical American model, but rather encompasses a broader range of problem-solving practices adapted to the governance context within which it operates. We therefore offer a provisional map of the new terrain of this global advocacy, highlighting the locations, strategies, networks, and skills implicated in the pursuit of global justice.

I. CROSSING BORDERS: PUBLIC INTEREST LAW UNDER GLOBALIZATION

A. *Divergence: The Geography of Liberal Legalism*

The concept of public interest law as a tool of progressive social change reflects a deeper faith in the power of law to shape institutional practices and individual behavior that scholars have associated with American “liberal legalism.”¹⁵ As a theory of the relation of law to society, the strong version of liberal legalism was premised on the idea that courts interpreted law as an autonomous body of universal rules and that social actors in fact conformed to these rules.¹⁶ A weaker version viewed law as “relatively autonomous” from other social institutions:¹⁷ while law could not dictate change, it nonetheless could place some political constraints on public officials and private citizens, who were forced to justify their actions in the language of legal

¹⁴ Cf. David M. Trubek et al., *Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas*, 44 CASE W. RES. L. REV. 407 (1993-1995) (discussing the role of international forces in shaping national legal fields).

¹⁵ David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis of Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062, 1070-72; see also LAURA KALMAN, *THE STRANGE CAREER OF LEGAL LIBERALISM* (1996).

¹⁶ Trubek & Galanter, *supra* note 15, at 1072.

¹⁷ See ABEL, *supra* note 4, at 7.

compliance. Under either version, changing law carried the potential to change society: legal reform, either through legislative decree or court order, held out the promise of moving society in more progressive directions. It was this promise of progressive change that animated three strains of legal activism that emerged during the Cold War era: public interest law, law and development, and human rights. Though each movement shared common premises—and often were shaped by common actors—they largely operated in separate geographic spheres with distinct aims. The line between public interest law, on the one hand, and human rights and law and development, on the other, was drawn along a *domestic-international axis*: American public interest law emerged as a parochial project, resting on the cornerstones of domestic legal rights and judicial independence, which were lacking in modernizing countries focused on economic development and those under authoritarian rule, where appeals to legality were framed to the international community in terms of human rights as a way to generate external pressure for domestic change. In contrast, the line between public interest law and human rights, on one side, and law and development, on the other, was forged along a *political-economic axis*. The law and development movement emphasized the exportation of legal reforms to developing countries as a spur to domestic industrialization and thus related law to the construction of economic institutions in a way that diverged from the primary thrust of public interest and human rights advocacy, which focused on the assertion of civil and political rights against abusive governments. This section traces the separate trajectories of these three movements.

1. Public Interest Law

Public interest law, for its part, emerged in the United States during the 1960s and 1970s, when the success of liberal lawyers in using the courts as a fulcrum to leverage political change for African Americans brought resources and professional status to a new sector of legal organizations promising to use law to promote the interests of groups excluded from conventional channels of political decision making.¹⁸ The concept of classical public interest law focused on the goal of political reform through domestic legal change.¹⁹ In particular, it sought to use carefully crafted test case litigation campaigns to create a body of universal rules, primarily in the area of civil and political rights, to promote greater social equality and expand the

¹⁸ See JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE* 2 (1978).

¹⁹ Louise G. Trubek, *Crossing Boundaries: Legal Education and the Challenge of the "New Public Interest Law,"* 2005 WIS. L. REV. 455, 457-60.

rights of members of less powerful groups. Although public interest lawyers during this period pursued multi-dimensional legal and political strategies,²⁰ the paradigm was the NAACP Legal Defense and Educational Fund's school desegregation campaign, which targeted sympathetic federal courts to provide justice that the political process had denied blacks.²¹ Thus, it was a strategy that mobilized the power of federal judicial interpretation and enforcement against the recalcitrance of state and local lawmaking. As such, public interest law relied on an activist liberal judiciary to strike down state action and, as it spread into areas like environmental and consumer law, it also came to depend on the power of federal bureaucracies, like the Environmental Protection Agency and Food and Drug Administration, to enforce federal mandates against market actors.²²

While public interest law emerged during this period as an exclusively, and self-confidently, American movement—an expression of American exceptionalism—it did so against the backdrop of Cold War politics. Prior to *Brown v. Board of Education*, there were efforts within the civil rights community to internationalize the civil rights struggle in order to pressure domestic officials to take bolder action. In a notable example, the NAACP in the late 1940s submitted a petition to the newly formed United Nations Commission on Human Rights challenging the “barbaric” practice of U.S. discrimination against blacks.²³ There were numerous instances of human rights litigation, as lawyers from the NAACP, ACLU, and other groups attempted to draw international attention to racial discrimination through the inclusion of human rights claims in civil rights cases during the 1940s and 1950s.²⁴ However, this international approach waned in the 1950s in part

²⁰ See, e.g., HANDLER, HOLLINGSWORTH & ERLANGER, *supra* note 8, at 41-42.

²¹ See RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1977). The same method was applied to advance the rights of other constituencies, such as the poor. See, e.g., MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960-1973* (1993); SUSAN E. LAWRENCE, *THE POOR IN COURT: THE LEGAL SERVICES PROGRAM AND SUPREME COURT DECISION MAKING* (1990).

²² Trubek, *supra* note 19, at 458-59.

²³ W.E.B. DuBois, *An Appeal to the World* (Oct. 23 1947), *reprinted in* W.E.B. DuBois, *Three Centuries of Discrimination*, 54 *THE CRISIS* 362, 380 (1947); see also CAROL ANDERSON, *EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS, 1944-1955* (2003).

²⁴ See Bert B. Lockwood, Jr., *The United Nations Charter and United Nations Civil Rights Litigation: 1946-1955*, 69 *IOWA L. REV.* 901, 931-933 (1983-1984); see also MICHAEL J. PERRY, *THE CONSTITUTION, THE COURTS, AND HUMAN RIGHTS: AN INQUIRY INTO THE LEGITIMACY OF CONSTITUTIONAL POLICYMAKING BY THE JUDICIARY* (1982); Paul Sayre, *Shelley v. Kraemer and United Nations Law*, 34 *IOWA L. REV.* 1 (1948).

because civil rights groups were sensitive to avoid the Communist label, but also because of the building momentum for domestic legalism, dramatized by *Brown*. This momentum, in turn, was spurred by the Communist threat, as federal decision makers moved forward on civil rights reform in order to blunt Soviet criticism of American Jim Crow.²⁵

2. Law and Development

While public interest law asserted the power of liberal legalism to reform American society from within, the law and development movement that emerged in the 1960s sought to export the concept to promote modernization in developing countries in the global South²⁶—part of the United States's Cold War effort to extend its sphere of influence. Major sponsors of the law and development movement included the U.S. Agency of International Development (“USAID”) and the Ford Foundation, which established the International Legal Center with a three million dollar grant in 1966 to provide legal assistance to developing countries.²⁷

In contrast to public interest law, which focused on the application of domestic law to reform politics, the law and development movement sought to change foreign law to promote economic growth. Its main aim was to enhance the power of the state over the market, fostering growth through a program of cultivating and protecting internal industries—a model known as import substitution industrialization.²⁸ To achieve this, law and development practitioners targeted the transformation of “legal culture” in developing countries, which was deemed inflexible and unresponsive to policy demands.²⁹ It was believed that by exporting the antiformalist, policy-oriented approach to law associated with American liberal legalism, foreign officials would be given the tools to reorient economic systems in a way that could spur modernization. In this model, economic development was prioritized over democratic legal reforms. Law and development proponents argued that

²⁵ See MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000).

²⁶ Trubek & Santos, *supra* note 11, at 2.

²⁷ Hugo Frühling, *From Dictatorship to Democracy: Law and Social Change in the Andean Region and the Southern Cone of South America*, in *MANY ROADS TO JUSTICE: THE LAW-RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD* 55, 56 (Mary McClymont & Stephen Golub eds., 2000).

²⁸ Trubek & Galanter, *supra* note 15, at 1062.

²⁹ See Lawrence M. Friedman, *Legal Culture and Social Development*, in *LAW AND THE BEHAVIORAL SCIENCES* 1000, 1004 (1964) (“[L]egal culture is the term we apply to those values and attitudes in society which determine what structures are used and why; which rules work and which do not, and why.”).

the modernization of economic rules would then “spillover” to enhance democratic values and ensure individual rights.³⁰ Because the goal was the transformation of legal culture, the central target of reform was legal education, which was to be reoriented to emphasize pragmatic problem-solving, equipping lawyers to embrace policy-sensitive uses of law.³¹ American law professors were therefore key proponents of law and development, enlisted to transmit the U.S. method of legal education to developing countries.³² During the 1960s, major law and development projects were launched in Asia, Africa, and Latin America.³³ For instance, the Ford Foundation initiated programs to train law professors in Chile, Colombia, and Peru, promoting exchange programs that sent Latin American professors to prominent U.S. law schools to learn new teaching methodologies so that they could return home to apply them.³⁴

By the 1970s, however, the optimistic view of liberal legalism reflected in the law and development movement was on the wane. This stemmed in part from a reassessment of the operating premises of law and development by some of its most ardent supporters, who began to question the effectiveness of legal transplants and suggested that the notion of American legal exports smacked of legal imperialism.³⁵ Events on the ground also hastened the demise of first-wave law and development. In particular, military coups and the imposition of authoritarian rule in countries like Chile and Argentina in the 1970s derailed legal reform efforts, with conservatives in some instances taking over the key site of modernization: the law schools.³⁶

3. Human Rights

It was against the backdrop of law and development’s decline that the human rights movement emerged as a way of challenging authoritarian regimes from the outside—using the threat of international law and mobilizing the pressure of international opprobrium to force domestic change where

³⁰ David M. Trubek, *The “Rule of Law” in Development Assistance: Past, Present, and Future*, in *THE NEW LAW AND ECONOMIC DEVELOPMENT*, *supra* note 11, at 74, 77.

³¹ *Id.*; see also David M. Trubek, *Toward a Social Theory of Law: An Essay on the Study of Law and Development*, 82 *YALE L.J.* 1, 9-10 (1972).

³² See Frühling, *supra* note 27, at 56.

³³ See Trubek & Galanter, *supra* note 15, at 1062-69; see also JAMES A. GARDNER, *LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* (1980).

³⁴ Frühling, *supra* note 27, at 56-57.

³⁵ Trubek & Galanter, *supra* note 15, at 1080.

³⁶ Frühling, *supra* note 27, at 57.

opportunities for domestic legal and political action were limited.³⁷ Thus, the move was from economics back to politics, with human rights used as a crucial tool for responding to state-sponsored violations of civil and political rights, seen most dramatically in the “disappearances” of political dissidents orchestrated by some Latin American military governments.

The international framework of human rights developed much earlier, borne in the aftermath of World War II, and shaped by the United States’s Cold War struggle against the Soviet Union. The United States was one of the primary architects of the post-war human rights system, contributing to the formation of the United Nations, whose Charter proclaimed “respect for human rights,” and helping to draft the Universal Declaration of Human Rights.³⁸ However, the United States’s support for human rights was always selective, driven by anticommunist foreign policy considerations. Thus, while U.S. officials were quick to point out the human rights failings of the U.S.S.R. and its allies, it attempted to deflect attention from its own internal violations—channeling civil rights activism into domestic venues³⁹—and ignored abuses by anticommunist allies. Moreover, although it played a leading role in establishing the human rights system at the United Nations, it failed to ratify key human rights treaties—including the Convention to Eliminate Discrimination Against Women and the Covenant on Economic, Social, and Cultural Rights—and limited those it did ratify by not according them self-executing power.

It was, ironically, the United States’s contradictory stance that helped launch human rights as an international movement. For instance, U.S. support for the coup of Chile’s democratically elected socialist government in 1973 mobilized the Ford Foundation, which began to invest in Chilean human rights organizations as a way to critique U.S. foreign policy.⁴⁰ Ford thus backed human rights organizations, like Chile’s *Vicaría de Solidaridad*, which emerged as a key group contesting the deprivation of civil and political freedoms under the military regime. By the late 1970s and early 1980s, Ford (which also played a central role in the institutionalization of U.S. pub-

³⁷ See MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998).

³⁸ See Lisa Hajjar, *Human Rights*, in *THE BLACKWELL COMPANION TO LAW AND SOCIETY* 589, 592 (Austin Sarat ed. 2004); see also Martha Minow, *Instituting Universal Human Rights Law: The Invention of Tradition in the Twentieth Century*, in *LOOKING BACK AT LAW’S CENTURY* 58, 62-63 (Austin Sarat, Bryant Garth & Robert A. Kagan eds., 2002).

³⁹ See DUDZIAK, *supra* note 25.

⁴⁰ Yves Dezalay & Bryant G. Garth, *Constructing Law Out of Power: Investing in Human Rights as an Alternative Political Strategy*, in *CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA* 354, 360-61 (Austin Sarat & Stuart Scheingold eds., 2001).

lic interest law) became the primary funder of the international human rights movement, greatly increasing its human rights portfolio and helping to establish pivotal international human rights organizations like the Lawyers Committee for Human Rights and the International Human Rights Law Group.⁴¹ In Latin America, Ford formally established a human rights funding program and concentrated its grant making on strengthening indigenous human rights organizations, like the *Vicaría* and Argentina's *Centro de Estudios Legales y Sociales*, in order to enhance their ability to document human rights violations and network with international allies to place violations on the international agenda.⁴² A similar human rights infrastructure developed in South Africa during the same period, also with Ford support.⁴³ In the Soviet Union, the Moscow Helsinki Group was created in 1976, followed by the formation of other Helsinki Groups in Eastern European Soviet Bloc countries that eventually came together as the International Helsinki Federation for Human Rights.⁴⁴ Although these human rights efforts grew out of indigenous activist traditions, they sought to leverage the institutions of human rights—including the United Nations, the European Court of Human Rights, and the Inter-American Commission on Human Rights—and thus by necessity relied on transnational networks of local activists and outside political and philanthropic allies. Human rights, as a strategy of legal pressure, also drew upon the U.S. public interest law experience as a model for patterning human rights advocacy.⁴⁵

Public interest law's domestic stature—forged in the movement for African American equality and linked to progressive conceptions of minority rights—gave it international legitimacy as a bulwark against government-sanctioned bigotry and social exclusion that resonated with human rights activists in countries struggling against authoritarian rule. Yet the public interest law and human rights movements deployed distinctive models of legal activism and operated in separate spheres. In contrast to public interest law's domestic orientation, this first wave of human rights practice pioneered innovative uses of transnational advocacy: domestic activists aligned

⁴¹ *Id.* at 363; see also YVES DEZALAY & BRYANT G. GARTH, *THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES* (2002).

⁴² Frühling, *supra* note 27, at 60-61.

⁴³ See Stephen Golub, *Battling Apartheid, Building a New South Africa*, in *MANY ROADS TO JUSTICE: THE LAW-RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD*, *supra* note 28, at 19.

⁴⁴ Rekosh, *supra* note 6, at 60.

⁴⁵ See Ellman, *supra* note 7, at 355.

themselves with outside lawyers and funders, typically from the United States and Europe, to amplify human rights abuses through access to international media and human rights institutions—the classic “naming and shaming” model.⁴⁶ By tapping into external networks and institutional arenas, local activists sought to pressure domestic political actors into reform.⁴⁷

Though they traveled along distinct paths, public interest law in the United States and human rights abroad became subject to a parallel set of critiques as the Cold War drew to a close. At a time when public interest law was being rapidly institutionalized on the left⁴⁸—and imitated on the right⁴⁹—it was subject to withering criticism by liberal academics, who questioned its efficacy in the face of the growing conservative backlash. Some scholars expressed skepticism about the degree to which American law could ever trump politics,⁵⁰ while others argued that law coopted more transformative political mobilization and lawyers dominated marginalized clients.⁵¹ This suspicion of law as a social change strategy moved lawyers toward community-based practice and linkages with local networks. The criticism of top-down law reform lawyers, who ignored community concerns in the pursuit of legal precedent, drove a new interest in “rebellious” lawyering that emphasized non-hierarchical lawyer-client relationships in which lawyer and clients collaborated to solve community problems,⁵² and “critical” lawyering that focused on client and community empowerment.⁵³ These forms of practice drew upon critical race and feminist theory to posit new

⁴⁶ Minow, *supra* note 38, at 62-63.

⁴⁷ KECK & SIKKINK, *supra* note 37, at 12-13.

⁴⁸ See NAN ARON, *LIBERTY AND JUSTICE FOR ALL: PUBLIC INTEREST LAW IN THE 1980S AND BEYOND* (1989).

⁴⁹ See Ann Southworth, *Conservative Lawyers and the Contest Over the Meaning of “Public Interest Law,”* 52 UCLA L. REV. 1223 (2005).

⁵⁰ See GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991); STUART SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE* (1974).

⁵¹ For a review of the literature on legal cooptation, see Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 948-59 (2007). For classic discussions of lawyer domination, see Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990).

⁵² See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

⁵³ See Louise Trubek & M. Elizabeth Kransberger, *Critical Lawyers: Social Justice and the Structures of Private Practice*, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES*, *supra* note 7, at 201.

types of lawyer-client relationships and to assert new goals for legal advocacy focused less on promoting systemic reform and more on transforming legal consciousness. These alternative lawyering models therefore resonated with the growing interest among practitioners and scholars in connecting legal advocacy to grassroots organizing as a way to build community power.⁵⁴ In each instance, there was a rejection of the models and goals of classical public interest law, which was viewed as both a potential blind alley given its lack of transformative power and risky in light of the increasingly conservative courts.

Critics of human rights also emphasized its political limits. As with law and development, human rights were presented as ethnocentric and imperialistic: Western values masquerading as universal principles.⁵⁵ In addition, particularly as the dislocations of open markets brought economic grievances to the fore in developing countries, the civil and political rights focus of first wave human rights activism—which could be sympathetically portrayed as the triumph of individual rights over the arbitrary excesses of concentrated political power—was criticized for undervaluing economic and social rights (again, evoking a parallel to the U.S. public interest law movement). Others charged that human rights operated as an international strategy of elite professional advancement that undercut its more radical potential.⁵⁶ These critics suggested that while activists in Argentina and Chile during the 1970s and 1980s deployed human rights to contest state power, they also used it to increase their own domestic political capital, which they were then able to exchange in the post-authoritarian era for positions of political power in the new state—reinforcing an elitist political orthodoxy rather than producing a radically transformative vision.⁵⁷ Dissatisfaction with the elitist nature of traditional legalism led some groups in the global South to invest more heavily in “alternative lawyering” practices, which deemphasized rights-based approaches in favor of community organizing and education, with an eye toward reducing lawyer domination in order to enhance community power.⁵⁸ This alternative lawyering movement resonated with and influenced the rebellious approach to U.S. practice.

⁵⁴ See Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001).

⁵⁵ See Austin Sarat & Thomas R. Kearns, *The Unsettled Status of Human Rights: An Introduction*, in HUMAN RIGHTS: CONCEPTS, CONTESTS, CONTINGENCIES 1, 5 (Austin Sarat & Thomas R. Kearns eds., 2001).

⁵⁶ See Dezalay & Garth, *supra* note 40, at 372.

⁵⁷ *Id.*

⁵⁸ Ellman, *supra* note 7, at 359-60.

By the end of the 1980s, parallel critiques of public interest law and human rights emerged, both revealing skepticism in the power of law to reshape society and preoccupation with the negative movement implications of privileging legality over other forms of politics. Yet, while these concerns echoed across the public interest law and human rights domains—and harkened back to the criticisms of law and development a decade earlier—they spoke to shared concerns about the underlying premises of liberal legalism rather than a convergence of the movements themselves on the level of practice and ideology.

B. Convergence: Public Interest Law in the Post-Cold War Era

The boundaries between public interest law, development, and human rights began to breakdown in the 1980s and grew more permeable after the fall of the Berlin Wall. Although technological advances associated with globalization no doubt helped to facilitate exchange between activists in both hemispheres, there were structural factors driving greater interpenetration between public interest law and its global counterparts. This section considers two factors influencing the move toward greater convergence. One was the resurgence and repackaging of law and development under the banner of Rule of Law reform, which imbued development assistance with a new mission in the 1980s—open markets—that was later fused with a commitment to rights enforcement and access to justice that placed public interest law squarely on the development agenda. Second, public interest law became bound up in the development of, and contest over, the global economic and political institutions that emerged in the post-Cold War era as powerful arbiters of free market capitalism and human rights. Thus, as international financial institutions and trade organizations assumed greater powers over global markets, public interest law was enlisted in transnational campaigns to demand a voice in their internal operations and challenge their distributional impacts. The human rights system also emerged as a venue for public interest advocacy, particularly as American public interest lawyers broke with their parochial past and began looking to the international system as a resource to challenge U.S. governmental power.

1. Public Interest Law and Development

The linkage of public interest law to international economic development occurred against the backdrop of the transformation of the global development agenda. The first move, in the 1980s, was from state-led growth

to open markets.⁵⁹ Under the new neoliberal vision of development, law was still viewed as playing a key role in transforming the economy, but the endpoint of that transformation was revised. State control over the market was discredited as inefficient and the goal of development policy was reframed as facilitating free trade and capital investment.⁶⁰ This so-called Washington Consensus was implemented by U.S.-dominated institutions, the World Bank and International Monetary Fund, which demanded structural adjustments from poor countries in the form of open markets and privatization in exchange for development funds.⁶¹ The neoliberal vision, instituted under President Ronald Reagan and extended after the fall of the Berlin Wall, sought to bring developing countries and those transitioning from Soviet rule into the sphere of market integration and was touted by its architects as fueling global economic growth. However, critics pointed to neoliberalism's association with economic inequality and instability.⁶² From a distributional perspective, they argued that liberalization created a race-to-the-bottom that undercut regulatory standards and fostered economic disparity, while shifting investment patterns in ways that created dislocations in poor countries borne by the most vulnerable segments of society, decimating traditional economic sectors (such as agriculture) and thus stimulating out-migration. Corruption exacerbated the unequal distributional effects. And speculative foreign investment fueled concerns about volatility and market failure, as the East Asian and Latin American economic crises of the late 1990s underscored.

These concerns with neoliberalism led to a reformulation of development policy during the 1990s toward a modified open markets approach under the auspices of Rule of Law reform, which recognized the prevalence of market failure and reconceptualized development as not merely about growth but also about freedom.⁶³ The Rule of Law movement attempted to respond to the critiques of neoliberalism by tempering the excesses of open markets with appropriate regulation and an emphasis on democratic rights.⁶⁴

⁵⁹ Trubek & Santos, *supra* note 11, at 2.

⁶⁰ *Id.* at 5-6.

⁶¹ JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 18 (2002).

⁶² See Amy L. Chua, *Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development*, 108 *YALE L.J.* 1 (1998) (arguing that prevailing law and development paradigms ignore how marketization and democratization may fuel ethnic conflict).

⁶³ Trubek & Santos, *supra* note 11, at 6-7.

⁶⁴ *Id.* at 7-9.

Its goals were reframed in terms of “good governance,”⁶⁵ which combined market liberalization with strong rights enforcement and political accountability.⁶⁶ Rights enforcement encompassed both private (contract and property) and public (civil and political) rights that required judicial independence and access to courts to be meaningful and politically legitimate.⁶⁷ Political accountability, in turn, encompassed multi-party democratic reforms,⁶⁸ as well as anti-corruption measures, which envisioned a strong role for nongovernmental oversight and reinforced the role of courts as independent arbiters with sufficient power to check the state. In this sense, good governance resonated both with the economic aims of transnational corporations, which wanted legally enforceable investments in stable regimes, and the aspirations of human rights activists, who sought democratic accountability and individual protection from government abuse.⁶⁹ Yet the Rule of Law contained its own tensions, which centered on the degree to which its agenda contemplated corporate accountability and redistributive social welfare policies, in addition to classical guarantees of civil and political rights.

The advent of the Rule of Law movement facilitated the globalization of public interest law in two related ways. First, it operated to connect public interest law explicitly to international development aims.⁷⁰ In order to promote the twin goals of rights enforcement and political accountability, Northern donors turned to public interest law as a tool to counter government power and increase access to justice. Beginning in the 1990s, major foundations—such as the Open Society Institute and Ford Foundation—as well as international agencies—USAID, the United Nations, and the World Bank⁷¹—began to make significant investments in supporting public interest law programs, particularly access to justice (legal aid and pro bono) and clinical legal education, in diverse countries across the globe, including

⁶⁵ See Bryant G. Garth, *Building Strong and Independent Judiciaries Through the New Law and Development: Behind the Paradox of Consensus Programs and Perpetually Disappointing Results*, 52 DEPAUL L. REV. 383, 386-88 (2002); Kerry Rittich, *Enchantments of Reason/Coercions of Law*, 57 U. MIAMI L. REV. 727, 731 (2003).

⁶⁶ See Trubek, *supra* note 30, at 84-85.

⁶⁷ See Chua, *supra* note 62, at 11-12.

⁶⁸ See Jacques deLisle, *Lex Americana?: United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond*, 20 U. PA. J. INT'L ECON. L. 179, 181 (1999).

⁶⁹ See Carol V. Rose, *The “New” Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study*, 32 LAW. & SOC'Y REV. 93, 94 (1998).

⁷⁰ See Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891, 959 (2007).

⁷¹ See *id.* at 964.

Bangladesh, Bulgaria, Cambodia, China, Hungary, Liberia, Mongolia, Poland, and Russia.⁷² In this way, the lexicon of public interest law, which remained the *lingua franca* of the international funding community, was exported into countries with distinct traditions. The second linkage reinforced by the Rule of Law movement was between human rights and public interest law. To the extent that the Rule of Law sought to foster democratic state-building in post-authoritarian countries, it encouraged lawyers to invest in constructing and monitoring state institutions from the inside, rather than contesting them from the outside.⁷³ This mode of legal engagement was more compatible with the public interest law model of internal legal enforcement than the human rights model of international naming and shaming. Accordingly, it created opportunities for lawyers trained in human rights techniques under authoritarian regimes to retool as public interest lawyers in the new democratic regimes, influencing the development of hybrid practices that incorporated human rights and public interest law methods and strategies.

2. Transnational Legal Mobilization

While public interest law was being deployed to support the development of liberal capitalism at the domestic level, it was also becoming linked to transnational movements seeking to reshape economic and political decision making at the level of global institutions.⁷⁴ Thus, as the Rule of Law movement was creating new opportunities for public interest law *within* national systems, the development and extension of international and regional institutions focused on finance, trade, and human rights simultaneously pulled public interest law *across* national borders as a tool of transnational legal mobilization directed at global governance structures.⁷⁵ The Rule of Law movement was directly connected to global governance both in terms of financial sponsorship and the shared objectives of promoting market integration and respect for human rights. Yet while the incorporation of public interest law into international development played out in the context

⁷² See *id.* at 963-68.

⁷³ See Dezalay & Garth, *supra* note 40, at 368.

⁷⁴ See generally GLOBALIZATIONS AND SOCIAL MOVEMENTS: CULTURE, POWER, AND THE TRANSNATIONAL SPHERE (John A. Guidry, Michael D. Kennedy & Mayer N. Zald eds., 2000); RESTRUCTURING WORLD POLITICS: TRANSNATIONAL SOCIAL MOVEMENTS, NETWORKS, AND NORMS (Sanjeev Khagram, James V. Riker & Kathryn Sikkink eds., 2002); TRANSNATIONAL PROTEST AND GLOBAL ACTIVISM I (Donatella della Porta & Sidney Tarrow eds., 2005); TRANSNATIONAL SOCIAL MOVEMENTS AND GLOBAL POLITICS: SOLIDARITY BEYOND THE STATE (Jackie Smith, Charles Chatfield & Ron Pagnucco eds., 1997).

⁷⁵ See Cummings, *supra* note 70, at 934-35.

of state-building, and thus looked to the state as a guarantor of social justice, the movement of public interest law into the arena of global governance acknowledged the ultimate limits of state power and asserted the need for globalized social justice strategies.⁷⁶ Toward this end, public interest law was mobilized around three primary goals: redressing the democracy deficit in international finance and trade institutions, resisting the deterioration of social standards in the global marketplace, and leveraging international law to reinforce and augment the rights of marginalized groups.

a. Democratizing International Institutions

The reorientation of existing supranational institutions devoted to managing global finance, like the World Bank and International Monetary Fund in the 1980s, and the development of new ones focused on free trade, particularly World Trade Organization (“WTO”) in the 1990s, highlighted the distributional impact of open markets on the world’s poor, while also underscoring their lack of power in defining the global rules of the marketplace. In response, global coalitions of the disaffected mobilized politically, as seen in the Seattle WTO protests,⁷⁷ and the establishment of the World Social Forum as an anti-WTO.⁷⁸ These political efforts were complemented by legal mobilization strategies that brought public interest lawyers into the global arena, where they deployed their tools in efforts to open global institutional decision-making and incorporate social standards into global economic policy.

At the World Bank, U.S.-based public interest groups, concerned about the impact of World Bank-financed infrastructure and resource extraction projects on protected environments and indigenous populations, collaborated with local nongovernmental organizations (“NGOs”) to intervene in Bank governance on multiple levels.⁷⁹ Most significantly, an international coali-

⁷⁶ See Austin Sarat & Stuart A. Scheingold, *State Transformation, Globalization, and the Possibilities of Cause Lawyering: An Introduction*, in *CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA*, *supra* note 40, at 3, 4 (arguing that the central dynamic of the current era of globalization is the “disaggregation” of State power, which has been eroded by the project of open markets from above and indigenous movements for democratization from below).

⁷⁷ See Sanjeev Khagram, James V. Riker & Kathryn Sikkink, *From Santiago to Seattle: Transnational Advocacy Groups Restructuring World Politics*, in *RESTRUCTURING WORLD POLITICS: TRANSNATIONAL SOCIAL MOVEMENTS, NETWORKS, AND NORMS* 3, 3 (Sanjeev Khagram, James V. Riker & Kathryn Sikkink eds., 2002).

⁷⁸ See Boaventura de Sousa Santos, *Beyond Neoliberal Governance: The World Social Forum as Subaltern Cosmopolitan Politics and Legality*, in *LAW AND GLOBALIZATION FROM BELOW* 29 (Boaventura de Sousa Santos & César A. Rodríguez-Garavito eds., 2005).

⁷⁹ See Cummings, *supra* note 70, at 962-63.

tion of groups, led by Environmental Defense and the Center for International Environmental Law, successfully lobbied for the establishment of an Inspection Panel to review citizen complaints about the Bank's failure to follow its own policies. Once this Panel was put in place in 1993, U.S.-based public interest organizations played a key role in submitting petitions challenging the environmental and displacement effects of infrastructure and extraction projects in developing countries.⁸⁰ Though the results of these submissions were limited to project-specific mitigation measures and there was not evidence of significant institutional reform,⁸¹ the struggle sensitized American public interest groups to the importance of advocacy in the global arena and equipped them with tools to continue engaging global institutions. These tools were applied in the struggle over citizen participation in the WTO, led by a key group in the World Bank efforts, the Center for International Environmental Law, which pressed the WTO to authorize the submission of public interest amicus briefs in state disputes over trade violations. As in the World Bank context, the impact of these submissions was minimal since WTO dispute resolution panels asserted complete discretion over whether to accept public interest briefs.⁸² Nonetheless, in both cases, public interest law groups sought to legalize the consideration of social concerns within the arena of global finance and trade, further reinforcing connections between public interest law and economic development issues.

b. Regulating Global Markets

Outside of the World Bank and WTO, which proved difficult to influence, public interest lawyers became involved in different types of transnational campaigns to resist the degradation of regulatory standards associated with open markets, paying particular attention to the labor and environmental consequences of global outsourcing, the economic insecurity of immigrants, and the displacement of indigenous populations caused by development.

One important example of transnational legal mobilization played out in the struggle over the impact of the North American Free Trade Agreement ("NAFTA") on regional labor and environmental standards. Public interest lawyers and activists from the United States, México, and Canada advocated *ex ante* to create mechanisms within NAFTA for raising claims of labor and

⁸⁰ See Kay Treacle, Jonathan Fox & Dana Clark, *Lessons Learned*, in DEMANDING ACCOUNTABILITY: CIVIL-SOCIETY CLAIMS AND THE WORLD BANK INSPECTION PANEL 247, 248-50 (Dana Clark et al. eds., 2003).

⁸¹ See *id.* at 258-65.

⁸² Cummings, *supra* note 70, at 952-53.

environmental abuse and then tried to use those mechanisms, spelled out in “side” agreements, to contest the negative consequences of regional free trade after the agreement went into effect.⁸³ The structure of the side labor agreement, which mandated that member states faithfully enforce their own labor laws, required that an aggrieved party file claims outside the jurisdiction of the offending country,⁸⁴ thus establishing a dispute resolution system necessitating cross-border mobilization.⁸⁵ As Ruth Buchanan and Rusby Chaparro show in this issue, the side labor agreement operated over the last decade to forge transnational networks between public interest law groups (particularly in the area of immigrant worker rights), labor unions, and human rights organizations in an effort to document and amplify claims of labor abuse, both in the *maquila* sector of México and the U.S. immigrant labor sector.⁸⁶ For example, during the period immediately following NAFTA’s passage, the U.S.-based International Labor Rights Fund (“ILRF”) was involved in coalitions submitting petitions in the United States (to the relative labor-friendly Department of Labor under President Bill Clinton) challenging México’s failure to certify independent unions and raising health and safety claims in the *maquiladoras*.⁸⁷ After the 2000 election of President George W. Bush in the United States and President Vicente Fox in México, NAFTA advocacy shifted toward raising claims of U.S. immigrant labor abuse in the relatively sympathetic Mexican labor ministry. These later NAFTA petitions saw greater doctrinal interplay between domestic law and international human rights, with U.S. public interest lawyers in immigrant labor cases asserting that the United States had violated binding international treaty obligations.⁸⁸

⁸³ See Ruth Buchanan & Rusby Chaparro, *International Institutions and Transnational Advocacy: The Case of the North American Agreement on Labor Cooperation*, 13 UCLA J. INT’L L. & FOREIGN AFF. 129, 130-32 (2008); Trubek et al., *supra* note 14, at 457-74.

⁸⁴ Jonathan Graubert, “Politicizing” a New Breed of “Legalized” Transnational Political Opportunity Structures: Labor Activists Uses of NAFTA’s Citizen-Petition Mechanism, 26 BERKELEY J. EMP. & LAB. L. 97, 98-99 (2005).

⁸⁵ See Tamara Kay, *Labor Transnationalism and Global Governance: The Impact of NAFTA on Transnational Labor Relationships in North America*, 111 AM. J. SOC. 715 (2005).

⁸⁶ Buchanan & Chaparro, *supra* note 83, at 151-57.

⁸⁷ Cummings, *supra* note 70, at 937-38.

⁸⁸ See Mexican NAO Submission 2005-01, H2-B Visa Workers (April 13, 2005), available at <http://www.dol.gov/ilab/programs/nao/status.htm#iib8> (last visited Nov. 19 2008) (arguing that the denial of legal aid to non-agricultural guest workers violates international standards of non-discrimination codified in the American Convention on Human Rights, the International Covenant on Civil and Political Rights, the Organization of American States Charter, the American Declaration on the Rights and Duties of Man, and the Universal Declaration on Human Rights).

Outside of the NAFTA venue, transnational legal mobilization took on other forms. At the grassroots level, local groups in coalition with international allies challenged governmental restructuring and corporate projects stimulated by neoliberalism.⁸⁹ These grassroots movements emerged around specific grievances and sought to deploy law to assert a “counter-hegemonic” vision of globalization incorporating the perspective of marginalized populations subordinated by open markets.⁹⁰ Although these campaigns grew from the ground up, they often connected in crucial ways with public interest lawyers from the North, who provided strategic expertise and resources to broadcast violations to domestic and international audiences, while translating them into legal claims. For instance, a movement of displaced peoples challenged the World Bank-funded creation of dams along the Narmada River in India through a transnational advocacy strategy that combined mass resistance and domestic supreme court litigation with advocacy by a coalition of local groups and Northern NGOs in front of the World Bank and International Labour Organization (“ILO”).⁹¹ Similar transnational campaigns around indigenous rights occurred in Latin American countries, including Colombia, where activists mobilized to protect the indigenous U’Wa from oil drilling by Occidental Petroleum. This campaign involved civil disobedience, domestic litigation, and the submission of indigenous rights claims against the Colombian government to the ILO and the Inter-American Commission on Human Rights, which were filed with the assistance of Earthjustice Legal Defense Fund.⁹² Transnational campaigns also grew up around the issue of garment sweatshops in México and immigrant labor in the United States.⁹³

⁸⁹ Boaventura de Sousa Santos & César A. Rodríguez-Garavito, *Law, Politics, and the Subaltern in Counter-Hegemonic Globalization*, in *LAW AND GLOBALIZATION FROM BELOW*, *supra* note 80, at 1.

⁹⁰ *Id.* at 3-4.

⁹¹ See Balakrishnan Rajagopal, *Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle*, in *LAW AND GLOBALIZATION FROM BELOW*, *supra* note 78, at 183, 194.

⁹² See César A. Rodríguez-Garavito & Luis Carlos Arenas, *Indigenous Rights, Transnational Activism, and Legal Mobilization: The Struggle of the U’Wa People in Colombia*, in *LAW AND GLOBALIZATION FROM BELOW*, *supra* note 78, at 241, 254.

⁹³ See Fran Ansley, *Local Contact Points at Global Divides: Labor Rights and Immigrant Rights as Sites for Cosmopolitan Legality*, in *LAW AND GLOBALIZATION FROM BELOW*, *supra* note 78, at 158; César A. Rodríguez-Garavito, *Nike’s Law: The Anti-Sweatshop Movement, Transnational Corporations, and the Struggle over International Labor Rights in the Americas*, in *LAW AND GLOBALIZATION FROM BELOW*, *supra* note 78, at 64.

These transnational campaigns highlighted the global terrain of legal mobilization as grassroots groups collaborated with public interest organizations to deploy legal claims at multiple levels in order to advance their causes. In this context, public interest law groups learned to operate at different global scales, supplementing their domestic expertise with knowledge of transnational fora governed by soft law norms rather than hard law rules enforceable against states. Yet they also continued to employ traditional litigation, albeit in innovative ways for global ends. In particular, as global outsourcing and resource extraction by transnational corporations revealed egregious instances of abuse, U.S. public interest lawyers in both NGOs and private public interest firms became involved in impact litigation campaigns to extend U.S. federal court jurisdiction to U.S.-based companies operating abroad. The doctrinal hook for these transnational litigation campaigns was the Alien Tort Statute (“ATS”), which provided federal court jurisdiction for noncitizens bringing tort claims alleging a violation of international law.⁹⁴ Though ATS litigation was pioneered as a vehicle to challenge human rights abuses committed by foreign governmental officials,⁹⁵ the weak legal accountability of transnational corporations operating in developing countries with degraded regulatory regimes sparked a movement to enlarge the extra-territorial scope of the U.S. judicial system—effectively exporting its regulatory power in pursuit of companies trying to evade it.⁹⁶ Thus, NGOs including the ILRF and EarthRights International, teamed up with notable civil rights firms to challenge abuses committed by oil companies in Burma and Nigeria,⁹⁷ as well as the repression of labor and environmental activists by companies in Guatemala and Colombia.⁹⁸

⁹⁴ Alien Tort Statute, 28 U.S.C. § 1350 (2000).

⁹⁵ *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980).

⁹⁶ See Beth Stephens, *Corporate Liability: Enforcing Human Rights Through Domestic Litigation*, 24 HASTINGS INT'L & COMP. L. REV. 401 (2001); Beth Van Schaack, *With All Deliberate Speed: Civil Human Rights Litigation as a Tool for Social Change*, 57 VAND. L. REV. 2305 (2004).

⁹⁷ *Doe I. v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002), *vacated and reh'g en banc granted*, 395 F.3d 978 (9th Cir. 2003), *district court opinion vacated by* 403 F.3d 708 (9th Cir. 2005); Eighth Amended Complaint for *Bowoto v. Chevron Corp.*, No. C-99-02506 SI (N.D. Cal., Sept. 21, 2006), available at <http://www.earthrights.org/files/Legal%20Docs/Chevron/Chev.fedcomplaint11.07.pdf>.

⁹⁸ *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242 (11th Cir. 2005); *Sinaltranal v. Coca-Cola Co.*, 256 F. Supp. 2d 1345 (S.D. Fla. 2003).

c. Leveraging International Law

As the campaigns around global economic standards underscored, transnational legal mobilization developed in symbiotic relationship with international law standards: as transnational activists operated outside of domestic legal systems, they were bound to invoke international law principles, which in turn were extended and deepened through transnational contestation. Although the deployment of international law as a source of domestic pressure was a well-tested human rights strategy,⁹⁹ the rise of open markets and the reconfiguration of human rights activism in the post-Cold War period ushered in distinctive approaches, particularly as the expanding human rights system interacted with new arenas of global governance and was brought to bear on economic concerns associated with globalization.¹⁰⁰ The expansion and redeployment of international human rights influenced the trajectory of public interest law in two ways.

First, transnational activists, in collaboration with public interest law groups, began to assert human rights as an international public law counterweight to the private law regime advanced under the open markets agenda. Thus, the move was to build up and radiate out human rights as a credible systemic alternative to neoliberal governance, which demanded the diminution of state regulatory and social welfare protections as a quid pro quo for international investment. As suggested by the transnational campaigns around labor standards, the environment, and indigenous rights, activists raised human rights in venues such as the NAFTA side labor agreement, ILO, Inter-American Commission on Human Rights, and United Nations to provide legal foundation for their challenges to the impact of deregulation and privatization on local populations. This occurred both through the formal assertion of claims in dispute resolution bodies and through the formulation of human rights policy, as in the case of the United Nations Declaration on Indigenous Peoples.¹⁰¹ Because it responded to the problems of economic insecurity and displacement, this use of human rights spotlighted the importance of economic and social rights in the open markets regime.

The second move was to attempt to bring human rights to bear on domestic politics as a progressive complement to domestic law. In some developing and transitional countries, this process of human rights domestication was facilitated by the passage of progressive constitutional provisions

⁹⁹ See KECK & SIKKINK, *supra* note 37.

¹⁰⁰ See Rajagopal, *supra* note 91, at 184.

¹⁰¹ United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/L.67, U.N. Doc. A/RES/61/L.67 (Sept. 7, 2007).

aligned with human rights standards,¹⁰² the ratification of the principal human rights treaties, and the acceptance of the jurisdiction of international tribunals, such as the European Court of Human Rights and the Inter-American Court of Human Rights, with power to impose binding rulings on member states. In contrast, for U.S. public interest lawyers, the interest in “bringing rights home” that emerged over the last decade reflected, in part, a pragmatic acknowledgment of the limits of domestic law to produce change at home in an era of political conservatism.¹⁰³ This movement, driven both by the limits of domestic legality for liberal public interest groups and the possibilities offered by human rights law and institutions, generated new legal exchanges between the domestic and international spheres. Particularly as the federal courts became less receptive to liberal civil and political rights claims, public interest lawyers sought to assert human rights arguments in international fora. The most notable example was the response to the detention of so-called “enemy combatants” at Guantánamo Bay, which saw high-profile U.S. public interest law groups combining federal court litigation with advocacy in front of the Inter-American Commission for Human Rights and the United Nations.¹⁰⁴ But while post-9/11 civil liberties received great attention, public interest lawyers also began to use human rights on issues related to women’s rights, criminal justice, and Indian rights.¹⁰⁵ Responding to the shrinking role of the government in the market, public interest lawyers in the United States further sought to use human rights as a tool to resist the diminution of federal power in the areas of social welfare and economic regulation, with economic and social rights campaigns around housing, the environment, and welfare reform.¹⁰⁶ In addition, incipient human rights strategies emerged to respond to the increase of undocumented immigrants

¹⁰² See Oscar Vilhena Vieira, *Public Interest Law: A Brazilian Perspective*, UCLA J. INT’L L. & FOREIGN AFF. 219, 231-34 (2008).

¹⁰³ On the domestic human rights movement, see Catherine Albisa & Sharda Sekaran, *Foreword: Realizing Domestic Social Justice Through International Human Rights*, 30 N.Y.U. REV. L. & SOC. CHANGE 351 (2006); Dorothy Q. Thomas, *Advancing Rights Protection in the United States: An Internationalized Advocacy Strategy*, 9 HARV. HUM. RTS. J. 15 (1996).

¹⁰⁴ See CENTER FOR CONSTITUTIONAL RIGHTS, THE STATE OF CIVIL LIBERTIES: ONE YEAR LATER: EROSION OF CIVIL LIBERTIES IN THE POST 9/11 ERA 16 (2002), available at <http://www.derechos.org/nizkor/excep/ccr.html>; WRITTEN STATEMENT FROM THE AMERICAN CIVIL LIBERTIES UNION ON TORTURE AND DETENTION TO UN COMM’N ON HUMAN RIGHTS (2005), available at http://www.aclu.org/images/asset_upload_file810_24799.pdf.

¹⁰⁵ See Cummings, *supra* note 70, at 993-1000.

¹⁰⁶ See *id.* at 1002-06; see also THE FORD FOUNDATION, CLOSE TO HOME: CASE STUDIES OF HUMAN RIGHTS WORK IN THE UNITED STATES 26-31, 50-56, 92-97 (2004).

in the U.S. low-wage sector,¹⁰⁷ where they were dispossessed of political rights (though retaining some economic rights, such as the right to a minimum wage). As Beth Lyon details, the application of human rights to confer legal protections on a class of residents defined by their illegality constituted an ambitious—and still unrealized—component of the immigrant rights agenda.¹⁰⁸ As such, it underscored a central challenge to the U.S. human rights strategy in the Bush era: how to use the human rights system to exert pressure on a political administration bent on resisting the force of international law.

II. A GLOBAL ATLAS OF PUBLIC INTEREST LAW: SYNTHETIC THEMES AND PROVISIONAL APPRAISALS

As public interest law has come to occupy a new space in the global arena, scholars have begun to probe its meaning and practice across national jurisdictions and within global venues.¹⁰⁹ The contributions to this issue offer a rich source of new information on the international texture of public interest law, which we draw upon in this Section to offer a tentative framework for understanding its evolving global role. We make two preliminary observations. First, there is evidence to suggest that public interest law is taking shape as a global institution, which means that a common set of understandings and practices is spreading around the world, though they are taking root in distinctive national political and economic environments, thus producing significant diversity across geographic space. We highlight the factors shaping the contours of public interest law's global institutional development. Second, public interest law can be viewed as an increasingly important part of the way that rules of global governance are designed, contested, and implemented. We consider how public interest law's role within global governance recasts modes of advocacy and strategic approaches, forcing public interest law to confront pluralistic legal regimes, adopt alternative methodologies, and develop new types of cross-border relationships.

A. *Public Interest Law as Global Institution*

As in other domains, globalization in the public interest law field is at once totalizing and inevitably partial: we therefore observe a certain level of

¹⁰⁷ See Michael J. Wishnie, *Immigrant Workers and the Domestic Enforcement of International Labor Rights*, 4 U. PA. J. LAB. & EMP. L. 529 (2001-2002).

¹⁰⁸ Beth Lyon, *Changing Tactics: Globalization and the U.S. Immigrant Worker Rights Movement*, 13 UCLA J. INT'L L. & FOREIGN AFF. 161, 186-95 (2008).

¹⁰⁹ See Santos & Rodríguez-Garavito, *supra* note 89; Sarat & Scheingold, *supra* note 76.

institutional convergence across national boundaries as public interest law takes root abroad, but also local variation. Convergence is driven both by the provision of resources and the circulation of ideas. Variation, in turn, is largely the product of local conditions. Here, we suggest the ways that these global and local forces interact in the development of national-level public interest law systems.

1. Design

The formation and development of institutional systems is the product of the interplay between outside influences and internal traditions. The logic of public interest law's institutionalization is no different: what we see across national contexts is the development of hybrid systems that incorporate organizational forms and practices imported from the United States and other developed systems alongside indigenous institutions.¹¹⁰

a. Global

An important driver of institutional design is funding. What the contributions to this issue suggest is that while outside funding unquestionably remains a powerful influence on the contours of local public interest systems, funding streams are being diversified and activist lawyers are leveraging international funding to weave together globalized forms of practice with local traditions in an evolving tapestry of advocacy.

Global philanthropic organizations such as the Ford Foundation and the Open Society Institute have played dominant roles in the diffusion of public interest law. Their role has encompassed fostering information exchange and implementing programs. In terms of information exchange, both funders have sponsored important conferences designed to bring together activist lawyers from different countries to compare practices and trade ideas. In the early 1990s, Ford sponsored a conference called Public Interest Law Around the World that connected American lawyers with their counterparts from eighteen countries in Africa, Asia, and Latin America.¹¹¹ As Ed Rekosh details, both Ford and the Open Society Institute funded conferences in 1995 to promote exchange between civil society actors in Central and Eastern

¹¹⁰ See Heinz Klug, *Hybrid(ity) Rules: Creating Local Law in a Globalized World*, in GLOBAL PRESCRIPTIONS: THE PRODUCTION, EXPORTATION, AND IMPORTATION OF A NEW LEGAL ORTHODOXY 276 (Yves Dezalay & Bryant G. Garth eds., 2002).

¹¹¹ Ellman, *supra* note 7; Aubrey McCutcheon, *Eastern Europe: Funding Strategies for Public Interest Law in Transitional Societies*, in MANY ROADS TO JUSTICE: THE LAW-RELATED WORK OF FORD FOUNDATION GRANTEEES AROUND THE WORLD, *supra* note 27, at 233.

Europe that led to longer-term financial investments in public interest law in the region.¹¹²

Global foundations have also spurred programmatic changes as well. As democratic state-building became the focal point of development efforts around the world, the funding emphasis shifted toward strengthening organizational capacity to promote practices associated with the American public interest law system: impact litigation, legal aid, pro bono, and clinical legal education.¹¹³ This can be seen in Ford's funding priorities across a number of nations. For instance, after focusing on human rights during the period of authoritarian rule in South America, Ford returned to the region in 1995 to support incipient public interest law programs under the banner of "democratic governance."¹¹⁴ As part of a broader effort to foster judicial independence and operationalize new constitutional provisions, domestically focused litigation—patterned on the U.S. impact litigation model—became a major funding priority. Ford's portfolio thus began to focus on ensuring governmental accountability through domestic legal channels, supporting groups like Colombia's FUNDEPUBLICO, which filed class actions to stem official corruption, and Argentina's Centro de Estudios Legales y Sociales, which also litigated cases to force the government to meet domestic mandates, like the provision of health services.¹¹⁵

Similar investments have been made to support the development of legal aid. For instance, in 1997, Ford funded the creation of the Public Interest Law Initiative at Columbia University to focus on building public interest law systems in Central and Eastern Europe.¹¹⁶ The organization, headed by Rekosh, has provided technical assistance in the implementation of access to justice programs in Poland and Bulgaria, and is undertaking research and providing programmatic support in connection with initiatives in the Balkans and Russia.¹¹⁷ Similarly, Ford has played an important role in supporting legal aid in China, providing resources to the state-run China Centre for

¹¹² Rekosh, *supra* note 6, at 75-78.

¹¹³ Cummings, *supra* note 70, at 965.

¹¹⁴ See Frühling, *supra* note 27, at 69-73.

¹¹⁵ See *id.* at 75-76.

¹¹⁶ The organization has spun off from Columbia and changed its name to the Public Interest Law Institute. See Public Interest Law Institute, About PILI, <http://www.pili.org/en/content/view/433/187/> (last visited Oct. 16, 2008).

¹¹⁷ See Public Interest Law Institute, Legal Aid Reform, <http://www.pili.org/en/content/view/256/163/> (last visited Oct. 16, 2008).

Legal Aid, which was created in 1996.¹¹⁸ In addition, Ford has supported Chinese nongovernmental legal aid programs based at universities and run by liberal elites who rely on small staffs to help litigate cases in specific substantive areas, like women's rights and the environment.¹¹⁹

Clinical legal education has also received significant support from global donors looking to promote the development of practical legal skills and augment legal services to the poor.¹²⁰ Ford has helped to develop a number of programs in South America and Southeast Asia,¹²¹ while the Open Society Institute's clinical initiative was launched in the mid-1990s and has placed more emphasis on using clinics to promote market integration and democratization in Central and Eastern Europe.¹²² In addition, the Ford Foundation has been a leading financial sponsor of international pro bono, which has been coordinated through the Cyrus Vance Center for International Justice Initiatives, a project of the Association of the Bar of the City of New York.¹²³ Oscar Vieira discusses Ford's role in helping to launch Brazil's Instituto Pro Bono, which has developed as a clearinghouse for pro bono cases and an intermediary between civil society groups and the private bar, taking on matters in the area of nonprofit governance, as well as more strategic cases on issues like HIV/AIDs, women's rights, and children's rights.¹²⁴

Reflecting the diversity of funding sources, government agencies and international institutions have also played key funding roles in globalizing public interest law—with funding targets that reflect their own priorities. For instance, balancing the twin goals of open markets and human rights has

¹¹⁸ Aubrey McCutcheon, *Contributing to Legal Reform in China*, in *MANY ROADS TO JUSTICE: THE LAW-RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD*, *supra* note 27, at 159, 180.

¹¹⁹ See Liu, *supra* note 10, at 278; McCutcheon, *supra* note 118, at 183-85.

¹²⁰ Cummings, *supra* note 70, at 967.

¹²¹ See Richard J. Wilson, *Three Law School Clinics in Chile, 1970–2000: Innovation, Resistance and Conformity in the Global South*, 8 *CLINICAL L. REV.* 515, 555–56 (2002); see also Stephen Golub, *From the Village to the University: Legal Activism in Bangladesh*, in *MANY ROADS TO JUSTICE: THE LAW-RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD*, *supra* note 27, at 127, 144–45 (detailing Ford's clinical initiative in Bangladesh).

¹²² See Open Society Justice Initiative, *Legal Aid and Community Empowerment Clinics*, <http://www.justiceinitiative.org/activities/lcd/cle/> (last visited Dec. 2, 2008) (describing how Open Society's Central and Eastern Europe Program began in 1996 and has funded seventy-five clinics in twenty-two countries); see also Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 *PENN ST. INT'L L. REV.* 421, 424–25 (2004).

¹²³ Cummings, *supra* note 70, at 966.

¹²⁴ Vieira, *supra* note 102, at 256-59.

been the main thrust of the USAID and World Bank-funded Central and Eastern European Law Initiative of the ABA,¹²⁵ which has sponsored refugee, prisoner, and women's rights clinics in Europe, the former Soviet republics, and South Asia.¹²⁶ Titi Liu describes the involvement of the United Nations Development Program, Canadian International Development Agency, and the Royal Netherlands Government as funders for legal aid in China.¹²⁷ In Central and Eastern Europe, while Ford, the Open Society Institute, and other major U.S.-based funders like Rockefeller have been strong supporters of public interest law, the European Union ("EU") has also played an important role in funding human rights programs to help countries meet Rule of Law objectives as pre-conditions to EU accession; in addition, legal aid was included in a checklist of reforms for enlarging the EU and thus received EU development assistance.¹²⁸ In North America after NAFTA, the Mexican government has become a supporter of U.S. immigrant rights programs, reflecting concern about the treatment of its citizens, whose work in the United States generates significant remittances to México each year. Raymond Atuguba notes the involvement of the British government in funding development projects that enlist public interest lawyers to monitor the government implementation of social programs.¹²⁹ In addition to providing resources to fund programming, international institutions have also provided other opportunities for global networking that have impacted public interest law programs. For instance, Vieira credits the United Nations conferences of the 1990s with producing a flow of ideas between human

¹²⁵ See ABA Rule of Law Initiative, Europe and Eurasia, http://www.abanet.org/rol/europe_and_eurasia/ (last visited Oct. 11, 2008); ABA Rule of Law Initiative, About, <http://www.abanet.org/rol/about.shtml> (last visited Oct. 11, 2008); see also Karen A. Lash, *Establishing Legal Clinics in Moldova: Lessons in Volunteerism and Legal Education*, 2000 USC LAW 40 (Spring 2000) (discussing experience helping to set up Moldova's first domestic violence clinic by ABA's Central and Eastern European Law Initiative), available at <http://law.usc.edu/news/assets/docs/Spring2000Magazine.pdf>; Lee Dexter Schnasi, *Globalizing: Clinical Legal Education: Successful Under-Developed Country Experiences*, 6 T.M. COOLEY J. OF PRAC. & CLINICAL L. 129, 139-40 (2003) (discussing experience in helping to set up clinics in Moldova and Belgrade-Serbia).

¹²⁶ See ABA Rule of Law Initiative, Legal Education Reform, http://www.abanet.org/rol/programs/resource_legal_education.html (last visited Oct. 11, 2008).

¹²⁷ Liu, *supra* note 10, at 276.

¹²⁸ Rekosh, *supra* note 6, at 71-73, 95.

¹²⁹ Raymond A. Atuguba, *Human Rights and the Limits of Public Interest Law: Ghana's Reaction to a Messy World Phenomenon*, 13 ULCA J. INT'L L. & FOREIGN AFF. 97, 103 (2008).

rights activists and domestic lawyers that influenced the development of public interest law in Brazil.¹³⁰

b. Regional

The development of public interest law has also been influenced by the interaction between local institutions and regional human rights systems. Brazil's ratification of the American Convention on Human Rights in 1992 and subsequent acceptance of the jurisdiction of the Inter-American Court of Human Rights prompted organizations to use the regional human rights system more aggressively. Thus, Vieira describes the creation of Justiça Global, an organization dedicated to using the human rights system to bring to justice to those abused by the military regime.¹³¹ In a similar vein, the Artigo 1º project of Brazil's Conectas, started in 2001, works on human rights impact cases in areas such as juvenile detention. Although its main focus is on enforcing constitutional and treaty-based human rights in domestic courts, it also uses the regional human rights system, as it did in 2005 when it filed a case in the Inter-American Court on behalf of 4000 adolescent detainees in Sao Paulo for inhumane treatment.¹³² In a parallel development, Rekosh highlights the importance of the admission of Central and Eastern European countries into the Council of Europe, which administers European human rights treaties, on public interest law's institutional development. Admission requires that member countries ratify the European Convention on Human Rights and accept jurisdiction of the European Court of Human Rights, which has strong human rights precedent. As a result, public interest groups have been drawn to the European Court of Human Rights as a potentially sympathetic venue for litigation.¹³³ However, admission to the Council has also had the effect of stimulating domestic impact litigation: because the Court has an exhaustion of domestic remedies requirement, legal groups have been pushed to develop strategic litigation in national courts first, thereby reinforcing the model of domestic public interest law.¹³⁴

¹³⁰ Vieira, *supra* note 102, at 246-47.

¹³¹ *Id.* at 246.

¹³² *Id.* at 251.

¹³³ Rekosh, *supra* note 6, at 72-73, 80-82.

¹³⁴ *Id.* at 81-82. The Inter-American human rights system also has an exhaustion of domestic remedies requirement. Organization of American States, American Convention on Human Rights art. 46, Nov. 22, 1969 O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

c. State

Domestic public interest litigation has also been fueled by changes at the state level that in some countries have made domestic legal enforcement through national courts a more potent tool of progressive reform. The advent of democratic movements and Rule of Law reform contributed to a wave of “world constitutionalism,”¹³⁵ which in many countries led to the passage of new constitutions with robust provisions on civil rights and civil liberties—in some cases incorporating or surpassing international human rights standards. In Latin America, for instance, there were new constitutions passed in a number of countries in the late 1980s and early 1990s, including Brazil (1988), Colombia (1991), México (1991), and Peru (1993).¹³⁶ Colombia’s constitution authorized “popular actions” to enforce constitutional provisions; Peru’s codified a right to a healthy environment and cultural identity; and Argentina’s similarly incorporated robust rights to health and protection against discrimination, while also recognizing the right of any person or group to file a legal action requesting an end to constitutional violations.¹³⁷ Vieira provides details on Brazil’s constitution, which also moved well beyond the U.S. constitution to provide a range of civil and political, as well as economic and social rights, including indigenous, consumer, and environmental rights.¹³⁸ Brazil’s constitution also contained procedural reforms conducive to public interest litigation, such as a stronger class action instrument, the *ação civil pública*, which has been utilized primarily by the public agency lawyers of the *Ministério Público* assigned with protecting vulnerable groups.¹³⁹

In those countries adopting liberal democratic constitutional reforms, the availability of progressive legal rights, coupled with the development of judicial independence, has fostered domestic impact litigation strategies. Rekosh’s story of the transition from human rights to public interest law in Central and Eastern Europe is instructive. As he recounts, in the immediate post-Cold War period, civil society organizations were focused on the human rights strategies that they had relied upon during the Communist era and there were almost no groups that viewed their activities in terms of public

¹³⁵ Heinz Klug, *Model and Anti-Model: The United States Constitution and the “Rise of World Constitutionalism,”* 2000 WIS. L. REV. 597, 597-98 (noting that “approximately 104 of the 188 members of the United Nations Organization” have created new constitutions); see also Bruce Ackerman, *The Rise of World Constitutionalism*, 83 VA. L. REV. 771 (1997).

¹³⁶ Rodriguez-Garavito & Arenas, *supra* note 92, at 247.

¹³⁷ Frühling, *supra* note 27, at 70.

¹³⁸ Vieira, *supra* note 102, at 232.

¹³⁹ *Id.* at 234.

interest law.¹⁴⁰ This changed with the development of new democracies and constitutional orders, which generated opportunities for domestic legal engagement. As Rekosh describes, by the mid-1990s, former dissidents engaging in the state-building process turned to public interest law as a new rubric unburdened by the politics of human rights and its Cold War associations. In particular, as political openness brought social issues like minority rights and the environment to the fore, public interest law came to be viewed as offering greater domestic political traction than the human rights framework, which was associated with issues of political freedom and governmental abuse.¹⁴¹ In this sense, public interest law provided a means to mobilize the newly minted rights regime on behalf of different constituencies and a broader range of economic and social rights issues, while legitimizing the role of civil society organizations in advancing the “public interest” as a feature of democratic governance.¹⁴²

The Central and Eastern European situation is the positive story of rights mobilization within liberal democratic systems with independent judiciaries and individual rights guarantees.¹⁴³ The picture is different in authoritarian regimes, although as Liu points out, lawyers still attempt to carve out space for what they deem to be “public interest law,” which takes the form of individual plaintiffs, many of whom are themselves non-elite lawyers, filing cases against administrative agencies or monopoly utilities over technical legal violations—like illegal train fare increases.¹⁴⁴ In the roughly 100 cases that have been filed in this mode, lawyers are using the small openings that the law provides to pursue court cases that have a wide public impact and promote governmental accountability to the letter of the law. These cases are supplemented by media reporting and lobbying efforts designed to pressure government officials to make change.¹⁴⁵

In contrast to the image of the lone lawyer pursuing social change in the inhospitable conditions of a single-party Communist state, we see some liberal democratic regimes investing significant public resources in rights enforcement. Thus, in places like Brazil, the state itself is a key actor in the public interest law system and, accordingly, the nonprofit public interest law

¹⁴⁰ Rekosh, *supra* note 6, at 63.

¹⁴¹ *Id.* at 66-68.

¹⁴² *Id.*

¹⁴³ See Stuart A. Scheingold, *Cause Lawyering and Democracy in Transnational Perspective: A Postscript*, in *CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA*, *supra* note 40, at 382, 383.

¹⁴⁴ Liu, *supra* note 10, at 284-86.

¹⁴⁵ *Id.* at 288-90.

firm with full-time staff is not the singular ideal type. In addition to a state-sponsored legal aid system that provides free individual representation in both civil and criminal cases, Brazil's *Ministério Público* is staffed by over 10,000 public servants with life tenure, who operate with relative independence at both the federal and state levels to prosecute claims related to the public interest. The *Ministério Público*, as Vieira notes, is a fourth branch of power, with the discretion to bring cases on issues related to the environment, consumer rights, children's rights, and indigenous rights. However, although there have been examples of collaboration between the *Ministério Público* and public interest NGOs, Vieira suggests that the bureaucratic structure of the *Ministério Público* makes it risk-averse and that its political composition leads it to focus on cases that address middle-class concerns, such as environmental and consumer issues.¹⁴⁶ Thus, while the emergence of strong state actors within public interest law produces new centers of activism and creates additional layers of public accountability, it also may engender rivalries over resources and tensions over mandates that act as forces of disunity within the public interest bar.

d. Civil Society

The changing nature of the state has occurred in tandem with changes in the civil society sector. Often, the relationship between democratization and the expansion and diversification of the civil society infrastructure has been mutually reinforcing. For instance, in both Vieira's account of Brazil and Rekosh's account of Central and Eastern Europe, the enlargement of constitutional rights is credited with opening up space for the creation of new rights-based NGOs and the extension of their work into new spheres—such as environmentalism and consumer rights—activated in the new constitutional systems. Such groups, in turn, play an important role in holding government to its constitutional promises.

In other places, like Ghana, the direction of civil society advocacy has been shaped against the backdrop of a state weakened in its social welfare commitments by structural adjustment and new efforts by international financial institutions to enlist NGOs in the struggle for governmental accountability. As Atuguba describes, in Ghana the trajectory of legal advocacy within civil society has been from human rights during the military period, to more traditional domestic litigation against the state after the 1992 constitution, to the current effort to promote public-private partnerships between the state and civil society organizations under the auspices of a Rights-Based

¹⁴⁶ Vieira, *supra* note 102, at 241.

Approach (“RBA”) to development.¹⁴⁷ RBA synthesizes development and human rights under the Rule of Law model, empowering the government to administer aid while enlisting public interest lawyers to enforce citizens’ rights to participate in its benefits.¹⁴⁸ The focus of RBA on governmental accountability in this context has produced a dual role for NGO lawyers, who continue to engage in litigation to enforce rights against the government, but who also are asked to collaborate with government agencies in the articulation and implementation of policies to promote “positive rights” in areas like health care and education.¹⁴⁹ Thus, Ghanaian NGOs involved in RBA projects have focused on the enforcement of anti-trafficking and domestic violence laws, but also on ensuring that laws governing tax and trade do not negatively impact economically vulnerable farmers and fisheries.¹⁵⁰ Yet while this expanded role for NGOs has empowered civil society organizations to help shape social policy, it has also highlighted the limits of this approach in the context of a state weakened by neoliberal structural adjustment. Atuguba points to the dearth of public interest lawyers in Ghana (roughly twenty) and suggests the irony in enlisting them now in the project of state-building: “The limits of law in this context are demonstrated by the fact that [public interest] lawyers frequently ask the courts to issue injunctive orders against the state for the provisioning of some right or other in circumstances in which the state is really not in control after several years of being rolled back in favor of private enterprise and multi-national corporations.”¹⁵¹

Civil society organizations with mass constituencies have also influenced public interest law systems in certain locations by adopting legal strategies as a way to provide benefits to their members. For instance, in China, the All China Trade Union, as well as the women’s and disabled persons’ federations, have sponsored nongovernmental legal aid programs.¹⁵² The union movement in Brazil generated a more radical style of lawyering focused on defending labor activists and extending the power of unions to organize.¹⁵³ In addition, progressive elements within the Catholic Church were a major source of legal activism in Brazil (as in other Latin American countries like Chile), helping to defend the human rights of political prison-

¹⁴⁷ Atuguba, *supra* note 129, at 106-08.

¹⁴⁸ *Id.* at 108-11.

¹⁴⁹ *Id.* at 113.

¹⁵⁰ *Id.* at 116.

¹⁵¹ *Id.* at 123.

¹⁵² Liu, *supra* note 10, at 279-80.

¹⁵³ Vieira, *supra* note 102, at 229-30.

ers during the military period and supporting the movement of landless peasants in rural areas.¹⁵⁴

e. Academy

Law schools have long been a focal point of legal activism, dating back to the first law and development movement's attempt to spur economic modernization through educational reform. In some ways, contemporary efforts to promote public interest law within the legal academy echo back to earlier initiatives, with the focus on international exchange programs and pedagogical innovation. As such, they raise similar questions about the power of curricular design and pedagogical method to produce and sustain longer-term institutional change.¹⁵⁵ Nonetheless, in the new wave of public interest law's global institutionalization, law schools have once again emerged as leading centers of change, playing key roles in facilitating cross-cultural dialogue, transmitting new skills, and providing direct legal services to the poor and other marginalized groups.

Law schools, in both rich and poor nations, have been crucial to facilitating the cross-border circulation of legal elites, who learn social change theories and techniques from their counterparts around the world. The circulation has occurred in both directions, with lawyers from developing and transitional countries taking graduate degrees in the United States and U.S. lawyers studying abroad. American LL.M. programs have provided important linkages between the U.S. public interest community and foreign lawyers, who capitalize on U.S. training and contacts to support the development of public interest systems in their home countries. One direct effort to train foreign public interest lawyers was NYU's LL.M. program in Public Service Law, which was started in 1998 under the auspices of the Global Public Service Law Project to examine global public interest models and promote cross-cultural collaboration and training.¹⁵⁶ Though the program suspended operations in 2006 for lack of funding, it succeeded during its tenure in producing graduates who returned to public interest law positions in Africa, East Timor, the Philippines, and Argentina.¹⁵⁷ At Georgetown, the

¹⁵⁴ *Id.* at 227-29.

¹⁵⁵ Richard L. Abel, *The Globalization of Public Interest Law*, 13 *UCLA J. INT'L L. & FOREIGN AFF.* 295, 301-02 (2008).

¹⁵⁶ See John E. Sexton, *The Global Law School Program at New York University*, 46 *J. LEGAL EDUC.* 329, 335 (1996); NYU School of Law, Global Public Service Law Program, LL.M. in Public Service Law, <http://www1.law.nyu.edu/programs/globalpublicservice/llm/index.html>.

¹⁵⁷ See NYU School of Law, Global Public Service Law Project Focus on Alumni, <http://www1.law.nyu.edu/programs/globalpublicservice/about/alumni.pdf>.

law school has sponsored a Leadership and Advocacy for Women in Africa program since 1993 that provides an LL.M. to African lawyers committed to returning to their countries of origin to advocate for women's rights; the program includes academic training, a six-month internship with a D.C.-area public interest or governmental organization, and public interest seminars designed to expose students to U.S. public interest methodologies.¹⁵⁸ Harvard also has provided significant training opportunities for foreign lawyers, who may take both masters and Ph.D-level degrees. Although Harvard's track is focused on academic rather than practice-based training, it has nonetheless fostered exchange of public interest law theories and methodologies. As a testament to the importance of these programs, three of the contributors to this issue have advanced degrees from U.S. law schools: Helena Alviar has an LL.M. from Harvard; Raymond Atuguba has an S.J.D. from Harvard; and Oscar Vieira has an LL.M. from Columbia. In his contribution, Atuguba frankly acknowledges the tension that his U.S. training has created at his organization, the Legal Rights Centre ("LRC") in Ghana, where all of the "core legal staff" have graduate degrees from U.S. law schools—once again raising the specter of American legal imperialism.¹⁵⁹

Liu similarly highlights the role of educational exchange programs in shaping the development of legal aid in China, noting that the state-sponsored legal aid program was developed after study visits to the United States, Canada, the Netherlands, Hong Kong, and the United Kingdom, and that the leaders of the nongovernmental legal aid movement "were exposed to American public interest lawyers through various study visits, conferences and exchanges" that shaped evolving programs along the lines of the American public interest model.¹⁶⁰

Information exchange has also occurred as the result of U.S. lawyers spending time in foreign law schools seeking to develop new programs and curricula around public interest law. A focus of these exchanges has been to provide support for clinical legal education. In addition to short-term exchange programs funded by major foundations, some U.S. clinicians have engaged in more intensive study through the Fulbright program, which has supported clinicians working to expand and deepen clinical education curricula abroad.¹⁶¹ In an effort to formalize global information exchange

¹⁵⁸ See Mary Hartnett, *The Need for International Women's Human Rights Lawyers: Now More than Ever*, 29 HUM. RTS. 21 (2002).

¹⁵⁹ Atuguba, *supra* note 129, at 126.

¹⁶⁰ Liu, *supra* note 10, at 278.

¹⁶¹ See Richard J. Wilson, *The New Legal Education in North and South America*, 25 STAN. J. INT'L L. 375, 380–81 n.12 (1989) (discussing the author's Fulbright year in Colombia).

among progressive academics, the Global Alliance for Justice Education was founded in the late 1990s to facilitate the network of clinical and practice-oriented law school professors from around the world interested in promoting social justice pedagogy.¹⁶² In another important—though still incipient—development, U.S. clinics have begun to make connections with public interest law counterparts in the global South to support their advocacy. Atuguba describes his relationship with Harvard Law School’s International Human Rights and Lawyering Internship Program, which places students at the LRC to work on Ghanaian cases. Through this program—and similar ones with Stanford and other schools—LRC lawyers receive support from law students (and their faculty supervisors) steeped in the U.S. approach to legal activism, while these students in turn are exposed to a different set of social problems and advocacy responses that they take back to their practice in the United States.¹⁶³ Moreover, Atuguba notes that the lines of legal transmission are not unidirectional—from the United States to Ghana and back—since many student interns from U.S. law schools are in fact foreign-born and thus take their experiences from the United States and Ghana back to their home countries in Russia, China, and elsewhere.¹⁶⁴

It is also the case that law schools have themselves been important sites for the incubation and practice of public interest law in the global South. Alviar addresses this development—and the tensions that it produces—in her discussion of clinical education in Colombia.¹⁶⁵ In her account, clinical education in Colombia has shifted course over the last thirty years as the move from import substitution industrialization to open markets brought with it new functions for law school clinics. Specifically, she argues that whereas Ford-sponsored clinics launched in the late 1960s and early 1970s emphasized civil and criminal legal aid provision, the movement toward the Rule of Law in the 1990s brought in new funders, particularly the World Bank, which have emphasized “good governance” programs focused on the enforcement of constitutional rights.¹⁶⁶ Thus, the move has been from the formalist application of legal rules in the name of expanding access to justice

¹⁶² See Clark D. Cunningham, *Clinical Education Changing the World and the World Changing Clinical Education: The Global Alliance for Justice Education*, <http://www.gaje.org/History/Cunningham-AusClinicConf05.htm> (last visited Nov. 19, 2008).

¹⁶³ Atuguba, *supra* note 129, at 126-27.

¹⁶⁴ *Id.* at 127.

¹⁶⁵ Helena Alviar, *The Classroom and the Clinic: The Relationship between Clinical Legal Education, Economic Development and Social Transformation*, 13 J. INT’L L. & FOREIGN AFF. 197 (2008).

¹⁶⁶ *Id.* at 202.

to the more antiformalist policy-oriented approach associated with test-case public interest litigation seeking to hold the government accountable to its constitutional and human rights obligations.¹⁶⁷ In China (as in the United States), the tension is between the pedagogical and social justice goals of clinical education, which was launched in 2000 with the support of the Ford Foundation (where Liu was a program officer) in order to train lawyers for China's transition to a market economy and more open society.¹⁶⁸ Although many of the founders viewed clinics as a way to promote social justice advocacy, the deeply conservative nature of Chinese law schools combined with the limited political opportunities for innovative advocacy have resulted in the development of clinics that emphasize professional skill development over social action.¹⁶⁹ In Central and Eastern Europe, on the other hand, the trajectory of clinical education has been different, privileging service provision over skills. As Rekosh describes, clinics in Poland and Russia, with financial support from Ford and the Open Society Institute, have followed the South African model of legal aid delivery to the poor, although he notes that this emphasis has meant that students focus on "rote recitation and theoretical exposition" rather than problem-solving¹⁷⁰—distinguishing the experience in Central and Eastern Europe from the policy-oriented public interest law approach in Colombia.

f. Profession

As public interest law expands its global presence, it interacts with professional structures in ways that further impact its development. In countries with weak or nascent organized bars, there are few pre-existing professional associations that public interest law proponents may turn to for support; by the same token, there may be fewer professional impediments to public interest law's advancement. As the relationship between public interest law and the profession evolves in developing and transitional countries, we may

¹⁶⁷ *Id.* at 209-14.

¹⁶⁸ Liu, *supra* note 10, at 281-82; see also Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE HUM. RTS. & DEV. L.J. 117, 128-29 (2005) ("In September 2000, as part of a Ford Foundation initiative, clinical legal education was launched in classrooms at seven different law schools in Beijing, Wuhan, and Shanghai. By 2002, the effort had spread to four additional campuses located in other parts of the nation, and shortly thereafter the China Law Society gave its approval for the founding of a Committee of Chinese Clinical Legal Educators ('CCLE'), a nonprofit academic body comprised of clinical legal educators from all over China.").

¹⁶⁹ Liu, *supra* note 10, at 282-83.

¹⁷⁰ Rekosh, *supra* note 6, at 88-90.

therefore expect to see professional alliances and divisions influenced by lawyers' economic location within the bar. Thus, as in the United States, public interest law efforts around constitutional and human rights enforcement might be expected to receive the most support from professional associations seeking legitimacy within democratic governance structures.¹⁷¹ In authoritarian countries like China, it may be the case that as the profession becomes more organized,¹⁷² it will provide more institutional resources to augment legal aid and public interest law.

Yet, while the organized bar may provide support, it may also assert resistance when public interest law invades remunerative practice areas. With echoes of the opposition to federally funded legal services and later to mandatory pro bono expressed by some segments of the U.S. bar, Vieira provides an account of pro bono in Brazil that underscores the potential for division between different levels of the profession.¹⁷³ In his story, pro bono emerged in Brazil with the support of the Ford Foundation and elite corporate firms, which sought to promote pro bono in response to corporate clients that wanted to burnish their reputations for social responsibility and U.S. law firm affiliates that wanted to maintain their commitment to public service.¹⁷⁴ However, when Conectas launched its Instituto Pro Bono in 2001, with the technical assistance of influential U.S.-based pro bono group Public Counsel, it was greeted with strong criticism by the organized bar, particularly lawyers outside the elite global firms, who complained that pro bono would undercut their business by funneling lower-income clients into the pro bono system.¹⁷⁵ In the face of the bar's efforts to assert market control,¹⁷⁶ pro bono has been strictly regulated and focuses on providing services in areas that do not pose economic threats to private lawyers, such as in the areas of non-profit governance and human rights.¹⁷⁷

2. Power

The process of building public interest law systems from imported and indigenous organizational forms inevitably raises crucial questions about outside domination and the imposition of legal fixes poorly suited to local

¹⁷¹ See SCHEINGOLD & SARAT, *supra* note 5, at 18.

¹⁷² Liu, *supra* note 10, at 274.

¹⁷³ Cf. JOHN P. HEINZ, ROBERT L. NELSON, REBECCA L. SANDEFUR & EDWARD O. LAUMANN, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 6-7 (2005).

¹⁷⁴ Vieira, *supra* note 102, at 256-57.

¹⁷⁵ *Id.* at 257.

¹⁷⁶ See RICHARD L. ABEL, *AMERICAN LAWYERS* 20 (1989).

¹⁷⁷ Vieira, *supra* note 102, at 257-58.

context. These are, at bottom, questions about the exercise of power and thus implicate long-standing tensions, particularly in the post-colonial context, over what role, if any, Northern actors should play in the internal affairs of countries in the global South. In one sense, this tension might be framed in terms of economic imperialism, with public interest law viewed as part of a broader neoliberal project to legitimate the imposition of open markets on poor countries. Yet, perhaps more fundamentally, the relationship between donor and recipient countries in the development of public interest law implicates deep issues of national identity, which themselves turn on notions of culture, race, and class.

Running throughout the essays in this issue is a resistance to the notion that Northern, particularly U.S., institutions have unduly shaped the trajectory of public interest law in the countries under consideration—what Richard Abel calls the “anxiety of influence.”¹⁷⁸ Thus, the stories of the origins of public interest law in Brazil, Central and Eastern Europe, and China are all careful to emphasize historical antecedents, local initiatives, and national politics as the primary drivers of public interest law’s institutionalization. These analyses recognize the important role of the U.S. in exporting legal concepts and approaches through funding, technical assistance, and U.S.-based education. However, in assigning credit for current institutional developments, the authors privilege local actors over outsiders. We do not take issue with the accuracy of these assessments. Yet it is important to draw attention to the authors’ need to emphasize local authorship of public interest law programs as an important feature of the contemporary global legal landscape.

This emphasis on the local reflects a broad discomfort with U.S. involvement in national governance that is part of America’s unfortunate, and often shameful, legacy in the developing world. And it offers a useful corrective to the tendency to inflate the United States’s global role, particularly to the degree that it highlights local antecedents of and regional influences on contemporary modes of legal activism. Thus, the essays in this issue contribute to a deeper analysis of the range of influences that are part of each national story and underscore the crucial role of non-U.S. actors in building modern public interest systems. For instance, at the local level, Vieira highlights the role of the anti-slavery movement in Brazil, while at the regional level Rekosh points to German legal aid and the European Court of Human Rights as influences in Central and Eastern Europe. The exploration of local identity also reveals important linkages between developing democracies, as

¹⁷⁸ Abel, *supra* note 155, at 296-98.

we see in Rekosh's analysis of South Africa's constitution as a template for Central and Eastern European countries. In addition, these contributions underscore the key point that "influence" is not a one-way street, from North to South, but rather a set of multi-directional, and often contested, flows. Thus, we see that modes of advocacy pioneered in the global South have reverberated back to influence public interest law elsewhere: the domestic human rights movement in the United States is an important example.

Yet privileging the local produces its own tradeoffs. There is a risk of romanticizing local efforts and minimizing the global role of outside funders. There is also the more complicated question of how the legacy of U.S. imperialism may impact long-term efforts to build transnational alliances and promote information exchange. U.S. actors, given their privileged position, need to approach transnational relationships with humility and respect for local institutions, while lawyers from developing and transitional countries must continue to assert the autonomy and integrity of local decision making. Yet the delicacy of this cross-border engagement should not impede efforts by lawyers from the North and South to collaboratively advocate for social justice. Going forward, it is therefore crucial that lawyers across the North-South divide continue to frankly confront the history and current reality of U.S. power, while also attempting to move beyond distrust in order to open up the possibility for transformative alliances across borders.

B. Public Interest Law in Global Governance

As a tool of global governance, public interest law has been used in transnational social justice movements in order to both contest the operation of global institutions and to leverage their power on behalf of peoples and causes marginalized by economic globalization. Though scholars have examined transnational practice in the private sector,¹⁷⁹ there is only beginning to emerge a literature on how lawyers are moving between the domestic and international spheres to advance causes—and how global engagement creates new opportunities and constraints that reframe our understanding of public interest law.¹⁸⁰ The contributions to this issue paint a picture of public interest lawyering across borders that diverges from the conventional litigation-focused American model, instead suggesting the outlines of a transnational version of public interest law that operates across a range of global and local advocacy venues, engages in both the deployment and construction

¹⁷⁹ See, e.g., YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* (1996); Richard L. Abel, *Transnational Law Practice*, 44 CASE W. RES. L. REV. 737 (1994).

¹⁸⁰ See Sarat & Scheingold, *supra* note 76.

of new forms of legality, aligns itself more closely with cross-border activist networks, and deploys a broad range of problem-solving skills.

1. Advocacy Arenas and Legal Pluralism

In contrast to the American preoccupation with national-level courts, global practice operates within a polycentric advocacy terrain that encompasses multiple tiers. While public interest lawyers continue to pursue national-level claims, the essays in this issue also suggest the importance of subnational and supranational fora, with lawyers supporting grassroots initiatives from “below” while also venturing into global institutions to promote change from “above.” In this sense, public interest law is becoming involved in broader transnational social justice struggles that play out under a global governance regime characterized by “legal pluralism,” in which there are multiple sources of law that operate within and across different arenas of advocacy.¹⁸¹

Although this multi-level advocacy terrain creates opportunities for activists to “deploy legal tools at one level against another,”¹⁸² it also imposes new constraints since the arenas are not equally situated in terms of their power to produce change on the ground. Thus, the choice of whether to engage particular legal arenas implicates political questions about what is to be gained in terms of legally enforceable rights, but also whether there are secondary mobilization benefits such as media attention, international political pressure, and grassroots activation. This observation implicates debates over the utility of “hard” versus “soft” law that our contributors explore. Do lawyers turn to venues that have the capacity to issue directives that are binding on state and private actors and have clearly defined methods of enforcement (“hard” law)? Or do they opt for venues that lack mechanisms for directly constraining action, but nonetheless establish compliance standards and offer opportunities to mobilize constituencies and generate media pressure (“soft” law)? What the essays in this issue suggest is that, for public interest lawyers operating in the global arena, the tactical choice of where to engage is driven less by a policy preference for hardness or softness, than by the pragmatic considerations of specific campaigns. Where venues offer enforceability, lawyers take advantage to press claims. However, where opportunities for hard enforcement are curtailed, engagement in soft law regimes is a strategic necessity.

¹⁸¹ Rodriguez-Garavito, *supra* note 93, at 82-84.

¹⁸² Rajagopal, *supra* note 91, at 183.

One set of choices revolves around the decision to enter human rights venues and their relationship to local legal enforcement and political mobilization. This decision is strongly influenced by the legal relationship between the domestic and international human rights systems. Thus, in countries that have accepted the jurisdiction of international tribunals and are bound to respect their judgments, the choice to move into the international arena is easier since it may be possible to obtain an enforceable judgment against the state. In Latin American countries that have accepted the jurisdiction of the Inter-American Court of Human Rights or in countries under the power of the European Court of Human Rights, the move from the domestic to the international is a more seamless transition up the ladder of legal advocacy: from national supreme court to regional human rights court with the ability to impose remedies. In the United States, by contrast, the move between the domestic and international systems is more complicated since the United States has generally resisted the jurisdiction of human rights bodies. Its membership in the Organization of American States means that the United States is subject to charges in the Inter-American Commission on Human Rights, but that venue lacks the authority to execute judgments, and the United States has refused to recognize its competence to issue orders.¹⁸³ Nonetheless, because the Commission can hold hearings, make investigations, and write reports, it has the power to generate negative publicity that has attracted some U.S. groups seeking to pressure the government to make political change. Thus, it has been used by U.S. advocates seeking to challenge death penalty orders, the detention at Guantánamo of both Haitians in the 1980s and “enemy combatants” after 9/11, government appropriation of Indian land, welfare reform, the denial of labor rights to immigrant workers, and the siting of toxic industrial operations in communities of color.¹⁸⁴ Similar tradeoffs confront groups seeking to use the United Nations human rights system, where the Human Rights Council and treaty-based committees in some cases offer opportunities to participate in hearings or file human rights complaints, and thus generate pressure on state violators, though (as in the case of the United States) the power of treaty bodies may be limited by non-ratification or a state’s assertion of reservations.

Buchanan and Chapparo examine the legal and political utility of another type of “soft law” transnational advocacy arena—the system set up by the NAFTA side labor agreement—on cross-border labor mobilization. While they emphasize that the system “was neither designed for nor intended to provide an enforceable North America-wide regime of labor stan-

¹⁸³ See Diane Marie Amann, *Guantánamo*, 42 COLUM. J. TRANSNAT’L L. 263, 276 (2004).

¹⁸⁴ See Cummings, *supra* note 70, at 993-1005.

dards,”¹⁸⁵ they do note that the cross-border complaint system that it initiated provided that allegations of certain types of labor violations were, in theory, subject to outside expert review and even arbitration.¹⁸⁶ Though the possibility of this type of high-level dispute resolution drew labor unions and community activists into the system early on to test its mandate, no complaints ever made it to the review or arbitration stage, raising criticism of its effectiveness.¹⁸⁷ Moreover, as Buchanan and Chapparo report, institutional resistance within the U.S. government in particular has frustrated activists, who have been stymied by slow responses by officials in charge of processing complaints and a lack of information about the status of their cases.¹⁸⁸ Yet, even as political opposition has undercut the potential legal power of the side labor agreement, the authors report that activists are still using the NAFTA system as a tool of mobilizing support for broader transnational labor campaigns.¹⁸⁹ Recent cases have thus focused on challenging the United States’s deprivation of legal rights to Mexican guest workers in order to influence the political debate on comprehensive immigration reform.¹⁹⁰

As the NAFTA example reveals, advocates’ choices about which venues to enter are fundamentally influenced by the audience that they wish to target. Traditional public interest law emphasized the state as the prime audience for advocacy and it is still the case that governmental decision makers are typically the targets that public interest lawyers seek to influence. But instead of having judges tell executive officials or legislators what to do, global advocacy seeks to reach different audiences that might influence state decision makers. One model is to use international strategies to mobilize support from one state against another. As Lyon shows, in the U.S. immigrant worker rights movement the use of international human rights has been deployed to influence México, which has an important stake in ensuring the humane treatment of its nationals abroad and has advocated within the Inter-American system for enhancing migrant rights in the United States.¹⁹¹

¹⁸⁵ Buchanan & Chaparro, *supra* note 83, at 139.

¹⁸⁶ North American Agreement on Labor Cooperation, U.S.-Can.-Mex., arts. 23-29, Jan. 1, 1994, available at <http://www.worldtradelaw.net/nafta/naalc.pdf>.

¹⁸⁷ See HUMAN RIGHTS WATCH, TRADING AWAY RIGHTS: THE UNFULFILLED PROMISE OF NAFTA’S SIDE LABOR AGREEMENT (2001), available at <http://www.hrw.org/reports/2001/nafta/>.

¹⁸⁸ Buchanan & Chaparro, *supra* note 83, at 150.

¹⁸⁹ *Id.*; see also Jonathan Graubart, “*Politicizing*” a New Breed of “*Legalized*” Transnational Political Opportunity Structures: Labor Activists Uses of NAFTA’s Citizen-Petition Mechanisms, 26 BERKELEY J. EMP. & LABOR L. 97 (2005).

¹⁹⁰ See Buchanan & Chaparro, *supra* note 83, at 154-57.

¹⁹¹ Lyon, *supra* note 108, at 184-85.

Although public interest lawyers have long sought to mobilize popular support through favorable news coverage, the increasing reach and power of the media makes it an even more appealing target. Thus, we see lawyers consciously attempting to generate media coverage in connection with advocacy in order to move policy makers. This is, for instance, an explicit strategy in the China public interest litigation cases, where Liu reports that lawyers curry media attention by strategically choosing cases “that illustrate a compelling harm to the public interest, but are not too politically sensitive to be reported in the Chinese media.”¹⁹²

2. Tactical Flexibility and Rights Mobilization

As public interest lawyers become more active on the global stage, they are employing a broad range of advocacy tools, reflecting the relative lack of opportunities for traditional court-based international advocacy and the availability of intersecting global legal regimes—each with different rules and powers of enforcement—that lawyers may engage to advance causes. As a result, the portrait of global public interest practice departs by necessity from the classical American model of rights-based litigation in domestic courts. As the examples from Central and Eastern Europe, Brazil, and China demonstrate, although domestic litigation is still important, it is increasingly viewed as part of a broader repertoire of advocacy techniques that lawyers bring to bear in complementary and politically sophisticated ways to address complex global problems. Lawyers therefore operate along a tactical continuum that ranges from traditional forms of adversarial legalism to approaches that embrace nonlitigation techniques to advance the interests of subordinated groups.

In the main, tactical choices are driven by the institutional availability of legal hooks and thus public interest lawyers adapt their global strategies to deploy the tools at hand, which often means that they must bend soft law systems to political advantage, given the relatively weak enforcement of global standards related to social justice. For instance, to the extent that public interest law is becoming more closely allied with human rights, we see public interest lawyers deploying human rights strategies of “naming and shaming” in order to exert international political pressure on recalcitrant governmental actors. Lyon describes the growing interest among U.S. immigrant rights lawyers in using human rights as a tool of domestic advocacy by “broadcasting” violations to international human rights bodies and “import-

¹⁹² Liu, *supra* note 10, at 289.

ing” international standards into U.S. law.¹⁹³ She points to the Inter-American Court of Human Rights’ 2003 advisory opinion challenging the U.S. Supreme Court’s decision in *Hoffman Plastics Compounds, Inc. v. NLRB*—which denied back pay to illegal immigrants fired for union organizing—as an example of advocacy designed to subject the U.S. government to international legal rebuke.¹⁹⁴ She mentions other campaigns to generate international pressure through petitions to the Inter-American Commission on Human Rights, hearings in front of the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, and the ILO.¹⁹⁵ In addition to these efforts to shine the spotlight of international law on U.S. practice, Lyon also notes that advocates can work to develop new human rights principles and formulate best practices in order to promote U.S. compliance with international standards on migrant rights.¹⁹⁶

The application of the human rights framework to U.S. immigrant rights suggests the use of international law as part of a broader political strategy designed to mobilize support for immigration reform from multiple points. In this sense, it is consonant with what Buchanan and Chaparro view as the politicized deployment of law in the NAFTA side labor system, where advocates do not seek “specific legal outcomes” but rather use the system to “bring to light and to denounce systemic violations that have been ignored by governments.”¹⁹⁷ As a result, advocacy around NAFTA labor issues has evolved into a “highly politicized style of advocacy, one that is collaborative, engaged and embedded in the ongoing struggles of social movements,” contributing to the fusion of public interest law and “alternative law” strategies that are firmly connected to broader political mobilization.¹⁹⁸

As the NAFTA experience shows, changes in lawyering strategy are responsive to the complexity of advocating for corporate accountability and worker rights across the regulatory divide that separates the developed from the developing world. Deregulation and privatization have weakened the ability of national governments to redress economic inequality in the developing world, where the embryonic nature of judicial independence often makes domestic courts an uncertain ally in the fight for economic and social rights. In this environment, public interest lawyers sometimes seek to integrate international and domestic rights strategies into a synthetic framework

¹⁹³ Lyon, *supra* note 108, at 171-72.

¹⁹⁴ *Id.* at 174.

¹⁹⁵ *Id.* at 174-75.

¹⁹⁶ *Id.* at 171-73.

¹⁹⁷ Buchanan & Chaparro, *supra* note 83, at 144.

¹⁹⁸ *Id.* at 143.

for promoting economic justice. Atuguba offers a dynamic example of this in his examination of the evolution of public interest law in Ghana, where he sees the emergence of a new “variant of PIL lawyering for social and economic transformation” that “uses multidisciplinary, multi-actor theories, methodologies, processes, practices, tactics, experiences and learning to support a broad range of transformative initiatives.”¹⁹⁹ In his view, this transformation is driven by the “strange marriage of convenience” between the development and human rights industries, which seek to hold government accountable for development mandates through popular participation and rights enforcement.²⁰⁰ In this context, public interest lawyers work to empower NGOs to both understand their role in the design and implementation of development projects and to sue to enforce rights when government deviates from its assigned task.²⁰¹ As Atuguba describes it, this means that public interest lawyers in Ghana combine popular education, technical assistance, transactional legal support for NGOs, and litigation in the pursuit of accountable development.²⁰² He is not always sanguine about this turn, suggesting that public interest lawyers are ill-equipped for many of these tasks and NGOs are being asked to bear an unrealistic burden in national governance.²⁰³ Nonetheless, he claims the importance of advancing a transformative vision of public interest law that seeks to promote grassroots empowerment by enlarging the scope of rights advocacy beyond the traditional civil and political rights framework, while moving away from litigation toward multidisciplinary advocacy at the national and international level “to achieve social transformation and resulting rights-positive outcomes.”²⁰⁴

Atuguba’s linkage between social transformation and rights suggests the powerful and complex role that rights-claiming continues to play in the global advocacy terrain. As all of the essays suggest, rights mobilization remains a central component of public interest lawyering—despite the canonical critique of rights as politically demobilizing.²⁰⁵ That it does so reflects the fact that global sites of advocacy like the United Nations and Inter-American system speak in the language of human rights and thus invite advocates to deploy rights talk as a political resource. The emphasis on rights globally, as Alviar suggests, is also a product of the changing nature of the

¹⁹⁹ Atuguba, *supra* note 129, at 103.

²⁰⁰ *Id.* at 121.

²⁰¹ *Id.* at 118-20.

²⁰² *Id.* at 118.

²⁰³ *Id.* at 117-21.

²⁰⁴ *Id.* at 101-02.

²⁰⁵ Lobel, *supra* note 51, at 948-58.

state in the Rule of Law period, where the emphasis on rights enforcement has moved judges and courts to the center, raising the profile of rights enforcement and deemphasizing the social engineering role that lawyers played during the first law and development period.²⁰⁶ Atuguba presents a slightly different picture in Ghana, where he contends that RBA has meant that the role of the social engineer and rights advocate are now linked in the form of the public interest lawyer, who gains legitimacy precisely because of his key role in implementing the Rule of Law. To the extent that public interest lawyers do in fact end up mediating between the state and capital in the development of Rule of Law systems, they risk playing a conservatizing social role. Yet the studies presented here nonetheless provide some evidence that public interest lawyers are attempting to use rights in more radical ways. The integration of immigrant rights and human rights, the incorporation of human rights claims in NAFTA petitions, the shift toward economic and social rights in Ghana and Colombia, the mobilization of rights to influence policy in China, and the exchange between domestic and human rights advocacy in Brazil and Central and Eastern Europe all point to ways in which activists are reconfiguring old rights traditions to advance short-term policy goals and longer-term reforms.

3. Transnational Networks and Legal Education

The essays in this symposium issue also draw attention to another important feature of public interest advocacy in the global arena: the reliance on transnational networks of organizations that cut across disciplinary categories. In terms of functions, our contributors suggest that transnational networks are emerging to mobilize law in new global arenas, foster political solidarity among disparate groups, and diffuse information and knowledge. Activism around the NAFTA side labor agreement again offers the sharpest view of the role of networks in legal mobilization.²⁰⁷ As Buchanan and Chaparro note: "One well-documented consequence of the [side labor agreement] almost from its inception has been the facilitating role it has played in fostering transnational networking among unions and labor rights

²⁰⁶ Alviar, *supra* note 165, at 211-13.

²⁰⁷ For examples of transnational networks in the NAFTA context, see David Brooks & Jonathan Fox, *Movements across the Border: An Overview*, in *CROSS-BORDER DIALOGUES: U.S.-MEXICO SOCIAL MOVEMENT NETWORKING 1* (David Brooks & Jonathan Fox eds., 2002); Heather Williams, *Lessons from the Labor Front: The Coalition for Justice in the Maquiladoras*, in *CROSS-BORDER DIALOGUES*, *supra*, at 87; Manuel García Urrutia M., *The Authentic Labor Front in the NAFTA-Era Regional Integration Process*, in *CROSS-BORDER DIALOGUES*, *supra*, at 77.

activists in the three NAFTA countries.”²⁰⁸ The creation of these networks, and the role of lawyers within them, is in part a function of the practical realities of claim submissions, with groups from the country charged with a labor violation having to rely on counterparts in the country where the claim is filed for legal expertise and strategic advice. Thus, the network is a way of bridging the national divide among the member states in order to operationalize the disputing system set forth under NAFTA.

However, network formation has also been forged on the basis of transnational political solidarity between groups seeking to assert collective resistance to the free trade regime—and this solidarity itself has been deepened by cross-border collaborations. One of Buchanan and Chapparo’s important findings is the growth of the transnational networks involved in the submissions over time. Thus, they note that the number of groups “appeared to take off” after 2000, with the recent case on behalf of non-agricultural guest workers drawing twelve organizational supporters, including U.S.-based organizations the Northwest Workers’ Justice Center, the Brennan Center for Justice, the AFL-CIO Solidarity Center, the National Immigration Law Center, and the Oregon Law Center, as well as the Mexican independent union Frente Auténtico del Trabajo.²⁰⁹ In terms of network composition, the authors also note that recent petitions have included both legal and labor groups from the United States and México, as well as unions and human rights organizations from other Latin American countries, Asia, and Europe.²¹⁰ These transnational formations suggest that the NAFTA campaigns are an opportunity for bringing to bear broad-based international pressure, but also for drawing together disparate groups with different organizational missions—union organizing, public interest law, human rights, and immigrant rights—around the cause of economic justice.

The essays in this issue also highlight the important role of transnational networks in disseminating information about social justice issues. This can be seen in the ambitious effort by Conectas to create a horizontal network of South-South groups to provide a forum for learning, resource sharing, and collaboration around human rights, as well as its initiative to spread pro bono programs both within Latin America and beyond to countries like Turkey and Portugal. The Public Interest Law Institute that Rekosh has developed facilitates regional networking in Central and Eastern Europe, providing access to funding sources and best practices through conferences and other transnational exchanges. Lyon also notes the loose coordination among

²⁰⁸ Buchanan & Chapparo, *supra* note 83 at 141.

²⁰⁹ *Id.* at 150, 154 n.72.

²¹⁰ *Id.* at 151.

immigrant rights and human rights groups, which share strategy “through various networks and national institutions.”²¹¹ In addition, we see the development of cyber-networks of websites and listserves, which allow lawyers and activists to quickly communicate, rapidly distribute updated information, and easily publicize upcoming events. Two important examples are E-LAW, an online resource for international environmental lawyers, and U.S. Human Rights Online, a web-based information clearinghouse.

Finally, as our collective project has highlighted, networks can provide structures for developing trust. The scholars and activists who came together over two years ago to engage in this examination of global public interest law had little previous contact—and some had doubts about the potential for productive exchange in light of concerns about U.S.-centrism and political insensitivity to other cultural frameworks and reference points. Our project was itself an exercise in the creation of a transnational public interest network forged around a shared commitment to advancing learning and trust among the participants. From this vantage point, the production of this issue is its own evidence that transnational networks can serve as important vehicles for cross-border learning and enrichment.

The challenge of what is to be done with this new cross-border learning brings us back to the role of legal education in preparing lawyers for an increasingly transnational form of practice that contributes to development and democratization. The Ghana LRC’s collaboration with U.S. law schools and the promotion of alternative forms of public interest practice geared toward reforming development is an innovative example of pedagogy designed to promote global connections and expose students to transnational practice. It highlights the powerful role that legal education can play in preparing lawyers for a practice that operates at the intersection of public interest law, human rights, and development, and that moves between domestic and international legal arenas, mixing litigation with other advocacy strategies. Going forward, although legal education may not succeed in transforming society, it can adapt curriculum, teaching methods, clinical training, and advanced degree programs in order to better equip public interest lawyers for the demands of globalized practice.²¹²

²¹¹ Lyon, *supra* note 108, at 167.

²¹² See Trubek, *supra* note 19, at 468-69; see also Louise G. Trubek & Jeremy Cooper, *Rethinking Lawyering for the Underrepresented Around the World: An Introductory Essay*, in EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY 1 (Louise G. Trubek & Jeremy Cooper eds., 1999).

CONCLUSION

This symposium issue is meant to be a starting point in an ongoing conversation about the global development of public interest law and its impact. In the end, our aim is to both tell a story about what has happened and point toward a future research agenda that takes a more systematic look at the evolution of public interest law systems in developing and transitional countries, as well as the risks and rewards of transnational legal campaigns. We conclude with a number of open questions. On a comparative level, we need to know more about how public interest law is playing out across disparate legal systems. Funding for Rule of Law initiatives continues apace, with new programs taking place in countries like Burundi, Bahrain, Ecuador, Jordan, Kosovo, and Vietnam. How do these legal reform projects strike a balance between importing outside exemplars of public interest law and promoting indigenous traditions? Who are the internal actors promoting public interest law's implementation and why? What accounts for commonalities and differences between nations? From the perspective of legal mobilization, we still know little about the ideology of lawyers who operate in the transnational arena, the strategic calculations and political values that shape their advocacy, and the nature of their relationship to client groups and broader constituencies. How are advocacy choices made to pursue specific international targets? And how do lawyers interact with client and community groups in articulating goals and implementing strategy? Finally, there are fundamental questions about impact and evaluation. The explosion of public interest law abroad occurs against the backdrop of pessimism about the power of law to change society in the United States—an irony not lost on our participants. What should we expect from public interest lawyering in the global arena? How do we evaluate the role that public interest law is playing in promoting participation and accountability in national governments and international institutions? And how do we measure public interest law's impact on advancing transnational social justice causes? The answers to these questions will not only help scholars make cross-national comparisons and gauge the efficacy of transnational efforts, but will also inform the choices of policy makers and advocates on the ground as they continue to author public interest law's global institutional development and pursue strategies that harness public interest law's transformative power.